

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,) Civil Action No. C94-1023
)
v.) Hon. Michael J. Melloy
)
MERCY HEALTH SERVICES and) **RESPONSE TO SECOND REQUEST FOR**
FINLEY TRI-STATES HEALTH) **PRODUCTION OF DOCUMENTS TO**
GROUP, INC.,) **UNITED STATES OF AMERICA**
)
Defendants.)

Plaintiff United States of America makes the following response to the Second Request for Production of Documents to United States of America ("the Second Request").

OBJECTIONS TO THE REQUESTS

The United States objects to the Second Request in its entirety to the extent it requests documents protected from discovery and disclosure by the attorney-client privilege, the deliberative process privilege, the work product doctrine, or any other privilege available under Federal or State statutory, constitutional, or common law.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

The United States objects to the Definitions and Instructions in the Second Request to the extent they attempt or purport to impose obligations greater than those authorized by the Federal Rules of Civil Procedure. The United States objects to the following paragraphs of the Definitions and Instructions of the

Second Request, as follows:

A. The United States objects to paragraph A to the extent it calls for production of documents not in the possession, custody or control of the Antitrust Division of the Department of Justice, and to the extent it attempts or purports to expand the obligation of the United States to supplement its response in accordance with Fed. R. Civ. P. 26(e).

C. The United States objects to paragraph C to the extent as unduly burdensome. Without in any way waiving that or any other objection, the United States states that it is unaware of any such documents.

D. The United States objects to paragraph D to the extent it attempts or purports to expand the obligation of the United States to supplement its response in accordance with Fed. R. Civ. P. 26(b)(5).

E. The United States objects to paragraph E as unduly burdensome to the extent it attempts or purports to impose obligations to search all back up or storage systems for computer-generated material. The United States further objects to this paragraph to the extent it attempts or purports to impose on the United States the obligation to translate information in a data base or machine readable form.

G. The United States objects to paragraph G to the extent it seeks information not in the possession, custody or control of the Antitrust Division of the Department of Justice.

H. The United States objects to paragraph H to the extent

it seeks information not in the possession, custody or control of the Antitrust Division of the Department of Justice.

I. The United States objects to paragraph I as vague, unintelligible and unduly burdensome.

M. The United States objects to paragraph M as unduly broad and burdensome.

N. The United States objects to paragraph N as unduly broad and burdensome.

O. The United States objects to paragraph O to the extent it attempts or purports to impose obligations greater than those authorized by Fed. R. Civ. P. 34.

P. The United States objects to paragraph P as unduly broad and burdensome.

R. The United States objects to paragraph R as unduly broad and burdensome.

S. The United States objects to paragraph S as unduly broad and burdensome.

OBJECTIONS AND RESPONSE TO REQUESTS

1. Produce all declarations, affidavits, deposition transcripts, witness statements, and letters referring or relating to any merger, acquisition, partnership, consolidation, combination, joint venture or other transaction involving hospitals in or around Moline, Illinois, Davenport, Iowa, and/or Des Moines, Iowa.

We do not understand defendants' reasons for requesting such documents. As such, the United States objects on the grounds

that they are irrelevant and not calculated to lead to admissible evidence. Moreover, whatever the intendment of the request, the United States further objects to the extent that producing such documents: (i) could require the United States to disclose the existence of a fling under the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. 18a, which is specifically prohibited by Section 7A(h) of the Clayton Act; (ii) could improperly invade privacy interests of private parties in violation of 15 U.S.C. 1314(f); and (iii) impair the Justice Department's law enforcement efforts. Finally, the United States objects because, even if there were some marginal relevance, that relevance would be outweighed by the undue burdensomeness of the request, compounded by its being overly broad in scope.

2. Produce all documents relating to the safety zone for hospital mergers set forth in the Policy Statements of Antitrust Enforcement Policy in the Health Care Area, issued September 15, 1993, including, without limitation, all internal correspondence and communications and all documents and/or correspondence received, dated or effective on or after September 15, 1993.

The United States objects to this request in part for the same reason that it objects to Request 1, namely, that defendants are targeting the exercise of prosecutorial discretion as part of discovery.

The United States further objects to this request as duplicative of Request 13 of Defendants' First Set of Interrogatories and First Request for Production of Documents and

the issues presented in Defendants' Motion to Compel. As set forth in the United States' Opposition to the Motion to Compel, the documents requested are outside the scope of permissible discovery and are protected by the deliberative process privilege.

3. To the extent not previously produced, produce all declarations, affidavits, deposition transcripts, witness statements, and letters received from and/or referring or relating to Richard Van Bell, John Deere Company, Heritage National Healthplan, John Deere Family Healthplan and/or John Deere Family Health Centers, including, without limitation, documents relating to transactions other than DRHS.

The United States has produced or is producing today unprivileged documents encompassed by this request that were generated or received in connection with this action. To the extent additional documents are sought, the United States objects on relevance (such documents would not be relevant or likely to lead to relevant evidence), burdensomeness (the request is overly broad and unduly burdensome) and privilege (attorney-client; attorney work product; deliberative and investigative process) grounds. The defendants have the depositions, witness statements, affidavits, and transcripts. Without waiving the objections above, the Government is producing documents

USA 01-43, which consists of correspondence and materials regarding Deere's CID production. The defendants may already have some of these documents.

Dated: August 12, 1994

Mary Beth McGee
Eugene D. Cohen
Jessica N. Cohen

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VERIFICATION

I, Jessica N. Cohen, declare:

1. I am an attorney with the United States Department of Justice, Antitrust Division.

2. I verify that authorized employees and counsel for the United States assembled the facts stated herein; and that the facts herein are true and correct to the best of my knowledge, information, and belief.

3. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington, D.C. on _____, 1994.

JESSICA N. COHEN