

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

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In re Evanston Northwestern Healthcare Corporation Antitrust Litigation))))))))
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This Document Relates To:)
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All Actions.)
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Master File No. 07-CV-4446

Judge Lefkow

Magistrate Judge Denlow

**EXPERT REPORT OF DR. MONICA G. NOETHER SUPPORTING OPPOSITION TO
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

**REDACTED VERSION
FOR PUBLIC FILE**

EXHIBIT INDEX

Exhibit 1.....Curriculum Vitae of Dr. Monica G. Noether

Exhibit 2.....Materials Considered by Dr. Monica G. Noether

Exhibit 3.....Tables, Charts, and Graphs [Sealed Documents, Not Available for Public Viewing]

Exhibit

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INTERNATIONAL

MONICA G. NOETHER

Executive Vice President

Ph.D. Economics,
University of Chicago
Graduate School of Business

M.A. Economics,
George Washington University

M.B.A. Finance and Economics,
University of Chicago
Graduate School of Business

B.A. Photography,
Wesleyan University

Dr. Noether is an executive vice president at CRA International. She specializes in antitrust analysis and other competitive issues for law firms, professional associations, government agencies, and other clients. She is well-known for her work in the healthcare industry but also has broad general expertise in all aspects of antitrust analyses. She has provided expert testimony in antitrust and reimbursement litigation. She has also worked on matters involving insurance, pharmaceuticals, software, retailing, wholesale, distribution, music, soft drinks, and energy.

PROFESSIONAL EXPERIENCE

Antitrust

Antitrust Litigation. Dr. Noether has provided economic analysis to various cases involving allegations of attempted monopolization, exclusive dealing, boycotts, or tying for a variety of health care services, including radiology, anesthesia, cardiology, women's health, surgery, oncology, ophthalmology, dialysis and trauma. Cases have involved arrangements among physicians, hospitals, ambulatory facilities, and health plans. Dr. Noether has also assessed similar economic issues in a variety of other industries, including retailing, wholesale distribution, software, and chemicals. She has provided deposition and trial testimony in a variety of these matters.

Healthplan Mergers. Dr. Noether has assessed the likely competitive effects of several health plan consolidations. She has provided in expert testimony to State Departments of Insurance in some of these matters. In some, such as Aetna's purchase of Prudential, United's acquisitions of Oxford and Pacificare, Humana's acquisition of CHA, and Anthem's acquisition of Wellpoint, she has prepared white papers for and made presentations to federal and/or state antitrust authorities. Issues have included definition of the appropriate product and geographic markets for antitrust analysis, assessment of the likelihood and sufficiency of entry or expansion by competitors, and the potential for the exercise of monopsony power over providers. She is familiar with the variety of databases useful to these efforts.

Hospital Mergers. Dr. Noether has analyzed the economic effects of dozens of unlitigated proposed hospital mergers involving a variety of geographic locations (including Massachusetts, Maine, New York, New Jersey, Pennsylvania, Illinois, North Carolina, South Carolina, Iowa, Florida, Texas, Utah, Louisiana, and California), ownership structures, numbers of involved facilities, and importance of network development. She has testified in a variety of hospital merger cases in federal district court, including the Federal Trade Commission's recent challenge of the consummated merger between Evanston Northwestern Healthcare and Highland Park Hospital (on behalf of the hospital).

Disability Insurance Mergers. Dr. Noether served as an expert witness in a Massachusetts Department of Insurance hearing regarding the proposed acquisition of Paul Revere by Provident and in the Maine Bureau of Insurance and South Carolina Department of Insurance hearings regarding the proposed combination of Provident and UNUM. She provided testimony on her analysis of the likely competitive effects of the transition, focusing on market definition and entry issues.

Other Mergers. Dr. Noether has evaluated the effects of mergers proposed in a variety of industries, including clinical laboratories, pharmaceuticals, medical devices, soft drinks, supermarkets, energy, chemicals, recorded music, and building materials. Each of these analyses has required assessment of market definition, entry conditions, and the impact of unique industry conditions on competition among market participants. In some cases, Dr. Noether has been involved in presentations to state or federal antitrust agencies.

Policy Issues. Dr. Noether developed a model to estimate the costs of proposed legislation that would allow physicians the right to negotiate collectively with health plans. The results of her analysis have been widely disseminated to federal and state legislators. She has also testified against proposed initiatives in Pennsylvania and Ohio. She has also been involved in various Certificate of Need proceedings in which she has provide expert testimony on issues relating to competitive impact.

Other Litigation

Regulatory Issues. Dr. Noether has assessed the economic issues arising from various forms of health care regulation, including fair market value provisions of the fraud and abuse laws, Orphan Drug Act, and Certificate of Need statutes. Analysis has focused on the regulations' effects on the economic incentives and behavior induced by the regulation as well as on their likely impact on market competition. She has provided testimony in a number of these matters.

Hospital Payment. Dr. Noether has analyzed the economic issues, and in some cases, testified in various matters relating to hospital reimbursement by private and public payers. These have included issues related to Medicaid risk plans, reimbursement of salaried teaching physicians and Boren amendment mandates that rates support efficiently operated hospitals. The analysis included an assessment of methodology used by the state to determine rates paid, a study of trends toward greater efficiency among hospitals, and an appraisal of characteristics of facilities and patients that most strongly affect hospital costs of operation. One suit resulted in a mandate to the state to revise its payment system.

Physician Studies

Medicare Physician Fee Schedule Analyses. Dr. Noether was active in all aspects of the congressionally mandated reform of Medicare's physician payment system to reflect a "resource-based relative value" approach. For the Health Care Financing Administration, she directed the design of the data collection strategy for measuring physician practice expenses, which relied on national survey data as well as information obtained from clinical panels. She also conducted a variety of studies and data collection efforts on behalf of specific medical specialties (including the cardiothoracic, vascular, orthopaedic, otolaryngologic and general surgeons, gastroenterologists, radiologists, pathologists, and nuclear medicine physicians) to assess the effects of the proposed reforms of practice expense reimbursement as well as of the work and malpractice components of the Medicare Physician Fee Schedule. In other fee-schedule-related work, Dr. Noether also assisted in the development of the methodology used to update and reevaluate the work component of the fee schedule, evaluated the effects of volume performance standards, and assessed the visit patterns associated with global surgical fees.

Forecast of Staffing Requirements in Various Specialties. Dr. Noether assessed current utilization of anesthesiology, nephrology, oral and maxillofacial surgery, and critical care staffing in different settings, and projected requirements in future years based on anticipated demographic and technological changes and influence of healthcare reform. She compared projected requirements and supply to estimate training needs.

Development of Bundled Surgical Episode Payment Options. Dr. Noether developed design and implementation options for lump-sum prospective payment of all services associated with a surgical episode. She analyzed particular procedures (cataract extraction, cardiac surgery) to determine options for episode definition, risk stratification, payment mechanisms, and other design and implementation features.

Hospital Studies

Development of Estimates of Effect of New Technologies on Hospital Costs. Dr. Noether developed the annual estimate of the scientific and technological advance allowance presented by the Prospective Payment Assessment Commission (now MedPAC) to Congress as part of its recommendation regarding payment updates for hospitals and dialysis facilities. The project involved collecting cost and diffusion data on cost-increasing, quality-enhancing technologies.

Analysis of Factors Contributing to Growth in Outpatient Surgery. Dr. Noether evaluated factors that explain switch from inpatient to outpatient setting for five outpatient surgical and diagnostic procedures. Changes in technology, reimbursement, and clinical risk were assessed through literature review and structured interviews with clinicians and medical device manufacturers.

Hospital Prospective Payment System Evaluations. Dr. Noether conducted various economic analyses of the effects of federal and state prospective reimbursement programs on utilization, quality, and cost of hospital services, as well as on medical education provided by hospitals. She also designed and evaluated a prospective ambulatory reimbursement system.

Outcomes Research

Practice Guideline Development. Dr. Noether assisted specialty society coalition in developing an AHCPR-funded guideline on colorectal cancer screening. She coordinated a comprehensive literature review and analysis of the resulting data and convened an expert panel.

Profiling of Hospitals and Physicians for Managed Care Plan Network Development.

Dr. Noether implemented a scoring system to evaluate hospitals and physicians on the quality and efficiency of care they provide for possible inclusion in a point-of-service managed care plan. The system involved the use of discharge and claims data in scoring algorithm designed to rank medical providers.

PREVIOUS PROFESSIONAL EXPERIENCE

Abt Associates Inc.

Managing Vice President and Area Manager of Economic Consulting to Healthcare Organizations, Senior Economist, 1987–1996. Dr. Noether developed new practice of health economics consulting to private clients on policy issues. She also directed a variety of publicly funded research initiatives.

Federal Trade Commission

Deputy Assistant Director, Staff Economist, Antitrust Division, Bureau of Economics, 1983–1987. Dr. Noether analyzed economic consequences of various actions subject to antitrust scrutiny, including mergers in various industries, price fixing, group boycotts, and other horizontal restraints. She was particularly active in investigations of competitive practices of various members of the healthcare industry. She served as lead economist on Commission's investigation of various acquisitions in the soft drink industry; she also supervised and worked on investigations of mergers in the oil, polyester, recorded music, and supermarket industries. In addition, she supervised several staff economists.

As part-time economic consultant to Commissioner Azcuenaga, Dr. Noether advised the Commissioner on specific cases before the Commission and on general economic theory. She also advised the Commissioner on acquisitions in chemical, natural gas, and other industries.

U.S. Department of Commerce

Research Associate, Office of Domestic Policy Coordination, 1979. Dr. Noether prepared briefings to the Secretary on various policy issues.

American Association of Psychiatric Services for Children and the American Psychiatric Association

Administrative Positions, 1974–1978. Dr. Noether was responsible for federal lobbying activities as well as management of Associations' finances, meetings, and newsletter editing.

PAPERS, PUBLICATIONS, AND PRESENTATIONS

Publications and Reports

"Antitrust Issues Raised in the DOJ's Investigation of the Anthem-WellPoint and United-Oxford Mergers." *Health Lawyers News*, Vol. 9, Number 2, February 2005, co-author.

"The Economics of Exclusive Contracts Between Hospitals and Managed Care Organizations." *Antitrust Review 4*, Early Spring 2002, (Publication of American Health Lawyers Association.)

"Antitrust Waivers for Physicians: Costs and Consequences." Report for Health Insurance Association of America, June 1999, updated March 2000. Several state level analyses have also been published.

"Economic Issues in Hospital Merger Policy." *Antitrust 13* (Spring 1999).

"Economic Issues in the Antitrust Assessment of Hospital Competition: Overview." *International Journal of the Economics of Business*, July 1998. (Special issue on hospital antitrust policy edited by Monica Noether.)

"A Critical Evaluation of the Cross-Specialty Linkage Procedure in the RBRVS." With M. Glickman. *Medical Care*, 1997.

"Compression in Magnitude Estimation: A Chronic Deficiency in Measuring Physicians' Work for Setting Medicare Physician Payment." With others. Working Paper.

"Estimating Increases in Outpatient Dialysis Costs Resulting from Scientific and Technological Advancement." With others. *Advances in Renal Replacement Theory 2*, No. 2 (April 1995): 127–142.

"Using Claims Data to Select Primary Care Physicians for a Managed Care Network." With others. *Managed Care Quarterly* (Autumn 1994), and *Physician Profiling and Risk Adjustment*, Norbert Goldfield and Peter Boland (eds.), Aspen Publishers, 1996.

"The RBRVS in Vascular Surgery." With N. Hertzner, MD. *Journal of Vascular Surgery* (October 1993).

"Physician Payment Reform: Comments from Economic Practitioners." With W. Marder. *Journal of Medical Practice Management* (Winter 1992).

"Measurement of the Total Physician Work of Surgical Procedures for Development of a Resource-Based Relative Value Scale." With G. Miller, MD, and G. Rainer, MD. June 1992.

"Using Functional Status to Identify Appropriate Cataract Surgeries." With O. Schein, MD, and L. Olinger. June 1992.

"Results from the Cardiothoracic and Vascular Surgery Work Survey by Abt Associates Inc." *The Annals of Thoracic Surgery* (August 1991).

"Changes in Hospital Competition during the Early 1980s." Working Paper, April 1991.

"Frequency and Costs of Diagnostic Imaging in Office Practice: A Comparison of Self-Referring and Radiologist-Referring Physicians." With others. *New England Journal of Medicine* (December 6, 1990).

"Readmissions and Transfers: The Effect of PPS." Report to the Health Care Financing Administration (November 1988).

"Competition Among Hospitals." *Journal of Health Economics* (September 1988).

"The Magnitude and Effect of Changes Between 1982 and 1985 in Hospital Patient Severity and Utilization, Measured Using MEDISGRPS Data." Report to the Health Care Financing Administration (September 1988).

"How Profitable is a Medical Career?" *Journal of Medical Practice Management* (Summer 1988).

"Competition Among Hospitals." FTC report (May 1987).

"The Effect of Government Policy Changes on the Supply of Physicians: Expansion of a Competitive Fringe." *Journal of Law and Economics* (October 1986).

"The Growing Supply of Physicians: Has the Market Become More Competitive?" *Journal of Labor Economics* (October 1986).

Presentations

"Health Care Antitrust Enforcement in the New Administration – An Economist's Perspective." Boston Bar Association, Boston, MA, February 10, 2009

"Economic Analysis in Hospital and Health Insurance Mergers." American Health Lawyers Association Annual Meeting, San Francisco, CA, June 30, 2008

"Merger Remedy Policy: Application to the Evanston Case," ABA Spring Antitrust Meeting, Washington, D.C., March, 2008

"Hospital Turf Wars." American Health Lawyers Association Teleconference, February 13, 2007.

"Health Plan Power and Practice." American Bar Association / American Health Lawyers Association Health Law Conference, Washington, D.C., May 12, 2005.

"Review of FTC/DOJ Health Competition Report." American Bar Association Annual Antitrust Meeting, Washington, D.C., March 30, 2005.

"Physician Product and Geographic Market Definition." Federal Trade Commission—Department of Justice Joint Hearings on Health Care and Competition Law and Policy, Washington, D.C., September 24, 2003.

"Economic Analysis of Market Power." Health Antitrust Conference jointly sponsored by the American Bar Association and American Health Lawyers Association, Washington, D.C., May 16, 2003.

"Health Insurance and Providers: Countervailing Market Power." Federal Trade Commission—Department of Justice Joint Hearings on Health Care, Washington, D.C., May 7, 2003.

"Experts in Antitrust Litigation." American Bar Association Annual Meeting, Washington, D.C., August 11, 2002.

"Exclusive Contracting—Benefit or Evil to Competition?" American Health Lawyers Association Annual Meeting, Antitrust Practice Group, July 1, 2002.

"Use of Economic Experts in Merger Evaluations." American Bar Association Antitrust Section Conference, New York, NY, June 13, 2002.

"Merger Simulation Techniques." Boston Bar Association, March 8, 2002.

"What is a Cost-to-Serve Model? How can it Help?" Periodical and Book Association of America, New York, NY, December 6, 2001.

"How can an Economist Help in an Antitrust Case?" Ohio State Bar Association Antitrust Institute, Columbus, OH, November 2, 2001.

"Antitrust Issues in Health Care Restructuring." Practicing Law Institute Program on Health Care Restructuring, New York, NY, April 26, 2001.

"Looking Beyond Managed Care: What's Next?" Health Industry Group Purchasing Association Annual Meeting, Orlando, FL, October 24, 2001.

"Economic Issues in Antitrust Policy Regarding Health Care Mergers." Practicing Law Institute Program on Health Care Mergers and Acquisitions, New York, NY, April 15, 1999.

"Economic Input to Strategies in Merger Litigation." American Bar Association, Section of Antitrust Law, Spring Meeting, Washington, DC, April 14, 1999.

"Issues in Hospital Merger Policy." Dallas Bar Association, Health Section, March 17, 1999.

"Antitrust Considerations in Mergers and Acquisitions." Tax Executive Institute, Needham, MA, January 22, 1999.

"Recent Policy Developments in Hospital Mergers." Charles River Associates Conference on Economists' Perspectives on Antitrust, Boston, April 30, 1998.

"Hospital Merger Policy." New York State Bar Association, January 29, 1998.

"Determining Geographic Markets: Principles and Applications." Charles River Associates Conference on Economists' Perspectives on Antitrust Today, Boston, April 24, 1997.

Participation in Robert Wood Johnson working conference on "Defining Competition in Health Care Markets," Reston, VA, November 14-15, 1996.

"A Health Policy Perspective on Market Definition." Charles River Associates Conference on Current Topics in Merger and Antitrust Enforcement, Washington, DC, October 31, 1996.

"New Ways to Think About Market Definition in Health Care as Markets Evolve." American Bar Association Health Antitrust Conference, New Orleans, LA, October 25, 1996.

"Defining Markets for Healthcare Networks." New York City Bar Association, May 20, 1996.

"Reform of Medicare Physician Payment for Practice Expenses." Harvard University course on Coping with the Healthcare Revolution, May 14, 1996.

"Pricing Your Plan's Services." Presented at Physician Sponsored Managed Care Plans conference, Chicago, IL, October 16, 1995.

Briefings to 130 medical specialty societies on Reform of the Physician Practice Expense Reimbursement, June 13 and August 18, 1995.

"Pricing of Bundled Episodes of Care." Presented at Activity Based Costing conference, Boston, MA, July 12, 1995.

“Medicare Practice Expense Reform.” Presented to American Association of Thoracic Surgeons, April 22, 1995.

“Antitrust and Evolving Health Care Markets.” Opening remarks and moderator of day-long symposium sponsored by Chicago Bar Association, March 1995.

“Costing of Bundled Service Packages.” Massachusetts Health Financial Management Association, March 1995.

“Economic Analysis of Physician Joint Ventures.” National Association of Attorneys’ General Meeting, September 1994.

“Market Definition in a Hospital Physician Privileges Case.” American Bar Association Antitrust Meeting, April 1994.

“Hospital Merger Analysis.” Loyola University School of Law, December 1993.

“Resource-Based Approaches to Physician Practice Expense Payment.” American College of Surgeons Coalition Meeting, November 1993.

“Issues in RBRVS Refinement.” Massachusetts Health Information Management Association Meeting, September 1992.

“Abt Restudy of Vascular Surgery Work Values.” Midwestern Vascular Surgery Society Meeting, September 1992.

“Changes in Hospital Competition during the Early 1980s.” Annual Health Economics Symposium, May 1991.

“The Effects of RBRVS on Physician Payment—Lessons for Other Payors.” Workmen’s Compensation Research Institute Annual Meeting, February 1991.

“Results from the Restudy of Work in Cardiothoracic and Vascular Surgery.” Society of Thoracic Surgeons (STS) Interim Meeting, September 1990.

“A Method to Identify Inappropriate Cataract Surgeries.” International Society of Technology Assessment in Health Care, June 1992; American Medical Review Research Center (AMRRC), August 1990.

“Constructing and Analyzing Episodes of Care using Claims Data.” AMRRC, November 1989.

“Competition among Hospitals.” Western Economic Association, July 1986; American Economic Association, December 1986; Association for Health Services Research, June 1987.

“The Magnitude and Effect of Changes in Patient Severity and Hospital Utilization Measured Using MEDISGRPS Data.” MediQual’s 4th National Symposium, April 1988.

“Readmissions and Transfers: The Effects of PPS.” Eastern Economic Association, March 1989; Harvard School of Public Health, April 1989; AMRRC, November 1989.

MEMBERSHIPS

- American Economic Association
- Association for Health Services Research
- American Bar Association
- American Health Lawyers Association, Former Vice Chair, Antitrust Practice Group, 2001-2008

REFEREE

- *American Economic Review*
- *Health Services Research*
- *International Journal of the Economics of Business*
- *Journal of the American Medical Association*
- *Journal of Political Economy*
- *Journal of Law and Economics*
- *Journal of Labor Economics*
- *Journal of Health Economics*
- *Journal of Industrial Economics*
- *Medical Care*
- *National Science Foundation*
- *RAND Journal of Economics*

HONORS

- Charles E. Merrill Fellowship, 1978–1980
- US Department of Health, Education, and Welfare Fellowship, 1979–1980

- University of Chicago Fellowship, 1980–1983
- H. B. Earhart Fellowship, 1981–1983
- Dean’s Honor List, University of Chicago Graduate School of Business

DEPOSITION AND TRIAL TESTIMONY

Federal Trade Commission v. University Health and St. Joseph Hospital, US District Court, Southern District of Georgia, CVI-91-052, 1991. (trial testimony).

Federal Trade Commission v. Columbia Hospital Corporation, Defendant, Adventist Health System/Sunbelt Health Care Corporation, Defendant-Intervenor, US District Court, Middle District of Florida, 93-30-Civ-Ftm-23D, 1993. (deposition and trial testimony).

Mary Imogene Bassett Hospital v. Donna Shalala and Empire Blue Cross/Blue Shield, US District Court Northern District of New York, 86-CV-1287, 1994. (trial testimony before Magistrate on behalf of Bassett Hospital).

US v. Mercy Health Services and Finley Tri-States Health Group Inc., US District Court for the Northern District of Iowa, C-94-1023, 1994. (deposition and trial testimony).

Ralph Read, M.D. v. Medical X-ray Center, et al., US District Court, District of South Dakota, C-92-4095, 1994–1995. (deposition and trial testimony).

State of New Hampshire Department of Insurance, Proposed Acquisition of Matthew Thornton Health Plan by Harvard Community Health Plan, 1995. (deposition and hearing testimony).

Commonwealth of Massachusetts Division of Insurance, Proposed Acquisition of Control of Paul Revere Companies by Provident Companies, Docket No. F-97-1, 1997. (hearing testimony on behalf of Provident and Paul Revere).

State of New Hampshire Department of Insurance, Proposed Acquisition of Matthew Thornton Health Plan by Blue Cross Blue Shield of New Hampshire, 1997. (hearing testimony).

Sisters of Providence Health System, Inc. v. Holyoke-Chicopee Health Resources, Inc., Commonwealth of Massachusetts, Superior Court, C-95-1051, 1997. (deposition testimony).

Iowa Eye, P.C. and John Puk, M.D., P.C. v. Richard Noyes et al., US District Court, Northern District of Iowa, C 95-0288, 1997. (deposition testimony).

Methodist Hospitals of Dallas v. Physician Reliance Network, Inc. and Texas Oncology, P.A., District Court of Dallas County, 96-01253, 1998. (deposition testimony).

The Regents of the University of California v. Genentech, Inc., US District Court, Northern District of California, C 90-2232, 1998. (deposition testimony).

State of Missouri Department of Insurance, Proposed Acquisition of Group Health Plan, Inc., Healthcare USA of Missouri LLC, Principal Health Care of Kansas City, Inc., and Principal Health Care of St. Louis, Inc. by Coventry Health Care, Inc., 1998. (hearing testimony).

Cleveland Clinic v. Agency for Health Care Administration and Naples Community Hospital, 1998. (deposition testimony).

Temple University Hospital v. Healthcare Management Alternatives, Inc., Court of Common Pleas of Philadelphia County, 1999. (trial testimony).

Christopher Allen, M.D., Bryan Donohue, M.D. and John Cave, M.D. v. The Washington Hospital, Telford Thomas, John Frazier, M.D. and Neil Hart, M.D., US District Court for the Western District of Pennsylvania, C-96-1950, 1999. (deposition testimony).

State of Maine Bureau of Insurance, Proposed Acquisition of UNUM Life Insurance Company of America by Provident Companies, 1999. (hearing testimony).

State of South Carolina Department of Insurance, Proposed Acquisition of Colonial Life & Accident Insurance Company by Provident Companies, 1999. (hearing testimony).

State of Maine v. Bridgton Hospital et al., State of Maine Superior Court Civil Action, Docket No. 00-548, 2000. (deposition testimony).

Boca Raton Community Hospital (and various other hospitals) v. Agency for the Health Care Administration, State of Florida Division of Administrative Hearings, 2001–2002. (deposition and hearing testimony).

Grand Valley Health Plan, Inc., Priority Health, Inc., and Care Choices HMO, v. Gambro Health Care, Inc., US District Court in the Western District of Michigan, Southern Division, Case No. 1:00–CV–873, 2002. (deposition testimony).

Women's Clinic, Inc., et al. vs. St. John's Health System, Inc., et al., US District Court Western District of Missouri, Southern Division, Case No. 01- 32-45- CV – S, 2002. (deposition testimony).

Certificate of Public Need Request Number VA-6361, submitted by Bons Secours –Richmond Health System in Accordance with a Decision of the Virginia Court of Appeals, Commonwealth of Virginia, Department of Health, 2002. (hearing testimony).

Combined Review of Competing Certificate of Public Need Applications: VA-6714, VA-6728, VA-6729, VA-6731, Commonwealth of Virginia, Department of Health, 2002. (hearing testimony)

Boca Raton Community Hospital v. Agency for the Health Care Administration and various hospitals, State of Florida Division of Administrative Hearings, 2003. (deposition and hearing testimony).

EasCare, L.L.C. v. Cape Cod Healthcare, and Cape Cod Medical Enterprises, Inc., US District Court for the District of Massachusetts, Civil Action No. 02-11460-RWZ, 2003. (deposition testimony).

Rocky Mountain Medical Center, Inc. v. Northern Utah Healthcare Corporation, HCA, Inc., and Ogden Regional Medical Center, Third Judicial District Court of Salt Lake County, State of Utah, Civil No. 000906627, 2003. (deposition testimony).

Review of Certificate of Public Need Application VA-6859 Commonwealth of Virginia, Department of Health, 2003 (hearing testimony).

Review of Certificate of Public Need Application VA-6886 Commonwealth of Virginia, Department of Health, 2004 (hearing testimony).

Connecticut Department of Insurance Hearing regarding Review of Form A Filing regarding the Acquisition of Oxford health Plans by Unitedhealth Group, 2004 (hearing testimony).

New Jersey Department of Insurance Hearing regarding Review of Form A Filing regarding the Acquisition of Oxford health Plans by Unitedhealth Group, 2004 (hearing testimony).

In the matter of Evanston Northwestern Healthcare Corporation, Before the Federal Trade Commission, Docket 9315, 2005 (deposition and trial testimony).

Colorado Department of Insurance Hearing regarding Review of Form A Filing on UnitedHealthcare's Acquisition of Pacificare, November 2005 (hearing testimony).

Kentucky Department of Insurance Hearing regarding Review of Form A Filing on Humana's Acquisition of CHA Health, April 2006 (hearing testimony).

Review of Certificate of Public Need Application FL-9822, State of Florida Division of Administrative Hearings, 2006. (deposition and hearing testimony).

Review of Certificate of Public Need Application VA-7374, Commonwealth of Virginia, Department of Health, 2006 (hearing testimony)

Pennsylvania Department of Insurance Hearing regarding proposed merger of Highmark, Inc. and Independence Blue Cross, Pittsburgh, PA, July 8, 2008 (hearing testimony)

Exhibit

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Exhibit 2. Materials Considered

Document Title	Bates Range
Plaintiffs' Motion for Class Certification, Case No. 1:07-CV-004446, filed February 13, 2009	
Plaintiffs' Response to Defendant Evanston Northwestern Healthcare's Interrogatories with Proof of Service and Verification	
Plaintiffs' Supplemental Response to Defendant Evanston Northwestern Healthcare's Interrogatories with Proof of Service	
Painters District Council No. 30 Health & Welfare Fund's Responses to Defendant's First Set of Interrogatories	
Painters District Council No. 30 Health & Welfare Fund's Supplemental Responses to Defendant's First Set of Interrogatories with Certificate of Service	
States District Court for the Northern District of Illinois Eastern Division, Painters District Council No. 30 Health & Welfare Fund, on its own behalf and on behalf of all others similarly situated, Plaintiff, vs. Evanston Northwestern Healthcare Corporation, Defendant, Case No. 08 CV 2541, Class Action Complaint.	
Declaration of Joseph Arango, attached to Non-Party Blue Cross Blue Shield of Illinois' ("BCBSI") Reply in Further Support of Its Motion for Protective Order and Objection to the Production by North Shore University Healthsystem of BCBSI's Highly Confidential and Business-Sensitive Documents, filed 10/22/2008.	
Plaintiffs' Motion for Class Certification, Case No. 1:07-CV-004446, filed February 13, 2009	
Painters' District Council No.30 Health & Welfare Plan: Summary Plan Description 2000 Edition	PF000001 - PF000053
Letter to Angie Ambrose (Painters' Council) RE: Fully Executed Network Administration Application	PF000054 - PF000056
Letter to Angie Ambrose (Painters' Council) Subject: Fully Executed Network Administration Application	PF000057 - PF000059
BlueCross BlueShield of Illinois Network Administration Agreement (DRAFT)	PF000060 - PF000081
BlueCross BlueShield of Illinois Bluecard Program Addendum to the Network Administration Agreement	PF000082 - PF000088
Painters' District Council No. 30 Health and Welfare Plan: Summary Plan Description 2000 Version	PF000089 - PF000136
Painters' District Council No. 30 Health and Welfare Plan, 1990 edition	PF000137 - PF000185
Painters' District Council No. 30 Health and Welfare Fund Rules and Regulations: As Amended and Restated January 1, 2005	PF000186 - PF000331
BlueCross BlueShield of Illinois Network Administration Agreement (SIGNED, FINAL)	PF000332 - PF000354
BlueCross BlueShield of Illinois Bluecard Program Addendum to the Network Administration Agreement	PF000355 - PF000361
Painters' Fund Summary Plan Description effective July 1, 2007	PF000362 - PF000429
Painters' District Council No. 30 Health and Welfare Fund Rules and Regulations: As Amended and Restated January 1, 2003	PF000430 - PF000578
Plaintiff Medical Records	MES000003 - MES000025
Plaintiff Medical Records LAH000001 - LAH000298	LAH000001 - LAH000298
Plaintiff Medical Records MES000001 - MES000002	MES000001 - MES000002
Plaintiff Medical Records BER000001 - BER000144	BER000001 - BER000144
ENH Plaintiff Medical Records ENHCA-005-000001 - ENHCA-005-000439	ENHCA-005-000001 - ENHCA-005-000439
Painter's Fund EOBs, non-redacted	PFE0B000001 - PFE0B000555
Articles of Agreement between Painters' District Council No. 30, International Brotherhood of Painters and Allied Trades, AFL-CIO, and the Northeast Illinois Chapter of the Painting and Decorating Contractors of America - effective May 1, 1999	PF000579 - PF000625

Document Title	Bates Range
Articles of Agreement between Painters' District Council No. 30, International Union of Painters and Allied Trades, AFL-CIO, and the FCA of Illinois - effective May 1, 2004	PF000626 - PF000679
Collective Bargaining Agreement for Painters' District Council 30 - May 1, 2008 - April 30, 2013	PF000680 - PF000750
Painters District Council No. 30 Minutes of the Meeting of the Board of Trustees, various dates	PF000751 - PF000844
Health Care Services Provider Agreement between Evanston Northwestern Healthcare and Board of Education of Township High School District #113 for the Self funded Health Plan	ENHCA-012-000368 - ENHCA-012-000391
Township High School District No. 113 Comparison of Medical Benefits (2007-2008)	ENHCA-012-012185 - ENHCA-012-012192
Letter of Extension between ENH and School District No. 113	ENHCA-012-012156 - ENHCA-012-012160
Expert Report of Dr. David Dranove Supporting Motion for Class Certification	
Dranove Report Back-Up Data Materials	
Plaintiffs' Memorandum of Law in Support of Their Motion for Class Certification	
Plaintiffs' Motion for Class Certification	
Plaintiffs' Supplemental Response to Defendant Evanston Northwestern Healthcare's Interrogatories Nos. 1-10	
ENH Financial Assistance and Eligibility Guideline (DRAFT 2/15/2002)	
ENH Charity Care and Financial Assistance Evaluation and Eligibility (4/2004)	
ENH Charity Care and Financial Assistance Evaluation and Eligibility (5/2005)	
ENH Financial Assistance Eligibility Guidelines (2006)	
ENH Charity Care and Financial Assistance Evaluation and Eligibility (10/1/2007)	
NorthShore Charity Care Information Protocol (12/2007)	
Strategic Pricing Review Guide, for ENH	
Charge Description Master (CDM) Enhancement: Summary of Initial Hospital Pricing Review	
Strategic Pricing Review - Steering Committee Update	
Email from Tom Hodges to Washa, Gladden, Jones, Sirabian, Weiss, Sanchez re ENH pricing structure	ENHCA-004-000172 - ENHCA-004-000176
Memo from Deloitte Consulting to Jeff Hillebrand re Strategic Pricing Project Documentation	ENHCA-004-000177 - ENHCA-004-000184
(DUPLICATE) Letter from Deloitte Consulting to Jeff Hillebrand re ENH pricing review engagement letter	DC 0605 - DC 0611
(DUPLICATE) Strategic Pricing Review Guide - Project Summary	DC 0001 - DC 0040
Letter from Deloitte Consulting to Jeff Hillebrand re ENH pricing review engagement letter	
Strategic Pricing Review Guide - Project Summary	ENHCA-004-016416 - ENHCA-004-016422
ENH Facility Pricing Update (Draft) presentation	ENHCA-004-017112 - ENHCA-004-017150
BCBS of Illinois documents related to the Painters Fund including Network Administration documents	ENHCA-004-028433 - ENHCA-004-028445
Employer Health Benefits 2008 Annual Survey	PF000845 - PF001108
Motions, Amicus Curiae, and Letters of Economics Professors including David Dranove	
Unmet Needs: The Skyrocketing Demand for Hospitals in Chicago Suburbs -- The Edward Plan: Projected Utilization Patterns in the Service Area Served by the Proposed Edward Plainfield Hospital	DRANOVE0001 - DRANOVE0032
Letter from Barry C. Finn, President & CEO of Rush-Copley Medical Center, to Professor David Dranove	
Testimony of David Dranove (Direct Examination)	
Expert Report of Dr. David Dranove for Plaintiff (Peoria Day Surgery Center)	

Document Title	Bates Range
Rebuttal Expert Report of Dr. David Dranove for Plaintiff (Peoria Day Surgery Center)	
Memorandum by David Dranove Re Further PeaceHealth analysis in light of new BCBS data	
Deposition Testimony of Dr. David Dranove for Plaintiff (Peoria Day Surgery Center)	
Letter from Alan I. Greene (Hinshaw & Culbertson LLP) to David E. Dahlquist (Winston & Strawn LLP) RE: Dr. David Dranove	
Deposition of Wanda O. Ehrhardt taken April 1, 2009	
Deposition of Steven Messner taken March 31, 2009	
Deposition of Amit Berkowitz taken April 3, 2009	
Deposition of David Dranove taken May 8, 2009	
Current Medicare DRG Schedule (version 26):	
"FY09_IPPS_final_V26_cost_weight" retrieved 5/20/2009 at http://www.cms.hhs.gov/AcuteInpatientPPS/FFD/itemdetail.asp?filterType=none&filterByDID=0&sortByDID=2&sortOrder=ascending&itemID=CMS1214025&intNumPerPage=10	
Interview with health care plan broker/consultant Michael Curtin of Wayne Gallagher.	
National Health Expenditures, Table 7, Hospital Care Expenditures Aggregate, Per Capita Amounts, and Percent Distribution, by Source of Funds: Selected Calendar Years 1970-2007, available at http://www.cms.hhs.gov/NationalHealthExpendData/downloads/tables.pdf .	
"2008 Medicare Supplement Premium Comparison Guide" for the State of Illinois, available at http://www.idfpr.com/DOI/medsup/MedSupFull2008.pdf .	

Data Files:

FTC_01_02.mdb	ENHCA-010-000001
ROUND2_FTC_HPH_cleaned.mdb	ENHCA-010-000002
ROUND2_FTC_97_EV_GB.mdb	ENHCA-010-000003
Unreadable CD	ENHCA-010-000004
ROUND2_FTC_99_EV_GB.mdb	ENHCA-010-000005
ROUND2_FTC_2000_EV_GB.mdb	ENHCA-010-000006
ROUND2_FTC_2001_Ev_GB.mdb	ENHCA-010-000007
ROUND2_FTC_2002_EV_GB.mdb	ENHCA-010-000008
ROUND2_FTC_2003_EV_GB.mdb	ENHCA-010-000009
ENH Income Statements (XLS files)	ENHCA-010-000010
ENHCA-010-000011	ENHCA-010-000011
ENHCA-010-000012	ENHCA-010-000012
ENHCA-010-000013	ENHCA-010-000013
ENHCA-010-000014	ENHCA-010-000014
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ENHCA-010-000019	ENHCA-010-000019
ENHCA-010-000020	ENHCA-010-000020
FY 00 COMP Data	ENHCA-011-000001
FY 01 COMP Data	ENHCA-011-000001
FY 02 COMP Data	ENHCA-011-000001
FY 03 COMP Data	ENHCA-011-000001
FY 04 COMP Data	ENHCA-011-000001
FY 05 COMP Data	ENHCA-011-000002
FY 06 COMP Data	ENHCA-011-000002
FY 07 COMP Data	ENHCA-011-000002
Revenue by Financial Class	ENHCA-110-060264
ENH Chargemaster Files (5/2/2002)	ENHCA-110-060264

Document Title	Bates Range
ENH Chargemaster Files (5/13/2004)	ENHCA-110-060264
ENH Chargemaster Files (10/2/2002)	ENHCA-110-060264
ENH Chargemaster Files (10/29/2003)	ENHCA-110-060264
ENHCA-110-060265	ENHCA-110-060265
ENHCA-118-048301	ENHCA-118-048301
ENHCA-118-048302	ENHCA-118-048302
ENHCA-119-006750	ENHCA-119-006750
ENHCA-122-016368	ENHCA-122-016368
ENHCA-122-016369	ENHCA-122-016369
ENHCA-124-021390	ENHCA-124-021390
ENHCA-131-024995	ENHCA-131-024995
ENHCA-131-024996	ENHCA-131-024996
ENHCA-131-024997	ENHCA-131-024997
ENHCA-012-000001-014752	ENHCA-012-000001 - ENHCA-012-014752
ENHCA-013-000001-000078	ENHCA-013-000001 - ENHCA-013-000078
ENHCA-014-000001-000165	ENHCA-014-000001 - ENHCA-014-000165
Painters' Fund EOBs, redacted	PF EOB 000001 - PF EOB 000555
ENHCA-002-001762	ENHCA-002-001762
ENHCA-002-001763-001849	ENHCA-002-001763 - ENHCA-002-001849
ENHCA-003-014851-014958	ENHCA-003-014851 - ENHCA-003-014958
ENHCA-106-000001-021130	ENHCA-106-000001 - ENHCA-106-021130
ENHCA-107-000001-015239	ENHCA-107-000001 - ENHCA-107-015239
ENHCA-109-000001-003126	ENHCA-109-000001 - ENHCA-109-003126
ENHCA-111-000001-009787	ENHCA-111-000001 - ENHCA-111-009787
ENHCA-114-000001-002157	ENHCA-114-000001 - ENHCA-114-002157
ENHCA-125-000001-002633	ENHCA-125-000001 - ENHCA-125-002633
ENHCA-030-000001-000683	ENHCA-030-000001 - ENHCA-030-000683
ENHCA-031-000001-004233	ENHCA-031-000001 - ENHCA-031-004233
ENHCA-032-000001-000022	ENHCA-032-000001 - ENHCA-032-000022
ENH Chargemaster Files (7/11/2002 to 3/4/2009)	

Books and Articles:

Cleverley, William O., and Andrew E. Cameron, Essentials of Health Care Finance, Boston: Jones and Bartlett Publishers, 2007.
Kongstvedt, Peter R., Ed., Essentials of Managed Health Care, Fifth Edition, Boston: Jones and Bartlett Publishers, 2007.

Kongstvedt, Peter R., Managed Care: What it is and How it Works, 3rd Edition, Boston: Jones and Bartlett Publishers, 2009.
Hurley, Robert E., Bradley C. Strunk, and Justin S. White, "The Puzzling Popularity of the PPO," Managed Care Revolution, March/April 2004, pp. 56-57.
Medpac, "Outpatient Hospital Services Payment System," Revised October 2008.

The Henry J. Kaiser Family Foundation, "Medicare: A Primer," 2009, available at <http://www.kff.org/medicare/upload/7615-02.pdf>.

The Henry J. Kaiser Family Foundation, "Medicaid: A Primer," 2009, available at <http://www.kff.org/medicaid/upload/7334-03.pdf>.
Haas-Wilson, Deborah and Christopher Garmon, "Two Hospital Mergers on Chicago's North Shore: A Retrospective Study," FTC Working Paper No. 294, January 2009.

Hogg, Robert and Allen Craig, Introduction to Mathematical Statistics, Fourth Edition, Macmillan Publishing Co., Inc., 1978, pp. 58-60

Web Sites:

<http://www.allbusiness.com/management/483217-1.html>
<http://www.allkids.com/income.html>; <http://www.allkidsdiscovered.com/pocket.html>
<http://www.bkd.com/docs/industry/CMSImplementsDRGRevisions.pdf>
<http://www.bls.gov/opub/cwc/cm20031022ar01p1.htm>
<http://www.cms.hhs.gov/AcuteInpatientPPS/>
<http://www.cms.hhs.gov/AcuteInpatientPPS/FFD/itemdetail.asp?filterType=dual,%20data&filterValue=FY09%20Final%20Notice%20Data&filterByDID=3&sortByDID=2&sortOrder=ascending&itemID=CMS1214025&intNumPerPage=10>
<http://www.cms.hhs.gov/apps/media/press/release.asp?Counter=1343>
<http://www.cms.hhs.gov/apps/media/press/release.asp?Counter=1863>

Document Title	Bates Range
http://www.cms.hhs.gov/HospitalOutpatientPPS/	
http://www.cms.hhs.gov/QuarterlyProviderUpdates/downloads/cms1243p.pdf	
http://deseretnews.com/article/1_5143_595084065,00.html	
http://facts.kff.org/chart.aspx?ch=889	
http://www.familycareillinois.com/cost.html	
http://www.familycareillinois.com/income.html	
http://www.hfs.illinois.gov/annualreport/	
http://www.hfs.illinois.gov/annualreport/reimbursing_hospital.html	
http://www.hhs.gov/asl/testify/t990422a.html	
http://www.idfpr.com/DOI/HealthInsurance/coord_benefits.pdf	
http://www.medicare.gov/publications/pubs/pdf/02179.pdf	
http://www.medpac.gov/publications/congressional_reports/Jun04DataBookSec12.pdf	
http://www.physicianscare.com/content/public/default.aspx?id=330	
http://www.pmconline.com/pmcs-wp05.aspx	
http://www.pmconline.com/pmcs-wp08.aspx	
http://www.ustreas.gov/offices/public-affairs/hsa/	
http://en.wikipedia.org/wiki/Diagnosis-related_group	
Illinois Department of Healthcare and Family Services, Fiscal Year 2007 Annual Report for the Department of Healthcare and Family Services' Medical Assistance Program, Reimbursing Hospitals, accessed June 2, 2009, available at http://www.hfs.illinois.gov/annualreport/reimbursing_hospital.html	

Materials from FTC Case:

Expert Report of Deborah Haas-Wilson, FTC Docket No. 9315, dated September 21, 2004.

Expert Report of Jonathan Baker, FTC Docket No. 9315, dated November 2, 2004.

Expert Report of Monica Noether dated November 2, 2004

Expert Report of Ira H. Rosenberg, FTC Docket No. 9315, dated 9/21/04.

Opinion of the Commission, In the Matter of Evanston Northwestern Healthcare Corporation, August 6, 2007, Docket No. 9315 by Majoras, Chairman, "FTC Opinion".

Data and Programs from FTC Case:

regression_by_drg.sas

aetna_postgrouper.sas7bdat

aetna.sas7bdat

bcbs.sas7bdat

humana.sas7bdat

teaching_and_medicare.sas7bdat

united.sas7bdat

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EXHIBIT 3

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