

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

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

UNITED STATES' SECOND RESPONSE TO DEFENDANTS' FIRST INTERROGATORIES AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to the Court's Order for Expedited Discovery dated June 23, 1994, the United States makes the following response to those of the Defendants' First Interrogatories and First Request for Production of Documents that, under the Court's Expedited Discovery Order, must be answered within ten (10) days of service. With regard to the Requests to which the United States has previously responded, the date of response is stated and the information repeated for convenience sake.

Request 1

All statements, declarations or affidavits, obtained in connection with or relating to your investigation of the proposed transaction between Mercy and Finley.

Answer

Copies of declarations from the following individuals were provided to you on June 17, 20, and 24, 1994:

Thomas Bishop
Leo Bressanelli
Lon Butikofer
Andrew Butler
Lawrence Cremer
Terry Gartner
Francis Guinta
James M. Golden
David Harms
Robert D. Hervey
Gerald W. Lefert
Melvin Maas
Dean Miller
Gregory E. Patten
Larry W. Pugh
Karl C. Schroeder
James K. Thomson
James A. Tinker
Richard Van Bell
Timothy J. Wick
Thomas A. Williams
Fran Zichal

These represent all the declarations obtained by the United States in the case.

Request 2

All documents obtained from persons other than Mercy or Finley, in connection with or relating to your investigation of the proposed transaction between Mercy and Finley.

Answer

Enclosed are seven (7) ASCII disks containing patient origin data obtained from the State of Illinois Health Care Cost Containment Council and from OHCI, Wisconsin. Record layouts

for these data are also enclosed.

Documents responding to Request 2 bearing the following Bates stamped numbers were produced on June 29 and July 1, 1994:

ACH 1-2
ACO 1-14
AM 1-9
AS 1-23
BAHC 1-3
BCIW 1-1515
BEEFA 1-65
CCH 1-3
CES 1-5
CN 1-739
DCHMO 1-41
DCMH 1-7
FMH 1-15
GCL 1-50
GMH 1-6
GSH 1-3
HART 1-3
HCSC 1-1808, 5001-6135
Heritage National Healthplan Inc 1-8408
IA 1-390
ICMH 1-40
II 1-882
JCPH 1-3
JD 1-6
LCMH 1-40
LMH 1-86
MA 1-2038
SIS 1-96
SW 1-292
TRI-STATE 1-101
UW 1-9
WCN 1-201

Also produced were three ASCII disks and related record layout information containing computer information submitted by: Medical Associates HMO; Southwest Health Center; Lancaster Memorial Hospital; and Freeport Memorial Hospital. As noted in our July 1, 1994,

response, pursuant to our agreement, the United States did not produce documents produced by KPMG Peat Marwick or by the Iowa Hospital Association.

Request 3

All documents obtained by any civil investigative demand ("CID") in connection with or relating to your investigation of the proposed transaction between Mercy and Finley.

Answer

All documents obtained from third-parties voluntarily or pursuant to civil investigative demand ("CID") have been produced in response to Request 2.

Request 4

All documents, including, without limitation, notes, relating to interviews with any person in connection with or relating to your investigation of the proposed transaction between Mercy and Finley.

Answer

The names of persons with knowledge interviewed in connection with the investigation of this case were disclosed pursuant to Interrogatory 32 on June 29, 1994. The United States objects to producing the notes and other materials sought by this request on the grounds that they are privileged work product and thus protected from discovery. Fed. R. Civ. P. 26(b)(3).

Request 5

All transcripts of oral examinations or testimony obtained by CID in connection with or relating to your investigation of the proposed transaction between Mercy and Finely.

Answer

Transcriptions of each deposition taken by the United States have been provided to the defendants. The persons deposed are:

Wanda Dalsing
Michael Finnin
Kevin Freihoefer
Gary Guetzko
Daniel Hammel
Stephen Charles Hanson
Sr. Helen Huewe
Gerald Murdock
Charles R. Naylor, Jr.
John Ortner
Kevin Rogols
David Schaller
Terry Steele
Steven P. Sesterhenn
Michael Stoll
Rodney Tokheim

Request 6

All CIDs issued in connection with or relating to your investigation of the proposed transaction between Mercy and Finley.

Answer

The following CIDs were provided to the defendants on July 1, 1994:

CIDs for Oral Testimony

Finnin, Michael	Michael Finnin Motors
Freihoefer, Kevin	Kemper Securities
Hammel, Dan	International Brotherhood of Electrical Workers, Local 704
Hanson, Stephen	Millard Fillmore Hospital
Miller, Dean	Beef America
Murdock, Jerry	Galena State Bank and Trust
Naylor, Charles	FDL Foods
Ortner, John	Blue Cross and Blue Shield of
Iowa	
Sesterhenn, Steven	CyCare Systems
Stewart, Terry	Firefighters Local 353
Stoll, Michael	Tri-State Independent Physicians Association

CIDs for Documents

Butler, Andrew	SISCO
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Cremer, Lawrence	Medical Associates HMO
Gallagher, Duncan	KPMG Peat Marwick
Hanson, Stephen	Millard Fillmore Hospital
Miller, Dean	Beef America
Naylor, Charles	FDL Foods
Sesterhenn, Steven	CyCare Systems
Stilley, Richard	Blue Cross and Blue Shield of
Iowa	
Stoll, Michael	Tri-State Independent Physicians Association
Turcott, John	Dean Health Plan
Van Vlierbergen, Brian	Blue Cross and Blue Shield of
Illinois	
Zessar, William	Heritage National Healthplan

Request 7

All calculations and tabulations done relating to the proposed transactions between Mercy and Finley, including, without limitation, calculations and tabulations involving computer information.

Answer

The United States objects on the grounds that the materials sought by this Request are privileged work product and thus protected from discovery. Fed. R. Civ. P. 26(b)(3). The Request is also vague, ambiguous and overbroad.

Request 8

Identify each person who will or may be testifying as a non-expert witness in this cause, and, with respect to each such person, describe in detail:

- a. The general subject matter on which such witness is expected to testify:
- b. Each document, exhibit or visual aid which may be offered in connection with the testimony of such witness and each document, exhibit or visual aid which may be introduced by the testimony of such witness.
- c. Produce all documents relating to your responses to subparagraph (b).

Answer

The following persons were identified in response to this Request on June 29, 1994:

<u>Witness Name</u>	<u>Subject Matter</u>
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Bishop, Thomas
Chief Operating Officer
Medical Associates Clinic
1000 Langworthy
Dubuque, IA 52001-7365
319-589-9950

Product market,
geographic market,
competitive effects and
managed healthcare.

Cremer, Lawrence E.
Medical Associates, HMO
One Cycare Plaza, Suite 230
Dubuque, IA 52001-6800
319-556-8070

Product market,
geographic market,
competitive effects and
managed healthcare.

Thomson, James K.
Vice-President of Operations
John Deere Health Care
William Zessar
Vice President/General Counsel
John Deere Health Care, Inc.
1515 Fifth Ave., Ste. 200
Moline, IL 61265-1368
309-765-1177

Product market,
geographic market,
competitive effects and Represented by
managed healthcare.

Van Bell, Richard J.
President
John Deere Health Care, Inc.
William Zessar
Vice President/General Counsel
John Deere Health Care, Inc.
1515 Fifth Ave., Ste. 200
Moline, IL 61265-1368
309-765-1177

Product market,
geographic market,
competitive effects and Represented by
managed healthcare.

No final decision has been made about which witnesses the United States will call, and a final list will be provided pursuant to the Rules for the United States District Court for the Northern District of Iowa ("Local Rules"). All documents that may be used with these witnesses were produced in response to Requests Numbers 2 and 3. We will identify the documents we expect to introduce as provided under Local Rules.

Requests 9 through 12

Requests 9, 10, 11, and 12 relate to expert witnesses. Such witnesses will be identified to the defendants when the United States has selected them and Requests relating to such experts will be answered at that time.

Request 13

All documents relating to the establishment of 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 documents relating to the bed and census levels utilized in determining the safety zone.

Answer

The United States objects on the grounds of relevance because defendants are not within any such safety zone. Notwithstanding such objection and without waiving it, enclosed are "Statements of Antitrust Enforcement Policy in the Health Care Area Issued by the U.S. Department of Justice and Federal Trade Commission" ("Policy Statements"), and the press release and attached statement entitled "Department of Justice and FTC Antitrust Enforcement Policy Statements in the Health Care Area," also dated September 15, 1993.

The United States objects to providing the other materials arguably called for by this Request on the basis that such materials are privileged, having been created during the deliberative process leading to the promulgation of these Policy Statements by the Executive Branch of the United States.

Requests 14 through 31

Responses to Interrogatories, which the Discovery Order requires be answered within 20 days (Requests numbers 14, 16, 17, 19, 21, 23, 25, 27, 29, and 30), will be provided on or

before July 14, 1994. All documents obtained from third parties in the course of this investigation were produced to the defendants pursuant to Request numbers 2 and 3. Accordingly, documents relating to the United States' responses to particular interrogatories (Request numbers 15, 18, 20, 22, 24, 26, 28, and 31) will not be separately produced.

Request 32

Identify the names and addresses of persons with knowledge of any claim in your Complaint.

Answer

The following list of names, addresses and telephone numbers of the persons with knowledge was produced to the defendants on June 29, 1994.

Alt, Edward S., M.D.
Medical Associates Clinic
1000 Langworthy
Dubuque, IA 52001-7365

Arnold, Scott, M.D.
Medical Associates Clinic
1000 Langworthy
Dubuque, IA 52001-7365
319-589-9760

Bigelow, Mark
Vice President
William C. Brown Communications
2460 Kerper Blvd.
Dubuque, IA 52001
319-588-1451

Bishop, Thomas
Chief Operating Officer
Medical Associates Clinic
1000 Langworthy
Dubuque, IA 52001-7365

319-589-9950

Bressanelli, Leo
President/CEO
Genesis Medical Center
Davenport, Iowa
Represented by Peter Benson
(Mr. Benson's tele.)
309-786-1600

Butikofer, Lon
Administrator/CEO
Delaware County Memorial Hospital
709 W. Main St.
Manchester, IA 52057
319-927-7305

Butler, Andrew
Executive Vice Pres.
Cottingham & Butler
P.O. Box 389,
300 Security Bldg.
Dubuque, IA 52004-0389
320 N. Grandview
Dubuque, IA 52001
319-556-5551

Clark, Christopher, M.D.
Medical Associates Clinic
1000 Langworthy
Dubuque, IA 52001
319-589-9821

Corry, Michael
Chairman
Wisconsin Cost Containment Commission
Represented by Todd Hunter, Esq.
Executive Director
202 State Street
Suite 203

Madison, WI 53703
608-264-9870

Cremer, Lawrence E.
Medical Associates, HMO
One Cycare Plaza, Suite 230
Dubuque, IA 52001-6800
319-556-8070

Derzon, Gordon
University of Wisconsin Hospital
600 Highland Ave.
Madison, WI 53792
608-263-8025

Easley, Don
Administrator
Memorial Hospital of Lafayette County
800 Clay St.
Darlington, WI 53530
608-776-4466

Eckhart, Teresa, M.D.
777 Mazzuchelli
Dubuque, Iowa 52001
319-557-8241

Evans, William
Eaton Corp.
107 Washington Street
Hanover, IL 61041
815-591-2151

Foster-Reilly, Nanette
Iowa Medicare/Medicaid
Dept. of Human Services
Div. of Medical Services
Hoover Bldg. 5th Floor
Des Moines, IA 50319
515-281-6087

French, Sam
Medical Associates of Clinton
915 13th Ave., North
Clinton, IA 52732
319-243-2511

Gartner, Terry
President
United Auto Workers, Local 94
Dubuque, IA
319-583-1779

Geahart, Vera
Payroll and Benefits Specialist
University of Wisconsin
Brigham Hall
1 University Plaza
Platteville, WI 53818
608-342-1178

Giunta, Francis
President
Dubuque Federation of Labor, AFL-CIO
319-556-5236

Golden, James
CEO
Midwest Business Group on Health
3201 Old Glenview Rd.
Wilmette, IL 60091
708-853-6262

Harms, David
Director of Human Resources
Crescent Electric Supply Company
7750 Dunleith Dr.
East Dubuque, IL 61025
815-747-3145

Hartig, Richard
President & CEO
Hartig Drug Stores Corp.

703 Town Clock Plaza
PO Box 709
Dubuque, IA 52004-0709
319-588-8700

Hervey, Roger D.
Administrator
Galena-Stauss Hospital
215 Summit St.
Galena, IL 61036
815-777-1340

Isenhardt, Chuck
Administrator
Tri-State Care Coalition
500 Fischer Bldg.
909 Main St., PO Box 14
Dubuque, IA 52004-0014
319-582-8804

Jansen, David
Galena Territory Association, Inc.
2000 Territory Drive
Galena, IL 61036
815-777-2000
Johnson, Thomas, M.D.
Medical Associates Clinic
1000 Langworthy
Dubuque, IA 52001-7365
319-589-9955

Kaloupek, Jack
Senior Vice President and CEO
Mi-T-M
Kapp Dr.
Peosta, IA
556-7484 ext. 213

Katrana, John
Gunderson Clinic Ltd.
1836 South Ave.
La Cross, WI 54601
608-782-7300

Klawiter, Anne
Administrator
Southwest Health Center
1100 Fifth Ave.
Platteville, WI 53818
608-348-2331

Kukla, Lawrence, M.D.
Medical Associates Clinic
1000 Langworthy
Dubuque, IA 52001
319-589-9855

Lefert, Gerald
President
St. Mary's Hospital
Madison, WI
Represented by Michael S. Weiden, Esq.
Quarles & Brody
Madison, WI
608-283-2480

Lengeling, Randall, M.D.
President
Dubuque Internal Medicine
1515 Delhi Street
Dubuque, IA 52001
319-589-4003
Linn, Myron
Manager of Compensation
Represented by David Munn
Corporate Counsel
Pella Corp.
102 Main Street
Pella, IA 50219
515-628-6321

Loukinen, Karin, M.D.
Medical Associates Clinic
1000 Langworthy
Dubuque, IA 52001
319-589-9955

Maas, Melvin

President
United Food & Commercial Workers, Local 150A
111 Bluff St.
Dubuque, IA 52001
319-556-1130

May, Julie
Anamosa Hospital
104 Broadway Pl.
Anamosa, IA 52205
319-462-6131

Meester, Gerald, M.D.
Dubuque Orthopedic Surgeons
444 N. Grandview Ave.
Dubuque, IA 51001
319-556-4171

Miller, Dean
Human Resources and Labor Relations
14748 W. Center Rd., Ste. 201
Omaha, NE 68144
402-330-1899

Morris, Harold
Administrator
Boscobel Hospital
205 Parker St.
Boscobel, WI 53805
608-375-4112

Murphy, Patrick
State Representative
Dubuque, IA
515-281-8221

Naylor, Charles
Vice President/General Counsel
FDL Foods
701 East 16th St, PO Box 898
Dubuque, IA 52004-0898
319-588-1970

Nervig, Barbara
Program Manager
Iowa Department of Public Health
Lucas State Office Bldg.
Des Moines, IA 50319-0075
515-281-4344

Olson, Rodney
Provider Consultant
Iowa Blue Cross/Blue Shield
319-578-8653

Ortner, John
Vice Pres. Provider Affairs
Iowa Blue Cross and Blue Shield
636 Grand Ave., Station 75
Des Moines, IA 50309
515-245-5048

Osterhaus, Lynn
Ertl Toy Company
Highway 136 & 20
Dyersville, IA 52040
319-875-5606

Ott, Roger, Sr., M.D
Medical Associates Clinic
1000 Langworthy
Dubuque, IA 52001
319-589-9705

Patten, Gregory E.
Administrator
Lancaster Memorial Hospital
507 S. Monroe St.
Lancaster, WI 53813
608-723-2143

Peck, Randy
Human Services Manager
City of Dubuque
City Hall
Dubuque, IA 52001

319-589-4125

Philips, Diane
Aerie Hotels and Resorts
815-777-5627

Pugh, Larry
President/CEO
Allen Memorial Hospital
1825 Logan Ave.
Waterloo, IA 50703
319-235-3987

Rease, Rich
Associate Director
Community Physicians Network
HMO of Wisconsin
Represented by Nancy Smith
General Counsel, HMO Wisconsin
608-643-2491

Runde, Charles
President
First National Bank of Platteville
Platteville, Wisconsin
608-348-7777

Runde, Mark, M.D.
Medical Associates Clinic
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Dubuque, IA 52001
319-589-9890

Schemmel, Scott Paul, M.D.
Medical Associates Clinic
100 Langworthy
Dubuque, IA 52001
319-589-9161

Schroeder, Karl
Administrator
Jackson County Public Hospital
700 W. Grove St.
Maquoketa, IA 52060
319-652-2474

Schlough, Steven
Dept. of Health & Social Services
State of Wisconsin
Madison, WI
608-266-3878

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Physicians Plus
340 W. Washington Ave.
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608-282-8219

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McDonald, Robert
President/CEO
McDonald, Artie
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Staley, John
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John Colloton Pav.

Iowa City, IA 52244
319-356-1616

Stegemann, Alan
Dept. of Health & Social Services
State of Wisconsin
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608-266-2055

Stoll, Michael
Administrator
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3343 Center Grove Dr., Ste. E
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Cedar Rapids, IA 52403
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President
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P.O. Box 56099
Madison, WI 53705
608-828-1305

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Cedar Rapids, IA 54202
319-369-7211

Wick, Timothy
Administrator
Guttenberg Municipal Hospital
Second and Main St.
Guttenberg, IA 52052
319-252-1121

Williams, Thomas
Wal-Mart Stores, Inc.
Represented by Scott Milton,
Benefits Attorney
Wal-Mart Stores, Inc.
922 W. Walnut
Rogers, AK 72756
501-621-2052

Zichal, Fran
Assistant Administrator for
Physician Recruitment & Public Relations
Central Community Hospital
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Box 269-A
Elkater, IA 52043
319-245-2250
319-583-7344 Cairns,
Robert Scott, M.D.

MARY BETH MCGEE
United States Department of Justice
Antitrust Division
555 4th St., N.W.
Washington, DC 20001
(202) 307-1037

Dated: