UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 1:98-CV-2172
v.	)	Judge
	)	
MEDICAL MUTUAL OF OHIO,	)	Filed: September 23, 1998
	)	
Defendant.	)	
	)	
	)	

COMPLAINT

For over ten years, Medical Mutual of Ohio ("Medical Mutual"), formerly known as Blue Cross and Blue Shield of Ohio, required that any hospital in the Cleveland area wishing to do business with it agree to a "Most Favorable Rates" ("MFR") provision. That provision in effect required hospitals to charge Medical Mutual's competitors significantly more, often 15-30% more, than they charged Medical Mutual for identical services or suffer significant penalties. In doing so, Medical Mutual substantially increased the cost of hospital services and health insurance for businesses and consumers in the Cleveland area. Moreover, by enforcing the MFR clause without regard to differences in products, patient mix, case management, and contracting methodologies, Medical

Mutual's MFR clause stifled creative contractual arrangements between hospitals and payers, deterred development of innovative health care plans, and hindered the growth of less-costly health plans.

Medical Mutual's recent announcement that it would abandon its MFR clause, an announcement occasioned by the imminence of this action, does not adequately protect consumers against either the reinstitution of the MFR clause or the use of similar practices equally pernicious to competition. For these reasons, the United States of America, acting under the direction of the Attorney General, brings this action to enjoin Medical Mutual from further violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

I. JURISDICTION AND VENUE

1. This Court has jurisdiction under 28 U.S.C. § 1331 and 15 U.S.C. § 4 to prevent and restrain Medical Mutual from violating Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. Venue is proper in the Northern District of Ohio (Eastern Division) because Medical Mutual is an inhabitant of, transacts business in, and is found within this District and Division, all within the meaning of 15 U.S.C. § 22 and 28 U.S.C. §1391.

II. DEFENDANT

3. Medical Mutual is a not-for-profit mutual insurance company organized under Ohio law with its principal place of business in Cleveland, Ohio. The largest health care insurer in Ohio, with receipts of nearly $1 billion in 1997, Medical Mutual sells individual and group health insurance, Medicare supplemental insurance, and such ancillary products as vision, dental, and prescription drug insurance. It also offers "administrative services only" ("ASO") contracts to self-insured groups, providing network access, claims processing, billing, utilization review, and related services.

III. CONCERTED ACTION

4. Various hospitals not named as defendants in this Complaint have entered into agreements with Medical Mutual and have been required to participate in, or otherwise perform acts in furtherance of, the violations alleged in this Complaint.

IV. INTERSTATE COMMERCE

5. Many purchasers of Medical Mutual's products and services remit substantial premiums and administrative fees to Defendant across state lines. Among these are businesses that sell products and services in interstate commerce, and the premiums or other payments made to Defendant and its competitors affect the prices of these products and services. In addition, various hospitals that contract with Defendant regularly attract and provide health care to out-of-state patients. Defendant's actions are, therefore, within the flow of, and have substantially and adversely affected, interstate trade and commerce.

V. RESTRAINT OF TRADE

A. Medical Mutual and the Cleveland Health Care Market

6. The relevant product markets affected by the MFR are (i) general acute care hospital services and (ii) commercial health care plans. Hospital services paid directly through Government programs, including Medicare, Medicaid, and local welfare programs, are not included. The relevant geographic market consists of the following seven counties in Northeast Ohio: Cuyahoga, Ashtabula, Geauga, Lake, Lorain, Medina, and Wayne (the "Cleveland Region").

7. Medical Mutual is by far the largest commercial health care insurer in the Cleveland Region. With more than 730,000 enrollees there, it covers approximately 36% of the commercially

insured population, and is roughly twice the size of its closest competitor. Medical Mutual also accounts for approximately 25 to 30% of commercial payments to local hospitals, and nearly all of these hospitals depend on Medical Mutual for the largest share of their commercial business.

8. Medical Mutual contracts with all of the general acute care hospitals in the Cleveland Region for its traditional indemnity plan. Approximately 75% of those hospitals are also in Medical Mutual's Preferred Provider Organization ("PPO") panel, while between 45% and 60% participate in one of Medical Mutual's two Health Maintenance Organization ("HMO") panels.

9. In return for direct payment, access to subscribers, and other benefits, hospitals agree to charge Medical Mutual and other health plans discounted rates. Moreover, hospitals typically offer substantially greater discounts than they offer to traditional indemnity plans in order to participate in one or more of a health plan's managed care networks. For example, hospitals participating in Medical Mutual's managed care plans typically charge it 15-20% less than they charge for identical services provided to Medical Mutual's indemnity patients.

B. Medical Mutual's MFR Provisions

10. Starting in 1986, Medical Mutual successfully imposed a MFR provision in all of its contracts with acute care hospitals in the Cleveland Region. Those provisions effectively required the hospitals to charge any non-governmental health plan with a lower total dollar volume of services than Medical Mutual rates equal to or greater than the rates the hospital charged Medical Mutual for services to its traditional indemnity subscribers. In approximately 1990, Medical Mutual also began to insist that each hospital charge all other plans anywhere from 1-10% more than it charged Medical Mutual for its traditional indemnity plans. This rate -- the rate charged Medical Mutual's indemnity plans plus a 1-10% buffer -- became the "MFR rate," and was used to determine compliance with the

MFR clause.

11. In addition, since hospitals typically charge Medical Mutual 15-20% more for services to its indemnity subscribers than to its managed care subscribers, pegging the MFR to Medical Mutual's indemnity rates created a further buffer between the price of hospital services for Medical Mutual's managed care plans and those of its rivals. In effect, the MFR clause ensured that Medical Mutual's managed care plans would have at least a 15-20% advantage in the cost of hospital services. When combined with the 1-10% additional differential in many of these contracts, Medical Mutual obtained a cost advantage in the purchase of hospital services of up to 30% over rival managed care payers.

12. Since 1995, Medical Mutual reluctantly agreed in some few instances to "like-product" or "line-of-business" rate comparisons with certain hospitals. Under such MFR provisions, other payers' managed care rates were compared to Medical Mutual's managed care rates, not to its indemnity rates. However, to protect its advantage, Medical Mutual required that the hospitals with these "line-of-business" MFR clauses charge other payers' managed care plans at least 10-15% more than they charged Medical Mutual for the same services. For example, the Cleveland Clinic, despite having a line-of-business MFR clause, was contractually required to charge any other managed care plans doing less total business at the Clinic than Medical Mutual at least 15% more than it charged Medical Mutual for identical services. Medical Mutual has imposed similar requirements in its contracts with, among others, Fairview, Lutheran, Lakewood, and the Meridia Hospitals.

13. Medical Mutual's often expressed purpose for the MFR clause -- and particularly for the various buffers it built into those clauses -- was "to afford [it] protection against its competitors" and to "protect its market share." It achieved this end by ensuring that its competitors paid higher

rates for hospital care. As Medical Mutual's former Vice President of Health Care Finance and Network Management testified: "The impact of . . . favored nations . . . was [that] the competitor would have to pay a higher price."

14. Pegging the MFR to the traditional indemnity rate restrained competition in another way as well: since all the hospitals in the area had at least a traditional contract with Medical Mutual, no rival payer could construct a managed care panel free of the MFR. In addition, hospitals excluded from Medical Mutual's managed care panels were effectively prevented from competing with those hospitals that participated in Medical Mutual's managed care panels because they could not offer rival payers rates lower than the rates charged for Medical Mutual's traditional indemnity patients without incurring a significant penalty.

C. Medical Mutual's Enforcement of the MFR Provisions

15. The MFR provision permitted Medical Mutual to audit the hospitals to determine compliance with the provision. Medical Mutual has used these audits aggressively, conducting more than one hundred compliance reviews since 1990, through such accounting firms as Cohen & Company, Walthall & Drake, Ernst & Young, Price Waterhouse, and Ciuni & Panichi. Cohen & Company, which alone performed more than eighty of those audits, also assisted Medical Mutual in drafting, revising, and strengthening the MFR provisions.

16. Medical Mutual's MFR provisions granted the auditor wide discretion to calculate the penalty or "lump sum settlement" for any violation. Typically, if a rival payer received discounts greater than those given to Medical Mutual, the auditor would multiply the percentage difference by Medical Mutual's total payments to that hospital. Thus, a rate 10% lower than Medical Mutual's would yield a $200,000 penalty if Medical Mutual's total business for the relevant contract year at that

hospital was as little as $2 million. As Medical Mutual accounted for the largest share of nearly every hospital's commercial business -- dwarfing the volume of some of the other payers in the market -- the MFR penalties could be quite large, and were often grossly disproportionate to the benefit received by the rival plan -- i.e., the amount that would have allowed the hospital to avoid violating the MFR provision. For example, in 1991 Medical Mutual assessed a penalty of $342,916 against St. John West Shore Hospital for giving a rival payer a discount below Medical Mutual totaling $13,831; and in 1992 it assessed a penalty of $417,373 against Fairview Hospital System (then known as HealthCleveland) for giving a different rival payer a discount below Medical Mutual's rates totaling $30,781. Because Medical Mutual has a large share of business at virtually all of the Cleveland Region hospitals, the penalties, calculated from Medical Mutual's total business at each hospital, have frequently been in the hundreds of thousands of dollars, and have been as high as $1.1 million.

17. The use of different reimbursement methods by other plans complicated the comparison of their rates with Medical Mutual's. Some plans contract on a per diem basis -- a set rate per day which can be varied by type of service (e.g., med/surg., obstetrics, and mental health). Other payers, Medical Mutual included, prefer to use case rates, also called Diagnosis Related Groups (DRGs): fixed payments based on principal and secondary diagnoses, surgical procedures, age, sex, and presence of complications. Still other payers negotiate a percentage discount off charges or pay a per capita rate for the delivery of all health services required by their enrollees (capitation contracts). These different payment mechanisms allocate the insurance risk differently and by doing so create differing incentives for cost management. A capitation contract, for example, places the risk on the hospital, creating an incentive for the hospital to closely manage care as well as to guard against unnecessary admissions. A DRG contract gives a payer an incentive to monitor admissions but little incentive to manage care

once the decision to admit is made. A per diem contract, in contrast, gives the payer a significant incentive to manage both admissions and care since it reaps the benefits of shortening the average length of a patient's stay.

18. Concerned about the ability of competitors to lower their hospital costs through better management of hospital services, Medical Mutual decided -- despite protests of unfairness by both hospitals and its own consultants -- that the auditor was to determine the rates charged other payers, and thus violations of the MFR clause, retrospectively, i.e., it was to look at actual reimbursement levels and not the contractual rate. By doing so it was able to impose penalties in those situations where the contractual discounts did not violate the MFR clause but where the effective discount, after factoring case mix and utilization management, was below the MFR rate. As one hospital complained to Medical Mutual: "[under] this clause we could find ourselves in violation of the Favored Nations provision if a per diem payer through strong utilization review efforts reduced their length of stay and also their aggregate payments"; in effect, the hospital would be penalized for a rival payer's greater efficiency. In fact, Medical Mutual had adopted its retroactive review specifically because of its concern that other payers, either by more aggressive case management or by enrolling a healthier population, would be able to reduce their hospital costs below Medical Mutual's even though their contractual rates were higher.

D. Medical Mutual's Recent Announced Abandonment of its MFR Provision

19. Faced with an imminent challenge by the United States and in the hopes of avoiding an enforceable judgment, Medical Mutual announced in May 1998, that it would not use MFR clauses in its hospital contracts for a period of ten years. It carefully and implicitly reserved, however, the option of instituting other policies and practices similar to the MFR clause, policies and practices that

the United States had already informed Medical Mutual would have to be addressed in order to avoid continuing harm to consumers.

E. Anticompetitive Effects of Medical Mutual's MFR Provisions

20. Medical Mutual's MFR provision harmed competition and reduced consumer welfare in the hospital services and hospital insurance markets in the Cleveland Region by increasing the costs of hospital services for other plans, businesses, and consumers, and by discouraging innovation in the design of health insurance plans and the delivery of hospital services.

1. Medical Mutual's MFR Provision Substantially Increased the Cost of Hospital Services for Rival Plans

21. Because the MFR provisions required that hospitals charge Medical Mutual's competitors substantially more than they charged Medical Mutual or suffer significant penalties, hospitals have been deterred from offering greater discounts to other health plans. The result has been to increase the cost of hospital services to Medical Mutual's rivals, to employers and other groups, and, ultimately, to consumers.

22. More specifically, Medical Mutual's MFR provisions have discouraged various hospitals and hospital systems, including MetroHealth, the Cleveland Clinic, University, Meridia, Lake, Marymount, Southwest General, Mt Sinai, and Fairview, from offering significant additional discounts -- discounts up to 20% or more -- to competing health plans, increasing the cost of health care coverage to their customers.

23. Where the MFR clause has been inapplicable -- whether due to an exemption or for some other reason -- hospitals have demonstrated a willingness to give lower rates to Medical Mutual's rivals. Thus, when Kaiser Permanente became the largest payer at the Cleveland Clinic in

1994, and therefore exempt from the MFR provision, its per case rate for cardiac services alone declined by $2,000. Similarly, when Total Health Care and other payers handling Medicare and Medicaid enrollees obtained an exemption from the MFR clause, University Hospital gave those plans rates below the MFR rate. MetroHealth Hospital also gave Total Health Care rates below the MFR rate due to a similar exemption. Starting in 1996, however, when it entered the Medicaid and Medicare market, Medical Mutual no longer granted such exemptions. As a result, those plans have been required to pay higher rates for hospital services.

24. The MFR clause and Medical Mutual's aggressive enforcement of it also discouraged hospitals from offering rates to rival plans approaching the MFR rate. The differences between Medical Mutual's and other plans' payment methods, patient mix, and case management, combined with Medical Mutual's retrospective review of actual reimbursement levels, made it difficult, if not impossible, for a hospital to accurately predict whether a contract would violate the MFR clause. As a result of such uncertainty, hospitals refused to price near the MFR rate, routinely demanding rates from rival plans significantly above the MFR rate in order to protect against what could be a financially devastating penalty.

2. Hospitals and Rival Plans Entered Into Costly Contractual Arrangements Designed to Avoid Medical Mutual's MFR Provision

25. In addition to discouraging hospitals from offering favorable prices to rival payers, Medical Mutual's MFR clause forced hospitals to manipulate their contractual arrangements with other payers to avoid incurring a MFR penalty, in effect raising the cost of hospital services to Medical Mutual's competitors -- and ultimately to consumers.

26. For example, some hospitals insisted on using "stop-loss" provisions in their contracts

with other payers to avoid MFR penalties. These clauses typically required third party payers to reimburse the hospital at a specified percentage of charges for claims that lay outside pre-determined thresholds. By superceding the contractual rates, such "stop-loss" provisions prevented the effective lowering of the average reimbursement rate due to catastrophic or high acuity cases. MetroHealth Hospital, for example, insisted on such MFR-related "stop-loss" provisions in 90% of its contracts. University Hospital and Fairview Health System have similar provisions in a number of their contracts as well.

27. Even those hospitals that would have insisted on "stop-loss" provisions were there no MFR clause (to avoid the financial risk associated with catastrophic cases) demanded lower "stop-loss" thresholds because of the MFR clause. By lowering the "stop-loss" threshold, the hospitals ensured that more services were priced above the competitive rate -- increasing the total cost of hospital care. For example, the Columbia/HCA hospitals (St. Vincent Charity Hospital, St. Luke's Medical Center, and St. John Westshore Hospital) would have agreed to higher "stop-loss" thresholds but for the MFR provisions.

28. In addition, some hospitals required payers to make payments over and above contracted rates to avoid a MFR penalty or to reimburse the hospital for any penalty incurred due to the MFR clause. Both mechanisms had the effect of raising the costs of Medical Mutual's rivals and, ultimately, to consumers. For example, Mt. Sinai Medical Center and CIGNA entered into "reconciliation agreements" beginning in 1992 which required CIGNA to reimburse Mt. Sinai any amounts necessary to avoid a MFR violation. CIGNA made retrospective payments to Mt. Sinai of over $600,000 for the years 1990-1992 alone so that Mt. Sinai could avoid over $4 million in MFR penalties that it would otherwise have owed to Medical Mutual.

29. Other hospitals took similar measures. The Cleveland Clinic has a reconciliation agreement with Kaiser in the event its volume ever falls below Medical Mutual's volume. MetroHealth demanded that various payers, including Prudential, Aetna, QualChoice, and Personal Physician Care, make additional payments if MetroHealth's own MFR audit suggested a violation. Meridia Health System required some payers to reimburse it for any amount paid for a MFR violation. University Hospital's contracts with Prudential required Prudential to make additional payments of $409,232.82 in 1996 alone.

30. Hospitals also demanded to re-negotiate existing agreements when faced with potential MFR violations. MetroHealth Hospital, for instance, requested HealthStar to re-negotiate rates in the midst of its 1993-94 contract because the patient mix was not as anticipated and would have caused a MFR violation. It also required that Aetna agree to re-negotiate its rates if a MFR violation appeared likely. Southwest General increased Emerald's inpatient reimbursement in the middle of its contract period in 1993, and in 1995 demanded to re-negotiate several contracts, including the contract with HMO Aetna, to avoid a MFR violation. In 1995, the Cleveland Clinic re-negotiated Aetna's contract because the Clinic's new contract with Medical Mutual generated a higher MFR benchmark, one requiring a 20% increase in Aetna's inpatient rates. Other examples include Lake Hospital demanding that CIGNA re-negotiate its contract after Lake paid a $225,000 MFR penalty; Meridia Health System terminating a contract with Affordable Health and re-negotiating a new contract at substantially higher rates after having been found in violation of the MFR provision; and Meridia entering into an agreement with United HealthCare requiring the latter to re-negotiate its rates if the MFR clause was violated.

31. Finally, some hospitals terminated contracts with other payers when they were unable

to re-negotiate terms: Southwest General terminated its 1994 contract with CIGNA for behavioral services after it learned from Medical Mutual's auditor that CIGNA's 1992 contract violated the MFR clause and CIGNA refused to re-negotiate; Lake Hospital terminated its contract with Prudential because of the MFR and lost its contract with CostLogics after a 1992 MFR audit prompted Lake to request a substantial rate increase; Lakewood lost its HMO Agreement with Metlife in 1992 because of the MFR; and University Hospital and Mutual of Omaha agreed to higher rates when Mutual of Omaha declined University's proposal to incorporate a reconciliation provision in their contract.

32. Medical Mutual has, moreover, been well aware of the significant effect the MFR had on its rivals' costs, the demands by hospitals for retroactive payments from its rivals, the re-negotiation of contracts to increase existing rates, and even the termination of such contracts. Indeed, it fully embraced these effects in its recent contracts, expressly providing that the hospital may elect, in order to avoid a violation of the MFR provision, to terminate, modify, or amend its contract with the other payer. The MFR's purpose and clear effect has been to increase the costs paid by other plans and, ultimately, by the consumer.

3. Medical Mutual's MFR Provision Hindered Innovation in the Delivery of Health Care Insurance

33. Medical Mutual's MFR provision also discouraged the development of innovative approaches to the efficient delivery of health insurance, particularly new contracting methodologies and novel health plan designs. Confronted by the threat posed by rival payers willing to invest in additional tools and resources to provide more efficient and better quality health care plans, Medical Mutual, through its MFR clause, required that all payers, regardless of utilization management, case mix, or other factors, pay a hospital at least as much or more than Medical Mutual for similar services.

If a hospital's actual price to another payer was below the MFR benchmark for any reason, including more efficient management, Medical Mutual would assess a penalty against the hospital. The result was to force hospitals to raise all rates to Medical Mutual's level, removing the principal incentive for other payers to invest in more efficient case management.

a. Contracting Methodologies

34. The MFR clause discouraged hospitals and payers in Cleveland from entering into contracts using alternate payment methods that could have resulted in less-costly health care for consumers. For example, per diem contracts can facilitate the efficient use of hospital resources by giving a payer an incentive to ensure that providers deliver health care efficiently and that its enrollees use only those services that are medically necessary. Under the MFR provisions, however, a payer that is able to more efficiently utilize hospital services can appear to have received greater discounts than Medical Mutual since the total reimbursement for a particular claim may be lower than Medical Mutual's reimbursement rate. As a result, numerous hospitals rejected proposals for per diem contracts or raised their per diem prices for fear that once compared with Medical Mutual's DRG-based rates those contracts would be deemed to violate the MFR clause, and a substantial penalty would be assessed. Unable to obtain the benefits of more efficient case management, rival payers declined to invest in less costly methods and consumers were deprived of the choice of alternative plans.

35. Because of variables such as the age, sex and demographics of a payer's enrollees, capitated rates could also appear to be lower than the MFR benchmark rate when converted to a percent of charges. Hospitals, including Mt. Sinai, Southwest, MetroHealth and Fairview Health System, unsure of how Medical Mutual would apply the MFR provision to capitated rates, have been

reluctant to enter into such arrangements or have required higher payments in order to protect against a MFR violation.

b. Limited Panel Plans

36. Medical Mutual's MFR provisions also created a significant disincentive to the development of low-cost, narrow-panel health care plans in the Cleveland Region, thus depriving consumers of the choice of such plans. By limiting its enrollees to fewer hospitals, a small panel plan provides higher volume to each of the participating hospitals in exchange for more aggressive discounts from the hospitals. In the Cleveland Region, however, Medical Mutual's MFR clause discouraged hospitals from offering a discount large enough to make such plans marketable. For instance, Aetna, which at one time had a strategy of contracting for 20-35% of the hospital beds in an area, was unable to assemble an adequate small-panel network in Cleveland because of the high price floor imposed by Medical Mutual's MFR provisions. Other payers thwarted in their effort to offer smaller panel plans include Humana, HealthStar, Personal Physician Care, Affordable and MetLife.

c. Specialty Carve-Out Contracts

37. Medical Mutual's MFR provisions also discouraged the use of "carve-out" contracts -- contracts for such specialty services as obstetrics, organ transplants, or invasive cardiology. These specialty contracts can reduce hospital costs for payers and consumers by allowing a payer to contract for those services in which the hospital has developed a particular expertise and by allowing the hospital to more efficiently use its resources. Medical Mutual's MFR provisions, however, discouraged hospitals in the Cleveland Region from entering into such specialty contracts by requiring that those payers be charged at least as much as Medical Mutual for such services. For example, both University Hospital and the Cleveland Clinic requested exemptions from the MFR clause in order to

enter into such carve-out contracts: University for both soft tissue transplant and obstetrics services; the Clinic for certain cardiology services. Medical Mutual refused them both, and neither participated in the programs because of the significant penalties they would have incurred.

F. The MFR Provision's Lack of Procompetitive Benefits

38. Medical Mutual's MFR provision generated no significant savings or other procompetitive benefits. Indeed, Medical Mutual's former Vice President for Healthcare Finance and Network Management admitted under oath that the MFR provisions did not lower its costs, but only raised the costs for its competitors. These increased costs -- the higher prices Medical Mutual could charge because it was insulated from competition and the higher costs paid by Medical Mutual's competitors -- were ultimately paid by consumers.

G. The Harm Associated With Medical Mutual's MFR Provision Will Likely Recur in the Future

39. Despite Medical Mutual's recent promise to cease enforcing its MFR provision and terminate the MFR audits, there is a real danger that the harms associated with its MFR will recur in the future in the absence of an injunction. Medical Mutual's promise is not enforceable and it could renege on its commitment at any time. Moreover, Medical Mutual's promise does not prevent it from taking other steps similar to the MFR clause to raise rivals' costs, steps that would be prohibited by the injunction sought by the United States. For over ten years, Medical Mutual's MFR clause has deprived consumers of the benefits that free and open competition would offer: lower premiums, increased access to hospital services, and wider choices of health insurance plans. Medical Mutual's belated promise of good behavior in the future is not sufficient.

VI. VIOLATION ALLEGED

40. Beginning around 1987, Medical Mutual entered into agreements with hospitals in the Cleveland Region that unreasonably restrained interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. These agreements had the following effects, among others:

(a) restraining meaningful price competition and raising the costs of hospital care and health insurance in the Cleveland Region;

(b) artificially raising costs for rival plans in the Cleveland Region, thereby deterring competitively effective entry;

(c) imposing substantial administrative and other expenses on hospitals;

(d) discouraging the development and use of new and innovative contracting methodologies and case management tools; and

(e) depriving consumers of the benefits of free and open competition in hospital services and health insurance.

These harms are likely to recur unless the relief sought is granted.

VII. REQUEST FOR RELIEF

WHEREFORE, the Plaintiff requests:

1. That the Court adjudge and decree that Defendant entered into unlawful agreements in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. That Defendant, its members, officers, directors, agents, employees, and successors, and all other persons acting or claiming to act on its behalf, be enjoined, restrained and prohibited from continuing, maintaining, enforcing, or renewing these agreements in any manner, directly or indirectly, or from engaging in any other combination, conspiracy, agreement, understanding, plan, program, or

other arrangement having the same purpose or effect as the alleged violation.

3. That Defendant, its members, officers, directors, agents, employees, and successors, and all other persons acting or claiming to act on its behalf, be enjoined, restrained and prohibited from (a) compelling any hospital to disclose rates charged any other payer or the lowest rate accepted by the hospital from any other payer, or (b) penalizing any hospital for offering or charging another plan rates equal to or lower than the rates charged Medical Mutual.

4. That Defendant, its members, officers, directors, agents, employees, and successors, and all other persons acting or claiming to act on its behalf, be enjoined, restrained and prohibited from adopting, maintaining, or enforcing any policy, practice, or agreement that requires a Participating Hospital to disclose to Medical Mutual, directly or indirectly, through audit or any other means, the rates such hospital offers or charges any Third Party Payer(s).

5. That the United States recover the costs of this action.

6. That the United States have such other relief as the nature of the case may require and the Court may deem just and proper.

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