

**BEFORE THE INSURANCE DEPARTMENT
OF THE
COMMONWEALTH OF PENNSYLVANIA**

Statement Regarding the Acquisition of Control of or Merger with
Domestic Insurers:

Highmark Inc.; First Priority Life Insurance Company, Inc.;
Gateway Health Plan, Inc.; Highmark Casualty Insurance Company;
Highmark Senior Resources Inc.; HM Casualty Insurance Company;
HM Health Insurance Company, d/b/a Highmark Health Insurance Company;
HM Life Insurance Company; HMO of Northeastern Pennsylvania, Inc.,
d/b/a First Priority Health; Inter-County Health Plan, Inc.;
Inter-County Hospitalization Plan, Inc.; Keystone Health Plan West, Inc.;
United Concordia Companies, Inc.; United Concordia Dental Plans of Pennsylvania, Inc.;
United Concordia Life and Health Insurance Company

By UPE, a Pennsylvania nonprofit corporation

**RESPONSE TO PID INFORMATION REQUEST 3.5 FROM THE
PENNSYLVANIA INSURANCE DEPARTMENT**

Information Request 3.5

Provide a full and complete copy of any communication (whether by letter, email or otherwise) and/or other document provided to and/or received from any governmental or regulatory entity related to the Transaction that is not otherwise required to be submitted in connection with this PID Information Request. "Governmental or regulatory entity" includes but is not limited to, the Pennsylvania Attorney General's Office, the Pennsylvania General Assembly, departments or agencies of the Commonwealth (other than the Pennsylvania Insurance Department), other state insurance departments, the United States Department of Justice, the Federal Trade Commission, other department or agencies of the United States or any other state, and any political subdivision or other governmental unit.

RESPONSE:

Attached is correspondence sent to or received by local counsel with respect to change of control filings required by the following regulatory entities: Alabama Department of Insurance, California Department of Managed Health Care, Delaware Insurance Department, Kentucky Department of Insurance, Michigan Office of Financial and Insurance Regulation, Ohio Department of Insurance, Texas Department of Insurance, Vermont Department of Banking, Insurance, Securities and Health Care Administration, West Virginia Office of Insurance Commissioner.

This Response relates to governmental and regulatory approvals in other states only and will be supplemented with respect to other notices, consents or approvals.

UPE
120 Fifth Avenue
Pittsburgh, PA 15222

Document Divider



ROBERT BENTLEY
GOVERNOR

JIM L. RIDLING
COMMISSIONER

STATE OF ALABAMA
DEPARTMENT OF INSURANCE
201 MONROE STREET, SUITE 502
POST OFFICE BOX 303351
MONTGOMERY, ALABAMA 36130-3351

TELEPHONE: (334) 269-3550

FACSIMILE: (334) 241-4192

INTERNET: www.aldoi.gov

DEPUTY COMMISSIONER
CHARLES M. ANGELL

CHIEF OF STAFF
RAGAN INGRAM

CHIEF EXAMINER
RICHARD L. FORD

STATE FIRE MARSHAL
EDWARD S. PAULK

GENERAL COUNSEL
REYN NORMAN

February 15, 2012

Jeffrey Thomas, Esq.
Mitchell, Williams, Selig, Gates & Woodyard, PLLC
425 West Capitol Ave., Ste. 1800
Little Rock, Arkansas 72201-3525

RE: Form A Statement Regarding the Acquisition of Control of United Concordia Dental Corporation of Alabama ("United") by UPE

Dear Mr. Thomas:

Upon further review of the above-referenced, the Department has determined that United, organized and authorized as a dental service corporation under Ala. Code §§ 22-21-360 *et seq.*, is not a "domestic insurer" subject to Ala. Code § 27-27-29. Therefore, the contemplated acquisition of control of United by UPE does not require our approval.

Additionally, please find attached the necessary forms (i.e. Claim Request and W-9) to pursue reimbursement of the \$2,000 (ck. #226287) statement fee.

If you have any further questions in this regard, please contact Ryan Donaldson, Associate Counsel, at (334) 241-4142 or ryan.donaldson@insurance.alabama.gov.

Sincerely,

Jim L. Ridling
Commissioner of Insurance

JLR/RD/ss

Attachment(s)

EQUAL OPPORTUNITY EMPLOYER

UPE-0005916



ROBERT BENTLEY
GOVERNOR

JIM L. RIDLING
COMMISSIONER

STATE OF ALABAMA
DEPARTMENT OF INSURANCE
201 MONROE STREET, SUITE 502
POST OFFICE BOX 303351
MONTGOMERY, ALABAMA 36130-3351
TELEPHONE: (334) 269-3550
FACSIMILE: (334) 241-4192
INTERNET: www.aldoi.gov

DEPUTY COMMISSIONER
CHARLES M. ANGELL (ACTING)

CHIEF OF STAFF
RAGAN INGRAM

CHIEF EXAMINER
RICHARD L. FORD

STATE FIRE MARSHAL
EDWARD S. PAULK
GENERAL COUNSEL
REYN NORMAN

PROCEDURE FOR REQUESTING REFUND OF LICENSING FEES

The attached Claim Request Form must be completed in full. Individuals **must** include a social security number and companies **must** include a Federal Employer Identification Number (FEIN) or the refund forms cannot be processed.

The completed form, a copy of the front and back of the cancelled check(s) for fees paid, and supporting documentation of fees (such as application form, etc.) must all be sent to the address shown below. Without this information, the request cannot be processed.

This office assigns the claim number so do not enter a claim number. The refund request is processed through the State Finance Department and once processed will be mailed to you at the address you list on the form.

Please allow 3 to 4 weeks for processing.

Please send to: Alabama Department of Insurance
 Attn: Accounting Division
 P. O. Box 303351
 Montgomery, Alabama 36130-3351

CLAIM REQUEST FORM

_____)	State of Alabama
(Name of Claimant))	Department of Insurance
v.)	Claim No. _____
Department of Insurance)	
State of Alabama)	

This form must be typed or printed. Claim form and documentary evidence in support of claim must be submitted in duplicate. Give complete information. Be specific.

1. Name and mailing address of claimant: _____

2. Company name: _____
Company FEIN: _____

3. Producer No: _____ Producer Name: _____
Producer Social Security Number: _____

4. Date claim accrued: _____
Type fee(s): _____ Amount Claimed: _____
Original Check No(s). _____ Date(s): _____

5. Statement of facts resulting in claim: _____

6. No part of this claim has been assigned by me and no amount has been paid to or received by me in payment of this claim except as follows: _____

Wherefore claimant respectfully requests that the State of Alabama take cognizance of this claim and upon consideration thereof make an award for the amount claimed.

(Signature of Claimant)

State of _____)

County of _____)

Before me, _____, a Notary Public in and for said State and County, personally appeared _____, who being made known to me, and being informed of the contents of this petition and the statements by him/her therein, and being by me duly sworn, says such statements are true and correct.

Sworn to and subscribed before me this _____ day of _____, 20_____.

Notary Public

Request for Taxpayer Identification Number and Certification

Give Form to the
 requester. Do not
 send to the IRS.

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification (required): <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate	
	<input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶	
	<input type="checkbox"/> Other (see Instructions) ▶	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code		
List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number																									
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Employer identification number																									
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20px; height: 20px;"></td> </tr> </table>																									

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

MITCHELL || WILLIAMS

Jeffrey Thomas
Direct Dial: 501-688-8879
Fax: 501-918-7879
E-mail: jthomas@mwlaw.com

425 West Capitol Avenue, Suite 1800
Little Rock, Arkansas 72201-3525
Telephone: 501-688-8800
Fax: 501-688-8807

December 29, 2011

VIA FEDERAL EXPRESS

The Honorable Jim L. Ridling
Commissioner of Insurance
Alabama Department of Insurance
201 Monroe Street, Suite 502
Montgomery, Alabama 36104

Re: Form A Statement Regarding the Acquisition of Control of United Concordia
Dental Corporation of Alabama ("the Domestic Insurer") by UPE (the "Applicant")

Dear Commissioner Ridling:

Pursuant to Section 27-29-1 *et seq.*, Code of Alabama (1975) and Ala. Admin. Code r. 482-1-055-.01 *et seq.*, I am enclosing for filing on behalf of the Applicant three copies of the Form A Statement dated December 29, 2011, all three of which contain originally executed Signature and Certification pages, regarding the above-captioned change of control of the Domestic Insurer. A filing fee in the amount of \$ 2000.00 accompanies this filing pursuant to Bulletin No. 2010-02.

Highmark Inc. ("Highmark") owns 100% of the voting securities of United Concordia Companies, Inc. which, in turn, owns 100% of the voting securities of the Domestic Insurer.

Highmark and West Penn Allegheny Health System, Inc. ("WPAHS") have entered into an Affiliation Agreement, dated October 31, 2011 (the "Agreement"), a copy of which is herewith filed as Exhibit A, pursuant to which a new nonprofit corporation was created to establish an integrated health care financing and delivery system in western Pennsylvania. Under the Agreement, at closing, the Applicant, the new nonprofit parent, will become the sole voting corporate member of Highmark.

There are a number of documents which we are submitting in sealed envelopes marked "Confidential." These include the biographical affidavits and certain financial statements. We ask that these documents be afforded confidential treatment and be excepted from disclosure (to the fullest extent permitted under Alabama law) because they contain personal and/or proprietary information which we wish to remain as confidential. The Applicant also requests that it be notified in advance if any person requests access to any of these documents so that it has the opportunity to take action to prevent or limit any such disclosure.

The Honorable Jim L. Ridling
December 29, 2011
Page 2

The Applicant was formed on October 20, 2011 as a non-member Pennsylvania nonprofit corporation. The corporation was organized for scientific, educational and charitable purposes and in this connection has filed an application with the Internal Revenue Service requesting that the Applicant be recognized as exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986 as amended. At closing of the affiliation transaction, the Applicant will be the sole member of the class of members of Highmark which will elect Highmark's Board of Directors. It is not anticipated that the Applicant will have significant operations separate from Highmark or WPAHS.

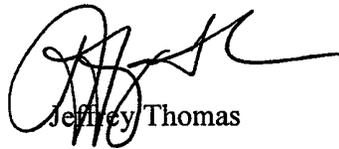
Our client is actively pursuing approval of this affiliation in Pennsylvania and is hopeful that it will receive a final Order from the Pennsylvania Insurance Department as early as March 1, 2012. It is also working in other states that require approval of some part of the affiliation effort. The goal is to obtain all necessary state approvals by February 28, 2012. Of course, some of these state approvals, including the one in Alabama, will be conditioned upon the final approval of the proposed transaction by the Pennsylvania Insurance Department. We are, therefore, requesting an expedited review of the enclosed Form A and the scheduling of a hearing, if necessary, within a timeframe that will permit your office to issue a conditional approval order by February 28, 2012.

We look forward to working with your Department in this matter and appreciate your courtesy and assistance.

Sincerely,

MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, P.L.L.C.

By



Jeffrey Thomas

Enclosures

cc: Jack M. Stover, Esq. (w/enclosures)
Mr. Edward A. Bittner, Jr. (w/enclosures)
Mr. Richard J. Enterline (w/enclosures)
Mr. Ronald Chronister (w/enclosures)

UPE-0005921

Document Divider

Gardner, Carl J.

From: JKral@dmhc.ca.gov
Sent: Friday, February 17, 2012 9:58 AM
To: Gardner, Carl J.; laleh.nili@ucci.com; Laurie.laspina@ucci.com;
paul.manos@ucci.com; Schubert, Gail D.
Cc: JKral@dmhc.ca.gov; JKral@dmhc.ca.gov; AKyumba@dmhc.ca.gov;
rultreras@dmhc.ca.gov
Subject: Notification of eFiling Closed re. 20120142, Amendment Re: Redacted Confidential
Information, United Concordia Dental Plans of CA, Inc. (933 0046) [SendClear]

The eFiling Number 20120142 regarding "Amendment Re: Redacted Confidential Information", eFiled by United Concordia Dental Plans of CA, Inc. (933 0046) was completed on Friday, February 17, 2012. Please direct questions regarding this eFiling to the following staff: Kral, Jeff Kyumba, Anna Ultreras, Rita.



Edmund G. Brown Jr., Governor
State of California
Health and Human Services Agency

Department of Managed Health Care
980 Ninth Street, Suite 500
Sacramento, CA 95814-2725
Phone: 916.324.9948
Fax: 916.327.6352
Email: ikral@dmhc.ca.gov

January 17, 2012

VIA ELECTRONIC MAIL AND U.S. MAIL

Carl Gardner
United Concordia Dental Plans of CA, Inc.
P.O. Box 10194
Van Nuys, CA 91410

Re: Notice of Material Modification Proposing Change in Control
Filed on December 16, 2011; Primary Filing No. 20112405

Dear Mr. Gardner:

Enclosed is Order No. 20112405 issued by the Department of Managed Health Care (the "Department") approving the terms of the above-referenced Notice of Material Modification (the "Notice") filed by United Concordia Dental Plans of CA, Inc. (the "Plan") requesting approval of the Plan's change in control from its ultimate parent company, Highmark Inc., to a new entity, UPE, which will become the new ultimate parent entity for the Plan.

Please note that the Order is issued subject to and conditioned upon the Plan's full compliance with the conditions set forth in the Order approving the Notice.

The Department's review of this Notice was limited to the information specifically described in the Exhibit E-1 and highlighted in the filed documents by ~~strikeout~~, underline or other method in accordance with California Code of Regulations, Title 28, section 1300.52.

This Order does not constitute a waiver of any compliance issues that may be identified on subsequent review and analysis of the Plan's operations or documents as described in the Notice, whether or not highlighted to reflect a change, or of any other Plan documents or operations, whether or not disclosed in this Notice.

The revisions necessary to correct the compliance concerns identified by the Department in this Notice apply to all Plan documents that contain similar language or provisions, whether previously filed or not. Plan documents and operations that do not reflect compliance with the Act and Rules in accordance with the Department's determinations regarding this Notice are not approved. Accordingly, please review and revise all Plan documents as necessary to identify and correct similar compliance concerns where they may exist. If language approved in the context of this Notice is the only change made by the Plan to its existing variations of the same forms of documents as submitted in this Notice, the Plan need not file those revised documents. The Department reserves the right to require additional revisions to the Plan's operations and

UPE-0005923

documents, including but not limited to subscriber and provider documents, and written policies and procedures, as further review may indicate is necessary for compliance with the Act.

Please contact me if there are any questions regarding the above.

Sincerely,



Jeff Kral
Associate Health Plan Advisor
Health Plan Oversight/Division of Licensing

Enclosed: Order of Approval
Determination of Confidentiality

STATE OF CALIFORNIA
HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF MANAGED HEALTH CARE

File No. 933 0046
Material Modification No. 20112405
Order No. 20112405

Licensee: United Concordia Dental Plans of CA, Inc.

**ORDER APPROVING
NOTICE OF MATERIAL MODIFICATION**

Pursuant to Health and Safety Code Section 1352(b), the terms of the Notice of Material Modification filed on December 16, 2011, requesting approval of Licensee's proposal for change in control from its current ultimate parent company, Highmark Inc. to a new entity, UPE, which will become the new ultimate parent entity for the Licensee and other Highmark Inc. and West Penn Allegheny Health System, Inc. ("WPAHS") entities, are approved as of the date set forth below.

This Order is issued, subject to and conditioned upon the approval by the Pennsylvania Insurance Department of the affiliation of Highmark Inc. and WPAHS.

This Order shall be in force and effect commencing on the date below and shall remain in effect until revoked or superseded by further Order of the Director.

Dated: January 17, 2012
Sacramento, California



BRENT A. BARNHART
Director
Department of Managed Health Care

By *Amy W. Krause*
for AMY W. KRAUSE
Assistant Chief Counsel, Licensing Division



Edmund G. Brown Jr., Governor
State of California
Health and Human Services Agency

Department of Managed Health Care
980 Ninth Street, Suite 500
Sacramento, CA 95814-2725
Phone: 916.324.9948
Fax: 916.327.6352
Email: ikral@dmhc.ca.gov

January 17, 2012

VIA ELECTRONIC MAIL AND U.S. MAIL

Carl Gardner
United Concordia Dental Plans of CA, Inc.
P.O. Box 10194
Van Nuys, CA 91410

Re: United Concordia Dental Plans of CA, Inc.
Material Modification Proposing Change in Control Determination of Confidentiality
pursuant to California Code of Regulations, title 28, section 1007
Filed on December 16, 2011; Primary Filing No. 20112405

Dear Mr. Gardner:

The Department of Managed Health Care (the "Department") has made a determination of confidentiality pursuant to California Code of Regulations, title 28, section 1007 ("Rule 1007") regarding the request submitted by United Concordia Dental Plans of CA, Inc. (the "Plan") for documents filed in the Material Modification to the Plan's proposal for change in control from its ultimate parent company, Highmark Inc., to a new entity, UPE, which will become the new ultimate parent entity for the Plan (the "Material Modification").

The Department accepted filing of the Material Modification on December 16, 2011. The Plan requested confidential treatment of the Affiliate Agreement (Miscellaneous Documents/Attachments) and Financial Projections (Miscellaneous Documents/Attachments) for indefinitely or until such other time as the Department and the Plan agrees upon the presentation, format, and disclosure of the Confidential Information or the Confidential Information becomes publicly available.

The Department grants confidentiality on the Affiliate Agreement (Miscellaneous Documents/Attachments) and Financial Projections (Miscellaneous Documents/Attachments) for indefinitely or until such other time as the Department and the Plan agrees upon the presentation, format, and disclosure of the Confidential Information or the Confidential Information becomes publicly available.

Further, if the Director determines to disclose the information for which a confidentiality determination was given above, the information may be disclosed in accordance with the notice and disclosure provisions of Rule 1007.

Notwithstanding the above grants, if the Plan notifies the Department that the information no longer constitutes confidential information, the Plan and the Department agree to a disclosure of the

UPE-0005926

information, the Director determines that the private and/or public interest in disclosing such information outweighs the public interest in non-disclosure, the justification for the confidential treatment no longer exists, or the other events described in California Code of Regulation, title 28, section 1007 (f) occur, the information will be disclosed sooner, at whichever is the lesser period of time.

Please contact me if there are any questions regarding the above.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Kral".

Jeff Kral
Associate Health Plan Advisor
Health Plan Oversight/Division of Licensing

Chronister, Ronald

From: Kroeker, Kevin B. [KKroeker@lockelord.com]
Sent: Monday, November 07, 2011 3:52 PM
To: mmckennan@dmhc.ca.gov; AKrause@dmhc.ca.gov; JKral@dmhc.ca.gov; Stephen Babich (sbabich@dmhc.ca.gov)
Cc: 'Laurie.laspina@ucci.com'; 'Ed.bittner@highmark.com'; 'Richard.enterline@highmark.com'; 'Belinda.clouser@highmark.com'; Chronister, Ronald; Gardner, Carl J.
Subject: United Concordia Dental Plans of California Change of Control - Pre-filing Meeting Agenda
Attachments: 699364_2.pdf; corp structure slide.pdf

Maureen,

Attached is an agenda for our conference call at 1 p.m. Pacific, and a slide showing the proposed corporate structure at the parent company level after the close of the proposed affiliation agreement.

Please forward to Suzanne Goodwin-Stenberg as I do not have an email address for her.

We look forward to our call.

Regards,

Kevin

Kevin Kroeker
Partner
Locke Lord LLP
300 S. Grand Ave., Suite 2600
Los Angeles, CA 90071
213-687-6758 Direct
213-341-6758 Fax
kkroeker@lockelord.com
www.lockelord.com

Atlanta, Austin, Chicago, Dallas, Hong Kong, Houston, London, Los Angeles, New Orleans, New York, Sacramento, San Francisco, Washington DC

1/30/2012

UPE-0005928

**UNITED CONCORDIA DENTAL PLANS OF CALIFORNIA, INC.
CALIFORNIA DEPARTMENT OF MANAGED HEALTH CARE**

**Pre-Filing Conference Call - Agenda
November 7, 2011**

Attendees:

Department:

Maureen McKennan, Deputy Director, Plan and Provider Relations, and Health Plan Oversight

Amy Krause, Assistant Chief Counsel, Licensing Division

Jeff Kral, Health Program Advisor

Suzanne Goodwin-Stenberg, Chief, Division of Financial Oversight

Stephen Babich, Supervising Senior Examiner, Division of Financial Oversight

United Concordia Dental Plans of California, Inc. ("Plan"), Highmark Inc. and UPE

Laurie Laspina – Plan Chief Operating Officer

Ed Bittner – Highmark counsel

Richard Enterline – Highmark and Plan counsel

Belinda Clouser – Highmark Paralegal

Ronald Chronister – Buchanan Ingersoll, Insurance Regulatory Specialist

Kevin Kroecker, Locke Lord LLP

Carl Gardner, Locke Lord LLP

I. Purpose of Meeting

To apprise the Department of Managed Health Care (the "Department") and to obtain the Department's input on a change of control filing related to an Affiliation Agreement between Highmark Inc. ("Highmark") and West Penn Allegheny Health System, Inc. ("WPAHS") pursuant to which Highmark and WPAHS will establish a new integrated health system that preserves Highmark's control over its insurance operations and WPAHS's federal income tax-exempt status ("Affiliation Agreement").

II. Overview of the Parties

A. United Concordia Dental Plans of California, Inc.

- Specialized health care service plan providing dental services
- Licensed as a Knox-Keene health care service plan since 1979
- Wholly-owned subsidiary of United Concordia Companies, Inc., which in turn has been wholly owned by Highmark since 1996
- Serves 158,589 members, as reported in 2011 second quarter financial statement
- Excess TNE of \$4,605,790

B. Highmark Inc.

- An independent licensee of the Blue Cross and Blue Shield Association, based in Pittsburgh, which serves 4.8 million members
- The current ultimate parent company of the Plan

C. West Penn Allegheny Health System

- A physician-led healthcare organization, based in Pittsburgh, comprised of five hospitals and a nearly 700-person multi-specialty physician group practice
- Will become affiliated with Highmark as a result of the Affiliation Agreement

D. UPE

- Nonprofit parent company of Highmark and WPAHS following the close of the Affiliation Agreement
- Formed on October 20, 2011 by filing of Articles of Incorporation with the Pennsylvania Department of State
- Requested approval of IRS for 501(c)(3) status

III. Overview of the Proposed Affiliation Agreement

A. Affiliation Agreement

- At closing under the Affiliation Agreement, UPE will become the sole corporate member within a new class of membership that will be established in Highmark.
- UPE will hold all rights in this new class of corporate membership in Highmark which will be created and exist in addition to the current class of Highmark members which consists of members of the Board of Directors of Highmark.
- Highmark will maintain its Board of Directors which will continue to have significant control over operations. UPE will also hold certain reserved powers with respect to Highmark. All initial Directors of UPE will be drawn from the Directors of Highmark.
- UPE will also become the sole corporate member of a new nonprofit subsidiary of UPE, UPE Provider Sub. UPE Provider Sub will become the sole member of WPAHS which in turn is the parent company of various entities in the WPAHS health system of hospitals and other healthcare providers. UPE and UPE Provider Sub will each have certain reserved powers in WPAHS and a majority of the Board of WPAHS will be appointed by UPE Provider Sub.

B. Highmark Funding Commitment

- Under the terms of the Affiliation Agreement, Highmark has agreed to provide funding to WPAHS in an aggregate amount not to exceed \$400 million over a three-year period.
- In addition, Highmark will establish a \$75 million endowment to fund scholarships for students attending medical schools affiliated with WPAHS, and to support other health professional education programs.

C. Financing of the Transaction

- Highmark will pay 100% of the funding commitment in cash with cash on hand, with no financing contingency.
- No pledge of Plan stock or assets in connection with the Affiliation Agreement.

D. Required Regulatory Approvals and Notices

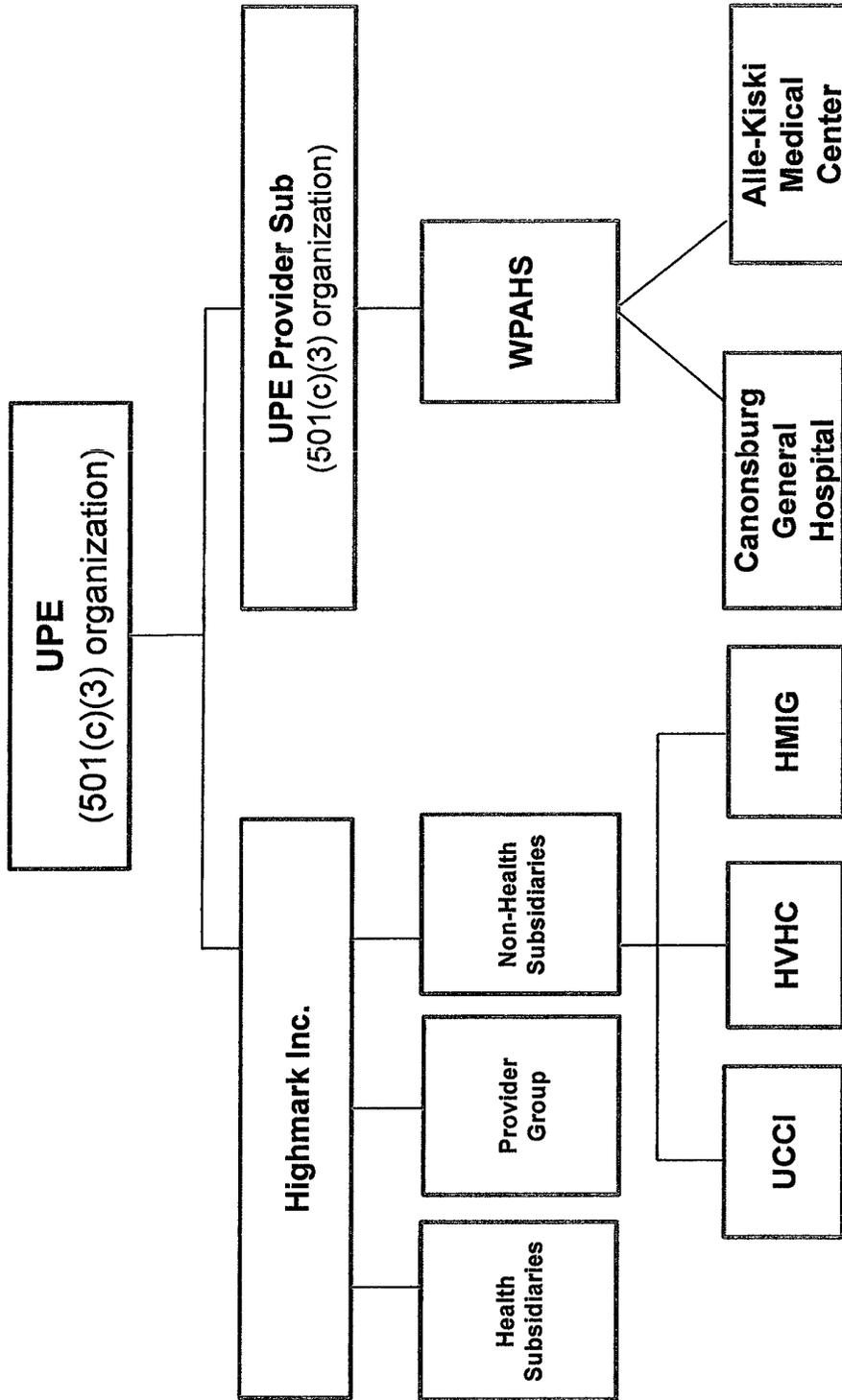
- Pennsylvania Insurance Department
- Pennsylvania Attorney General
- Pennsylvania Court of Common Pleas/Orphans' Court Division, for approval of hospital changes of control
- Internal Revenue Service
- Notice of Material Modification with the Department
- Other state insurance departments

E. No material changes to the Plan as a result of the Affiliation Agreement

- The Plan will not enter into any new administrative services agreements in connection with the Affiliation Agreement
- No change in the Plan's tax sharing agreement
- No change in Plan officers, directors or staff as a result of the Affiliation Agreement. The Plan will be filing a change in officer and director in the normal course, unrelated to the Affiliation Agreement
- The Plan will maintain its offices and books and records in California at closing
- The Plan will make all filings as required by the Knox-Keene Act and regulations for any changes made after closing, although none are presently contemplated in connection with the Affiliation Agreement

IV. Next Steps, Questions and Discussion

Proposed Corporate Structure



Document Divider

Doak Foster
Direct Dial: 501-688-8841
Fax: 501-918-7841
E-mail: dfoster@mwilliams.com

425 West Capitol Avenue, Suite 1800
Little Rock, Arkansas 72201-3525
Telephone: 501-688-8800
Fax: 501-688-8807

February 17, 2012

VIA FEDERAL EXPRESS

The Honorable Karen Weldin Stewart, CIR-ML
Commissioner of Insurance
Delaware Insurance Department
Rodney Building
841 Silver Lake Boulevard
Dover, Delaware 19904

Attn: Linda Sizemore, CPA, CFE
Director of Company Regulation

Re: Supplement No. 1 to Form A Statement Regarding the Acquisition of Control of
Highmark BCBSD, Inc. d/b/a BlueCross BlueShield of Delaware ("the Domestic
Insurer") by UPE (the "Applicant")

Biographical Affidavit of David M. Matter

Dear Commissioner Stewart:

Enclosed in a sealed envelope marked "**Confidential**" is the original and one copy of the
biographical affidavit of David M. Matter, a current member of the Highmark Board of
Directors, who has been elected to UPE's Board of Directors.

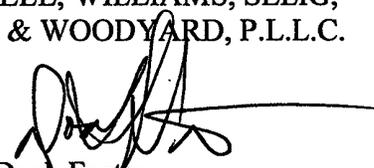
The Applicant requests confidentiality of Mr. Matter's biographical affidavit pursuant to
Del. C. § 10002(g)(2), and that (i) the Applicant be notified in advance of any proposed
disclosure by the Delaware Insurance Department ("Department") and (ii) the Applicant be given
a reasonable opportunity to seek a protective order or take other action to prevent or limit any
such disclosure.

We appreciate your assistance and courtesy in working with us on this matter.

Very truly yours,

MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, P.L.L.C.

By


Doak Foster

DF:ka
Enclosures

The Honorable Karen Weldin Stewart, CIR-ML
February 17, 2012
Page 2

cc: The Honorable Joseph R. Biden, III
Attn: Ian R. McConnell, Esquire (w/enclosure)

Michael Houghton, Esquire (w/enclosure)
Mr. Edward A. Bittner, Jr. (w/enclosure)
Mr. Richard J. Enterline (w/enclosure)
Mr. Ronald E. Chronister (w/enclosure)

MITCHELL || WILLIAMS

Frederick K. Campbell
Direct Dial: 501-688-8882
Fax: 501-918-7882
E-mail: rcampbell@mwlw.com

425 West Capitol Avenue, Suite 1800
Little Rock, Arkansas 72201-3525
Telephone: 501-688-8800
Fax: 501-688-8807

February 14, 2012

VIA FEDERAL EXPRESS

The Honorable Karen Weldin Stewart, CIR-ML
Commissioner of Insurance
Delaware Insurance Department
Rodney Building
841 Silver Lake Boulevard
Dover, Delaware 19904

Attn: Linda Sizemore, CPA, CFE
Director of Company Regulation

Re: Form A Statement Regarding the Acquisition of Control of Highmark BCBSD, Inc.
d/b/a BlueCross BlueShield of Delaware ("the Domestic Insurer") by UPE (the
Applicant")

Dear Commissioner Stewart:

Pursuant to Chapter 50 of the Delaware Insurance Code and Regulation 1801 of the Delaware Administrative Code, we are enclosing for filing on behalf of the Applicant two copies of the Form A Statement dated February 14, 2012, both of which contain originally executed Signature and Certification pages, regarding the above-captioned change of control of the Domestic Insurer. A filing fee in the amount of \$ 100.00 accompanies this filing pursuant to 18 *Del. C.* § 701 (17).

At the close of 2011, Highmark Inc. ("Highmark") became the Ultimate Controlling Person of the Domestic Insurer pursuant to an Order issued by the Delaware Insurance Department (Docket No. 1509-10).

Highmark and West Penn Allegheny Health System, Inc. ("WPAHS") have entered into an Affiliation Agreement, dated October 31, 2011 (the "Agreement"), a redacted copy of which is herewith filed as Exhibit A-1 and an unredacted copy which is filed herewith as Exhibit A-2, pursuant to which a new nonprofit corporation was created to establish an integrated health care financing and delivery system in western Pennsylvania. Under the Agreement, at closing, the Applicant, the new nonprofit parent, will become the sole voting corporate member of Highmark.

There are a number of documents which we are submitting in sealed envelopes marked “**Confidential.**” These include the unredacted copy of the Agreement (Exhibit A-2), biographical affidavits and certain financial statements. The Applicant requests confidentiality of these documents pursuant to Del. C. § 10002(g)(2), and that (i) the Applicant be notified in advance of any proposed disclosure by the Delaware Insurance Department (“Department”) and (ii) the Applicant be given a reasonable opportunity to seek a protective order or take other action to prevent or limit any such disclosure. Please note that the biographical affidavit of David M. Matter will be submitted as a supplement to this filing later this week.

The Applicant was formed on October 20, 2011 as a non-member Pennsylvania nonprofit corporation. The corporation was organized for scientific, educational and charitable purposes and in this connection has filed an application with the Internal Revenue Service requesting that the Applicant be recognized as exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986 as amended. At closing of the affiliation transaction, the Applicant will be the sole member of the class of members of Highmark which will elect Highmark’s Board of Directors. It is not anticipated that the Applicant will have significant operations separate from Highmark or WPAHS.

By virtue of the affiliation, the Domestic Insurer will become indirectly controlled by UPE. However, the Domestic Insurer will remain directly controlled by Highmark. Further, no change to the capitalization, organizational structure or any other aspect of the Domestic Insurer will occur as a direct result of the affiliation. The separate corporate existence of the Domestic Insurer will continue and the daily management and board of directors of the Domestic Insurer will remain as they are prior to the affiliation. Moreover, the Conditions contained in the Delaware Insurance Commissioner’s Decision and Final Order of December 30, 2011 approving the affiliation of Highmark and the Domestic Insurer will remain in full force and effect.

Our client is actively pursuing approval of this affiliation in Pennsylvania and is hopeful that it will receive a final Order from the Pennsylvania Insurance Department in the next few months. It is also working in other states that require approval of some part of the affiliation effort. Of course, some of these state approvals, including the one in Delaware, will be conditioned upon the final approval of the proposed transaction by the Pennsylvania Insurance Department. We are, therefore, requesting an expedited review of the enclosed Form A and the scheduling of a hearing, if necessary, within a timeframe that will permit your office to issue a conditional approval order as soon as possible.

By copy of this letter, simultaneous notice of this Form A filing seeking the Department’s approval of the affiliation between Highmark and WPAHS is being provided to the Delaware Department of Justice pursuant to 18 Del.C. § 6311.

The Honorable Karen Weldin Stewart, CIR-ML
February 14, 2012
Page 3

We look forward to working with your Department in this matter and appreciate your courtesy and assistance.

Sincerely,

MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, P.L.L.C.

By


Frederick K. Campbell

FKC/ka
Enclosures

UPE-0005938

The Honorable Karen Weldin Stewart, CIR-ML
February 14, 2012
Page 4

cc: The Honorable Joseph R. Biden, III
Attn: Ian R. McConnel, Esquire (w/enclosures)

Michael Houghton, Esquire (w/enclosures)
Mr. Edward A. Bittner, Jr. (w/enclosures)
Mr. Richard J. Enterline (w/enclosures)
Mr. Ronald E. Chronister (w/enclosures)

Johnson, Margaret R.

From: Craig, Janet A.
Sent: Tuesday, February 07, 2012 1:21 PM
To: 'Finley, Matt (PPC)'
Subject: RE: United Concordia
Thank you. I don't know what I was thinking. Janet

Janet A. Craig
Stites and Harbison PLLC
250 West Main Street
2300 Lexington Financial Center
Lexington, KY 40507-1758
Direct: 859-226-2377
Fax: 859-425-7937

NOTICE: This message is intended only for the addressee and may contain information that is privileged, confidential and/or attorney work product. If you are not the intended recipient, do not read, copy, retain or disseminate this message or any attachment. If you have received this message in error, please call the sender immediately at (859) 226-2377 and delete all copies of the message and any attachment. Neither the transmission of this message or any attachment, nor any error in transmission or misdelivery shall constitute waiver of any applicable legal privilege.

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

From: Finley, Matt (PPC) [mailto:Matt.Finley@ky.gov]
Sent: Tuesday, February 07, 2012 12:41 PM
To: Craig, Janet A.
Subject: RE: United Concordia

And it is Thursday, Feb 16 @ 10am...

Matt S. Finley, Attorney
Office of Legal Services, Insurance Division
215 W. Main Street
Frankfort, KY 40601
502-564-6032
502-564-1456 FAX

From: Craig, Janet A. [mailto:JCRAIG@stites.com]
Sent: Tuesday, February 07, 2012 12:04 PM
To: Finley, Matt (PPC)
Subject: United Concordia

Dear Matt,

Per our agreement I am drafting the Joint Proposed Findings of Fact and Conclusions of law for the hearing next Wednesday. Can you please let me know the following: Date of the Order scheduling the

2/8/2012

Hearing, date the notice was published, and the name and title of the person testifying for the KDOI. I will put this information in the document and send it to you for your review and consideration. Thank you and have a nice day. Janet

Janet A. Craig
Stites and Harbison PLLC
250 West Main Street
2300 Lexington Financial Center
Lexington, KY 40507-1758
Direct: 859-226-2377
Fax: 859-425-7937

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2/8/2012

UPE-0005941

Ready, Donna P.

From: Finley, Matt (PPC) [Matt.Finley@ky.gov]
Sent: Tuesday, February 07, 2012 1:04 PM
To: Craig, Janet A.
Subject: RE: United Concordia

Janet,

I just was notified the Jay Thompson will be my witness.

Matt S. Finley, Attorney
Office of Legal Services, Insurance Division
215 W. Main Street
Frankfort, KY 40601
502-564-6032
502-564-1456 FAX

From: Craig, Janet A. [mailto:JCRAIG@stites.com]
Sent: Tuesday, February 07, 2012 12:04 PM
To: Finley, Matt (PPC)
Subject: United Concordia

Dear Matt,

Per our agreement I am drafting the Joint Proposed Findings of Fact and Conclusions of law for the hearing next Wednesday. Can you please let me know the following: Date of the Order scheduling the Hearing, date the notice was published, and the name and title of the person testifying for the KDOI. I will put this information in the document and send it to you for your review and consideration. Thank you and have a nice day. Janet

Janet A. Craig
Stites and Harbison PLLC
250 West Main Street
2300 Lexington Financial Center
Lexington, KY 40507-1758
Direct: 859-226-2377
Fax: 859-425-7937

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2/8/2012

UPE-0005942

Ready, Donna P.

From: Finley, Matt (PPC) [Matt.Finley@ky.gov]
Sent: Tuesday, February 07, 2012 12:39 PM
To: Craig, Janet A.
Subject: RE: United Concordia
Attachments: Order setting UPE hearing.pdf

Janet,

See attached order with date of January 31, 2011.

The notice was published today in the Lexington Herald Leader and is scheduled for tomorrow in the Courier Journal.

My witness will either be Bill Clark, Chief Financial Analyst, or Jay Thompson, Financial Analyst. They are currently deciding who it will be...

I should know by the end of the day exactly who it will be.

Thanks.

*Matt S. Finley, Attorney
Office of Legal Services, Insurance Division
215 W. Main Street
Frankfort, KY 40601
502-564-6032
502-564-1456 FAX*

From: Craig, Janet A. [mailto:JCRAIG@stites.com]
Sent: Tuesday, February 07, 2012 12:04 PM
To: Finley, Matt (PPC)
Subject: United Concordia

Dear Matt,

Per our agreement I am drafting the Joint Proposed Findings of Fact and Conclusions of law for the hearing next Wednesday. Can you please let me know the following: Date of the Order scheduling the Hearing, date the notice was published, and the name and title of the person testifying for the KDOI. I will put this information in the document and send it to you for your review and consideration. Thank you and have a nice day. Janet

**Janet A. Craig
Stites and Harbison PLLC
250 West Main Street
2300 Lexington Financial Center
Lexington, KY 40507-1758
Direct: 859-226-2377
Fax: 859-425-7937**

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2/8/2012

shall constitute waiver of any applicable legal privilege.

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2/8/2012

UPE-0005944



**COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE
Frankfort, Kentucky 40601
ADMINISTRATIVE ACTION NO. 2012-DOI-004**

In the matter of:

UPE

PETITIONER

VS.

KENTUCKY DEPARTMENT OF INSURANCE

DEFENDANT

NOTICE AND ORDER SETTING FORMAL HEARING

WHEREAS, UPE (the "Applicant and "Petitioner") has filed with the Kentucky Department of Insurance ("the Department") a Form A – Application for Approval of the Acquisition of Control of or Merger with a Domestic Insurer ("Form A") – requesting approval of the acquisition of or merger with United Concordia Dental Plans of Kentucky, Inc., a Kentucky Limited Health Service Organization.

NOW, THEREFORE, pursuant to KRS 13B.050; KRS 304.2-310, KRS 304.37-120 and all other applicable law, it is hereby ORDERED:

1. An impartial hearing will be held before the Honorable Clayton Patrick, 415 West Main Street, Frankfort, Kentucky 40601. This hearing shall be conducted at the offices of the Kentucky Department of Insurance, 215

West Main Street, Frankfort, Kentucky 40601, on February 16, 2012 at 10:00am.

2. That, the parties to the public hearing are: The Department of Insurance, represented by Honorable Matt Finley, Counsel, PO Box 517 Frankfort, Kentucky 40602-0517, phone (502) 564-6032; Fax (502) 564-1456; and UPE, represented by Honorable Janet A. Craig, Stites & Harbison, PLLC, 250 West Main Street, Suite 2300, Lexington, Kentucky 40507, Phone (859) 226-2377, Fax (859) 425-7937.

3. The purpose of this hearing is to determine whether the acquisition of or merger with United Concordia Dental Plans of Kentucky, Inc., a domestic insurer, by UPE as proposed in the Form A filed with the Department on January 5, 2012, is in compliance with and meets the standards set out in KRS 304.37-120, and all other applicable law.

4. That the public hearing shall be governed by KRS Chapter 13B and KRS 304.2-310 through KRS 302.2-370.

5. That the petitioners have a right to legal counsel. Petitioners or their counsel, have the right to cross-examine witnesses, to introduce witnesses on their behalf, and to have subpoenas issued for the presence of said witnesses. The cost of the subpoenas issued on Petitioners' behalf will be charged to the Petitioners.

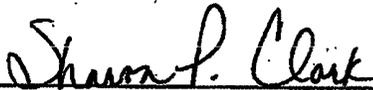
6. That, pursuant to KRS 13B.050(3)(g), the parties have a right to examine, at least five (5) days prior to the hearing, a list of witnesses the parties expect to call at the hearing, any evidence to be used at the hearing, and any

exculpatory information in the possession of the Department of Insurance; unless modified by order of the hearing office or agreement of the parties in writing.

7. That any party who fails to attend or participate as required in any stage of the administrative hearing process may be held in default pursuant to KRS 13B.050(3)(h).

8. That, in accordance with KRS 304.2-320(2), the cost of providing notice of the hearing by publication shall be borne by UPE.

Effective this 31st day of January, 2012.



Sharon P. Clark, Commissioner
Kentucky Department of Insurance

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Notice and Order was served by mailing a true copy by prepaid certificate mail, return receipt requested to:

Hon. Janet A. Craig
Stites & Harbison, PLLC
250 West Main Street, Suite 2300
Lexington, Kentucky 40507

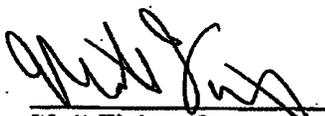
United Concordia Dental Plans of Kentucky, Inc.
421 West Main Street
Frankfort, Kentucky 40601

Hon. Clayton Patrick
415 West Main Street
Frankfort, Kentucky 40601

And hand delivered to:

Custodian of Records
Kentucky Department of Insurance
215 W. Main Street
Frankfort, Kentucky 40601

on this 1st day of February, 2012.



Matt Finley, Counsel
Kentucky Department of Insurance
215 West Main Street
Frankfort, Kentucky 40601
(502) 564-6032

Johnson, Margaret R.

From: Craig, Janet A.
Sent: Tuesday, February 07, 2012 12:04 PM
To: 'Finley, Matt (PPC)'
Subject: United Concordia

Dear Matt,

Per our agreement I am drafting the Joint Proposed Findings of Fact and Conclusions of law for the hearing next Wednesday. Can you please let me know the following: Date of the Order scheduling the Hearing, date the notice was published, and the name and title of the person testifying for the KDOI. I will put this information in the document and send it to you for your review and consideration. Thank you and have a nice day. Janet

Janet A. Craig
Stites and Harbison PLLC
250 West Main Street
2300 Lexington Financial Center
Lexington, KY 40507-1758
Direct: 859-226-2377
Fax: 859-425-7937

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2/8/2012

UPE-0005949

Johnson, Margaret R.

From: Craig, Janet A.
Sent: Friday, February 03, 2012 10:13 AM
To: 'Finley, Matt (PPC)'
Subject: RE: Form A Hearing United Concordia

Thank you. We are glad to work on those. Janet

Janet A. Craig
Stites and Harbison PLLC
250 West Main Street
2300 Lexington Financial Center
Lexington, KY 40507-1758
Direct: 859-226-2377
Fax: 859-425-7937

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From: Finley, Matt (PPC) [mailto:Matt.Finley@ky.gov]
Sent: Friday, February 03, 2012 9:46 AM
To: Craig, Janet A.
Subject: RE: Form A Hearing United Concordia

Janet,

Got your message, was out sick.

Yes, we are confirmed for the 16th.

If you want to draft some stipulations and a proposed recommended order, the Dept. doesn't have any objections.

From: Street, Danielle (PPC)
Sent: Monday, January 30, 2012 1:28 PM
To: Finley, Matt (PPC)
Subject: RE: Form A Hearing United Concordia

Feb 16th @ 10:00 am.
I'll get the N&O to you shortly.

2/6/2012

Danielle Street

From: Finley, Matt (PPC)
Sent: Monday, January 30, 2012 9:45 AM
To: Street, Danielle (PPC)
Subject: FW: Form A Hearing United Concordia

Can you check on the below and schedule if it is still open?

Matt S. Finley, Attorney
Office of Legal Services, Insurance Division
215 W. Main Street
Frankfort, KY 40601
502-564-6032
502-564-1456 FAX

From: Craig, Janet A. [<mailto:JCRAIG@stites.com>]
Sent: Monday, January 30, 2012 9:39 AM
To: Finley, Matt (PPC)
Subject: Form A Hearing United Concordia

Dear Matt,

I am sorry for the delay in getting back to you. February 16th works for my client for the Form A hearing. Can you let me know if it still works for the Department? Thank you and have a good day. Janet

Janet A. Craig
Stites and Harbison PLLC
250 West Main Street
2300 Lexington Financial Center
Lexington, KY 40507-1758
Direct: 859-226-2377
Fax: 859-425-7937

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2/6/2012

UPE-0005951

Johnson, Margaret R.

From: Craig, Janet A.
Sent: Monday, January 30, 2012 2:21 PM
To: 'Finley, Matt (PPC)'
Subject: RE: Form A Hearing United Concordia
Thank you. Janet

Janet A. Craig
Stites and Harbison PLLC
250 West Main Street
2300 Lexington Financial Center
Lexington, KY 40507-1758
Direct: 859-226-2377
Fax: 859-425-7937

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From: Finley, Matt (PPC) [mailto:Matt.Finley@ky.gov]
Sent: Monday, January 30, 2012 1:39 PM
To: Craig, Janet A.
Subject: FW: Form A Hearing United Concordia

Janet,

See below.
Thanks.

Matt S. Finley, Attorney
Office of Legal Services, Insurance Division
215 W. Main Street
Frankfort, KY 40601
502-564-6032
502-564-1456 FAX

From: Street, Danielle (PPC)
Sent: Monday, January 30, 2012 1:28 PM
To: Finley, Matt (PPC)
Subject: RE: Form A Hearing United Concordia

1/31/2012

Feb 16th @ 10:00 am.
I'll get the N&O to you shortly.

Danielle Street

From: Finley, Matt (PPC)
Sent: Monday, January 30, 2012 9:45 AM
To: Street, Danielle (PPC)
Subject: FW: Form A Hearing United Concordia

Can you check on the below and schedule if it is still open?

Matt S. Finley, Attorney
Office of Legal Services, Insurance Division
215 W. Main Street
Frankfort, KY 40601
502-564-6032
502-564-1456 FAX

From: Craig, Janet A. [<mailto:JCRAIG@stites.com>]
Sent: Monday, January 30, 2012 9:39 AM
To: Finley, Matt (PPC)
Subject: Form A Hearing United Concordia

Dear Matt,

I am sorry for the delay in getting back to you. February 16th works for my client for the Form A hearing. Can you let me know if it still works for the Department? Thank you and have a good day. Janet

Janet A. Craig
Stites and Harbison PLLC
250 West Main Street
2300 Lexington Financial Center
Lexington, KY 40507-1758
Direct: 859-226-2377
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1/31/2012

UPE-0005953

Johnson, Margaret R.

From: Finley, Matt (PPC) [Matt.Finley@ky.gov]
Sent: Monday, January 30, 2012 1:39 PM
To: Craig, Janet A.
Subject: FW: Form A Hearing United Concordia

Janet,

See below.

Thanks.

*Matt S. Finley, Attorney
Office of Legal Services, Insurance Division
215 W. Main Street
Frankfort, KY 40601
502-564-6032
502-564-1456 FAX*

From: Street, Danielle (PPC)
Sent: Monday, January 30, 2012 1:28 PM
To: Finley, Matt (PPC)
Subject: RE: Form A Hearing United Concordia

Feb 16th @ 10:00 am.
I'll get the N&O to you shortly.

Danielle Street

From: Finley, Matt (PPC)
Sent: Monday, January 30, 2012 9:45 AM
To: Street, Danielle (PPC)
Subject: FW: Form A Hearing United Concordia

Can you check on the below and schedule if it is still open?

*Matt S. Finley, Attorney
Office of Legal Services, Insurance Division
215 W. Main Street
Frankfort, KY 40601
502-564-6032
502-564-1456 FAX*

From: Craig, Janet A. [mailto:JCRAIG@stites.com]
Sent: Monday, January 30, 2012 9:39 AM
To: Finley, Matt (PPC)
Subject: Form A Hearing United Concordia

Dear Matt,

1/31/2012

I am sorry for the delay in getting back to you. February 16th works for my client for the Form A hearing. Can you let me know if it still works for the Department? Thank you and have a good day. Janet

Janet A. Craig
Stites and Harbison PLLC
250 West Main Street
2300 Lexington Financial Center
Lexington, KY 40507-1758
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1/31/2012

UPE-0005955

Johnson, Margaret R.

From: Craig, Janet A.
Sent: Monday, January 30, 2012 9:39 AM
To: 'Finley, Matt (PPC)'
Subject: Form A Hearing United Concordia

Dear Matt,

I am sorry for the delay in getting back to you. February 16th works for my client for the Form A hearing. Can you let me know if it still works for the Department? Thank you and have a good day.
Janet

Janet A. Craig
Stites and Harbison PLLC
250 West Main Street
2300 Lexington Financial Center
Lexington, KY 40507-1758
Direct: 859-226-2377
Fax: 859-425-7937

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To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

1/31/2012

UPE-0005956

Ready, Donna P.

From: Finley, Matt (PPC) [Matt.Finley@ky.gov]
Sent: Tuesday, January 24, 2012 9:44 AM
To: Craig, Janet A.
Subject: RE: Hearing dates

Janet,

Yes, February is correct.

*Matt S. Finley, Attorney
Office of Legal Services, Insurance Division
215 W. Main Street
Frankfort, KY 40601
502-564-6032
502-564-1456 FAX*

From: Craig, Janet A. [mailto:JCRAIG@stites.com]
Sent: Tuesday, January 24, 2012 9:36 AM
To: Finley, Matt (PPC)
Subject: RE: Hearing dates

Dear Matt,

I will check. You mean February right? Thank you. Janet

**Janet A. Craig
Stites and Harbison PLLC
250 West Main Street
2300 Lexington Financial Center
Lexington, KY 40507-1758
Direct: 859-226-2377
Fax: 859-425-7937**

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To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

From: Finley, Matt (PPC) [mailto:Matt.Finley@ky.gov]
Sent: Tuesday, January 24, 2012 7:09 AM
To: Craig, Janet A.

2/8/2012

Subject: FW: Hearing dates

Janet,

The hearing officer has Tuesday the 14th or Thursday the 16th of January available if either date works for your client.

*Matt S. Finley, Attorney
Office of Legal Services, Insurance Division
215 W. Main Street
Frankfort, KY 40601
502-564-6032
502-564-1456 FAX*

From: Street, Danielle (PPC)
Sent: Monday, January 23, 2012 3:05 PM
To: Finley, Matt (PPC)
Subject: Hearing dates

The hearing officer is available any time on Feb 14th or 16th.

Danielle Street

Paralegal
Kentucky Department of Insurance
Office of Legal Services
215 West Main Street
Frankfort, Kentucky 40602
502-782-5242
Danielle.Street@ky.gov

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2/8/2012

UPE-0005958

Ready, Donna P.

From: Finley, Matt (PPC) [Matt.Finley@ky.gov]
Sent: Tuesday, January 24, 2012 7:09 AM
To: Craig, Janet A.
Subject: FW: Hearing dates

Janet,

The hearing officer has Tuesday the 14th or Thursday the 16th of January available if either date works for your client.

*Matt S. Finley, Attorney
Office of Legal Services, Insurance Division
215 W. Main Street
Frankfort, KY 40601
502-564-6032
502-564-1456 FAX*

From: Street, Danielle (PPC)
Sent: Monday, January 23, 2012 3:05 PM
To: Finley, Matt (PPC)
Subject: Hearing dates

The hearing officer is available any time on Feb 14th or 16th.

Danielle Street
Paralegal
Kentucky Department of Insurance
Office of Legal Services
215 West Main Street
Frankfort, Kentucky 40602
502-782-5242
Danielle.Street@ky.gov

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2/8/2012

UPE-0005959

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2723 South State Street
Suite 400
Ann Arbor, Michigan 48104
WWW.DYKEMA.COM
Tel: (734) 214-7660
Fax: (734) 214-7696
Kathrin E. Kudner
Direct Dial: (313) 568-6896
Email: KKUDNER@DYKEMA.COM

February 3, 2012

Hand Delivered

Ms. Marilyn Rzepecki
Supervisory Affairs and Insurance Monitoring Division
Michigan Office of Financial and Insurance Regulation
611 W. Ottawa Street, 3rd Floor
Lansing, MI 48933

Dear Ms. Rzepecki:

On behalf of our client, and in connection with a Form A Filing relating to the proposed acquisition of control of United Concordia Dental Plans of the Midwest, Inc., enclosed are fingerprint cards for the following individuals: Kenneth R. Melani, M.D., J. Robert Baum, Ph.D., David A. Blandino, M.D., Joseph C. Guyaux, David J. Malone, David M. Matter, Victor A. Roque, Nanette P. DeTurk and Maureen L. Hogel. These individuals are the officers and directors of the UPE, the Applicant.

I have enclosed a check payable to the State of Michigan for the processing fee.

I will be sending additional fingerprint cards for those officers and directors of United Concordia Dental Plans of the Midwest, Inc. for which you do not have current fingerprint results on file.

If you have any questions, please call me.

Very truly yours,

DYKEMA GOSSETT PLLC

Kathrin E. Kudner

KEK:rd

Enclosures

cc: Alex Hertrich
Richard J. Enterline
Belinda A. Clouser
Ronald E. Chronister

DET01\1003828.1
ID\KEK - 079526/0003

California | Illinois | Michigan | North Carolina | Texas | Washington, D.C.

UPE-0005960

Kudner, Kathrin

From: Hertrich, Alexander (LARA) [HertrichA@michigan.gov]
Sent: Wednesday, January 25, 2012 1:21 PM
To: Kudner, Kathrin
Subject: RE: Form A

Hello (again),

We still have not received the .pdf version of the Form A. Please e-mail us the .pdf version as soon as possible.

We also will be adding to our letter we previously sent to include some biographical affidavits and fingerprints as outstanding. In accordance with our policy we need fingerprints on directors and officers of the applicant and updated biographical affidavits and fingerprint results on any current officers or directors of our domestic insurer where the results we have are older than one year. I will forward you this addendum shortly.

Please let me know if you have any questions or concerns,

Alex Hertrich
Financial Analyst
Insurance Evaluation Division
Michigan Office of Financial and Insurance Regulation
Phone: 517-335-4074
E-mail: hertricha@michigan.gov

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From: Kudner, Kathrin [mailto:KKudner@dykema.com]
Sent: Wednesday, January 25, 2012 9:34 AM
To: Hertrich, Alexander (LARA)
Subject: RE: Form A

Thank you.

Kathrin E. Kudner
Dykema
2723 South State Street, Suite 400
Ann Arbor, Michigan 48104
(313) 568-6896
(734) 214-7697
(734) 214-7696 (fax)
kkudner@dykema.com
www.dykema.com

From: Hertrich, Alexander (LARA) [mailto:HertrichA@michigan.gov]
Sent: Wednesday, January 25, 2012 9:33 AM
To: Kudner, Kathrin
Subject: RE: Form A

Kathy,

Kudner, Kathrin

From: Hertrich, Alexander (LARA) [HertrichA@michigan.gov]
Sent: Wednesday, January 25, 2012 9:33 AM
To: Kudner, Kathrin
Subject: RE: Form A
Attachments: Form A Completeness Letter UCDCPM.pdf

Kathy,

I have attached the letter to this e-mail.

Thank you,

Alex Hertrich
Financial Analyst
Insurance Evaluation Division
Michigan Office of Financial and Insurance Regulation
Phone: 517-335-4074
E-mail: hertricha@michigan.gov

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From: Kudner, Kathrin [mailto:KKudner@dykema.com]
Sent: Wednesday, January 25, 2012 9:00 AM
To: Hertrich, Alexander (LARA)
Subject: Re: Form A

Alexander, I would like an electronic copy. Thank you, Kathy

From: Hertrich, Alexander (LARA) [mailto:HertrichA@michigan.gov]
Sent: Wednesday, January 25, 2012 08:01 AM
To: Kudner, Kathrin
Subject: Form A

Hello Ms. Kudner,

I wanted to touch base with you and let you know that I am the analyst that has been assigned Highmark Inc's Form A request.

As Judy and Kristin have probably told you, we have performed an initial review of the Form A and have noted a few items missing. A formal letter regarding the items has been sent to you and Mr. Stover. If you would like an electronic copy of the letter, please let me know and I will send you a .pdf copy.

If you have any questions or concerns, feel free to contact me.

Alex Hertrich
Financial Analyst
Insurance Evaluation Division
Michigan Office of Financial and Insurance Regulation
517-335-4074



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
R. KEVIN CLINTON
COMMISSIONER

STEVEN H. HILFINGER
DIRECTOR

January 25, 2012

Ms. Katherin Kudner
Dykema Gossett PLLC
2723 S. State Street, Suite 400
Ann Arbor, MI 48104

Dear Ms. Kudner:

This letter is an addendum to our letter dated January 24, 2011. In accordance with our policies, we need fingerprints on directors and officers of the applicant and updated fingerprint results on any current officers or directors of our domestic insurer where the results we have are older than one year. We have noted that fingerprint results are outstanding for the directors and officers of UPE. After review of our files, we will also need updated biographical affidavits and fingerprint results for the following officers and directors of our domestic company United Concordia Dental Plan of the Midwest: Edward A. Bittner; David W. Kempken; Daniel J. Lebish; Frederick G. Merkel; Joseph W. Seygal; and Daniel J. Wright.

The items above have been added to our list of outstanding items sent to you January 24, 2012 and receipt of an acceptable response to all items will be necessary to deem the filing complete. We understand that timing for fingerprint processing can vary. In accordance with our policies we will accept receipt of proof that officers and directors have been fingerprinted when considering completeness.

If you have any questions, please contact me at (517) 335-4074 or hertricha@michigan.gov.

Sincerely,

Alex Hertrich
Financial Analyst
Insurance Evaluation Division

Cc: Jack M. Stover, Esquire
Buchanan Ingersoll & Rooney PC

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UPE-0005963

Kudner, Kathrin

From: Hertrich, Alexander (LARA) [HertrichA@michigan.gov]
Sent: Wednesday, January 25, 2012 8:02 AM
To: Kudner, Kathrin
Subject: Form A

Hello Ms. Kudner,

I wanted to touch base with you and let you know that I am the analyst that has been assigned Highmark Inc's Form A request.

As Judy and Kristin have probably told you, we have performed an initial review of the Form A and have noted a few items missing. A formal letter regarding the items has been sent to you and Mr. Stover. If you would like an electronic copy of the letter, please let me know and I will send you a .pdf copy.

If you have any questions or concerns, feel free to contact me.

Alex Hertrich
Financial Analyst
Insurance Evaluation Division
Michigan Office of Financial and Insurance Regulation
517-335-4074

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RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
R. KEVIN CLINTON
COMMISSIONER

STEVEN H. HILFINGER
DIRECTOR

January 24, 2012

Ms. Katherin Kudner
Dykema Gossett PLLC
2723 S. State Street, Suite 400
Ann Arbor, MI 48104

Dear Ms. Kudner:

We have performed an initial cursory review of the Form A filed by you on behalf of UPE, a Pennsylvania nonprofit corporation, regarding the acquisition of control of our domestic insurer, United Concordia Dental Plans of the Midwest, Inc. At this time we are unable to deem the filing complete. We did not receive projected direct, assumed, ceded and net written premium by line, proforma projections on the balance sheet or income statement, or a complete 5 year business plan for our domestic insurer as required in item 5b of the Form A. Item 12 of the Form A states that audited annual financial statements are not available for UPE. Please submit any substantially similar information, such as compiled financial statements or tax returns, as available, in lieu of the audited financial statements.

Additionally, you have requested that information within the filing be held confidential. Any requests to hold information confidential must be submitted to our FOIA coordinator. Please note Form A filings generally are available under FOIA, until a contrary determination is made.

We are allowed 30 days to review an application for completeness. The clock has been stopped as of today and will resume once an acceptable response to the issues above has been received. After the application has been deemed complete, we have an additional 90 days to complete our review. If you have any questions, please contact me at (517) 335-4074 or hertricha@michigan.gov.

Sincerely,

Alex Hertrich
Financial Analyst
Insurance Evaluation Division

Cc: Jack M. Stover, Esquire
Buchanan Ingersoll & Rooney PC

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UPE-0005965

Kudner, Kathrin

From: Hynes, Kristin (LARA) [hynesk@michigan.gov]
Sent: Monday, January 23, 2012 3:06 PM
To: Kudner, Kathrin
Subject: FW: Form A

Ms. Kudner,

Based on a cursory review of the filing, it does appear that we do need Highmark's GAAP Combined Financials for our review of the Form A filing.

We have 30 days to deem the filing complete and then an additional 90 days to complete our review of the file. The clock does stop while we are waiting for information to be sent. We have begun our initial review of the Form A for completeness and have noted that some information is missing from the filing. A letter will be sent out within the next day or two that provides you more details.

Please let me know if you have any questions. Thanks.

Kristin M. Hynes, CFE
Manager, Insurance Evaluation Division
Office of Financial and Insurance Regulation
Phone: (517) 241-0020
Fax: (517) 241-4610
E-mail: hynesk@michigan.gov

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From: Weaver, Judy (LARA)
Sent: Monday, January 23, 2012 1:52 PM
To: Hynes, Kristin (LARA)
Subject: FW: Form A

See question below

Judy Weaver, CFE
Deputy Commissioner
Supervisory Affairs & Insurance Monitoring Division
Michigan Office of Financial & Insurance Regulation
Phone (517) 335-1742
Fax (517) 241-4610

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From: Kudner, Kathrin [mailto:KKudner@dykema.com]
Sent: Monday, January 23, 2012 1:51 PM
To: Weaver, Judy (LARA)
Subject: RE: Form A

Kudner, Kathrin

From: Kudner, Kathrin
Sent: Monday, January 23, 2012 1:51 PM
To: 'Weaver, Judy (LARA)'
Subject: RE: Form A

Judy, I discussed this with Highmark. They do not want to withdraw the application at this point. I will work with Randall Gregg to see if we can facilitate his review. I do have one question on the Form A filing. We included Highmark's Combined GAAP Financial Statements in addition to the annual statutory statements. Do you need the GAAP Combined Financials? If not, we can revise the filing to delete that Exhibit. Kathy.

Kathrin E. Kudner
Dykema
2723 South State Street, Suite 400
Ann Arbor, Michigan 48104
(313) 568-6896
(734) 214-7697
(734) 214-7696 (fax)
kkudner@dykema.com
www.dykema.com

From: Weaver, Judy (LARA) [mailto:weaverj3@michigan.gov]
Sent: Wednesday, January 18, 2012 9:59 AM
To: Kudner, Kathrin
Cc: Hynes, Kristin (LARA)
Subject: Form A

Hi Kathy:

We received the hand delivered Form A yesterday, but did not receive the .pdf version. Did you email it?

Secondly, we are probably going to need you to withdraw the filing given you have asked for certain information to be held confidential. You will need to contact Randall Gregg, our General Counsel, to get a determination on your request, before we should accept the filing. We have tight timeframes for reviewing a Form A when we receive one, and we cannot control how long it takes our General Counsel to consider the confidentiality request. Therefore, we prefer any applicant to get their confidentiality determination, but officially filing the Form A so we can complete our Division's review within the required timeframe.

I will send Randall your January 17, 2012 letter to get the issue rolling, but you may want to directly follow up with him on your request.

Judy Weaver, CFE
Deputy Commissioner
Supervisory Affairs & Insurance Monitoring Division
Michigan Office of Financial & Insurance Regulation
Phone (517) 335-1742
Fax (517) 241-4610

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Kudner, Kathrin

From: Weaver, Judy (LARA) [weaverj3@michigan.gov]
Sent: Wednesday, January 18, 2012 10:00 AM
To: Gregg, Randall (LARA)
Cc: Kudner, Kathrin; Hynes, Kristin (LARA)
Subject: Confidentiality Request
Attachments: Highmark Form A.pdf

Hi Randy:

We received a Form A yesterday that contains a request that certain documents be held confidential under MCL 500.234. As the FOIA Coordinator, you will have to make a determination on that request. See attached. I have included Kathy Kudner from Dykema on this email. She is making the request on behalf of her client.

Judy Weaver, CFE
Deputy Commissioner
Supervisory Affairs & Insurance Monitoring Division
Michigan Office of Financial & Insurance Regulation
Phone (517) 335-1742
Fax (517) 241-4610

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Kudner, Kathrin

From: Weaver, Judy (LARA) [weaverj3@michigan.gov]
Sent: Wednesday, January 18, 2012 9:59 AM
To: Kudner, Kathrin
Cc: Hynes, Kristin (LARA)
Subject: Form A

Hi Kathy:

We received the hand delivered Form A yesterday, but did not receive the .pdf version. Did you email it?

Secondly, we are probably going to need you to withdraw the filing given you have asked for certain information to be held confidential. You will need to contact Randall Gregg, our General Counsel, to get a determination on your request, before we should accept the filing. We have tight timeframes for reviewing a Form A when we receive one, and we cannot control how long it takes our General Counsel to consider the confidentiality request. Therefore, we prefer any applicant to get their confidentiality determination, but officially filing the Form A so we can complete our Division's review within the required timeframe.

I will send Randall your January 17, 2012 letter to get the issue rolling, but you may want to directly follow up with him on your request.

Judy Weaver, CFE
Deputy Commissioner
Supervisory Affairs & Insurance Monitoring Division
Michigan Office of Financial & Insurance Regulation
Phone (517) 335-1742
Fax (517) 241-4610

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Chronister, Ronald

From: Berliner, Alan [Alan.Berliner@thompsonhine.com]
Sent: Tuesday, January 24, 2012 5:18 PM
To: 'Barbara Brown (Barbara.Brown@insurance.ohio.gov)'
Cc: Steve Vamos; James May (james.may@insurance.ohio.gov)
Subject: Highmark -Acquisition of Gateway Health Plan of Ohio Inc. by UPE

It has come to my attention that two schedules to the Affiliation Agreement were not included on the CDs filed with the Form A. We will file with Barbara tomorrow two CDs , each of which contain both of those schedules, 4.15 and 4.15(d).

Sorry for the inconvenience. If you need anything else or have any questions, please let me know.
Thanks.

Alan F. Berliner |Thompson Hine LLP
41 South High Street, Suite 1700 | Columbus, OH 43215-6101
Office: 614.469.3268 | Cell: 614.354-3416
Fax: 614.469.3361 | Email: Alan.Berliner@ThompsonHine.com
Web: <http://www.thompsonhine.com>



1/25/2012

UPE-0005970

Chronister, Ronald

From: Berliner, Alan [Alan.Berliner@thompsonhine.com]
Sent: Monday, January 23, 2012 5:27 PM
To: Berliner, Alan
Subject: FW: Highmark - Court Orders regarding confidential treatment of portions of Affiliation Agreement etc.
Attachments: docket.pdf; 1524581672-49762-17475-135-76_DONE.pdf; 513647288-40189-18286-191-5_DONE.pdf

From: Berliner, Alan
Sent: Wednesday, January 18, 2012 2:05 PM
To: Steve Vamos
Cc: Timothy J. Biler (Tim.Biler@insurance.ohio.gov); James May (james.may@insurance.ohio.gov); Chambers, Sarah
Subject: Highmark - Court Orders regarding confidential treatment of portions of Affiliation Agreement etc.

Steve,

Attached are the Court orders related to confidential treatment of certain provisions in the Affiliation Agreement between Highmark and West Penn Allegheny Health System ("WPAHS") and the related exhibits and schedules. Also attached is an excerpt from the docket related to the Federal Court case involving WPAHS. The second page of the docket excerpt reflects the Court's response on January 5 to a request by WPAHS for partial reconsideration of the 12/29 Order. Additionally, WPAHS has asked for partial reconsideration of the 1/13/12 order as well and that request is currently pending.

The latest redacted version of the Affiliation Agreement, exhibits and schedules which we filed yesterday with the Form A (and was filed with the Pennsylvania Insurance Department) continues to redact the materials that WPAHS has asked the Court to hold confidential through its request for reconsideration.

Please let me know if you have questions or need further information, thanks.

Alan F. Berliner |Thompson Hine LLP
41 South High Street, Suite 1700 | Columbus, OH 43215-6101
Office: 614.469.3268 | Cell: 614.354-3416
Fax: 614.469.3361 | Email: Alan.Berliner@ThompsonHine.com
Web: <http://www.thompsonhine.com>



1/24/2012

UPE-0005971

Chronister, Ronald

From: Berliner, Alan [Alan.Berliner@thompsonhine.com]
Sent: Monday, January 23, 2012 5:26 PM
To: Berliner, Alan
Subject: FW: Highmark Form A

From: Berliner, Alan
Sent: Wednesday, January 18, 2012 9:03 AM
To: Steve Vamos
Cc: Timothy J. Biler (Tim.Biler@insurance.ohio.gov); James May (james.may@insurance.ohio.gov); Chambers, Sarah
Subject: Highmark Form A

Steve,

Thanks for your call. This confirms that we did not intend to claim the Form A itself is confidential, I did not realize that the pages were labeled that way on the original we filed. I apologize for the confusion, I just didn't catch it.

In addition, once I receive it, I will be providing you a copy of the court order from Pennsylvania regarding some parts of the Affiliation Agreement itself, exhibits and schedules being confidential.

Alan F. Berliner |Thompson Hine LLP
41 South High Street, Suite 1700 | Columbus, OH 43215-6101
Office: 614.469.3268 | Cell: 614.354-3416
Fax: 614.469.3361 | Email: Alan.Berliner@ThompsonHine.com
Web: <http://www.thompsonhine.com>



Chronister, Ronald

From: Berliner, Alan [Alan.Berliner@thompsonhine.com]
Sent: Monday, January 23, 2012 5:26 PM
To: Berliner, Alan
Subject: FW: Acquisition by UPE involving Gateway Health Plan Of Ohio, Inc.

From: Berliner, Alan
Sent: Tuesday, January 17, 2012 4:06 PM
To: Timothy J. Biler (Tim.Biler@insurance.ohio.gov)
Cc: James May (james.may@insurance.ohio.gov); Barbara Brown (Barbara.Brown@insurance.ohio.gov); Chambers, Sarah
Subject: Acquisition by UPE involving Gateway Health Plan Of Ohio, Inc.

Tim,

Thanks for speaking with me about the above today. As I said in our call, we will be filing either late today or tomorrow morning a Form A regarding an Affiliation between two Pennsylvania companies, Highmark Inc. and West Penn Allegheny Health System Inc. Highmark is the ultimate parent company of Gateway Health Plan of Ohio, Inc., an Ohio domestic that has not been operating the last couple years.

Highmark has many subsidiaries and for the most part they did **not** file consolidated financial statements. We started copying all the financial statements, but came to realize that copying all the statements would lead to boxes and boxes of copies, so in lieu thereof we will file two CDs, each of which contain all the financial statements. We will be happy to provide the Department hard copies of any of the financial statements upon request, but to provide copies of all of them at this time would be a waste of time, money, manpower and trees.

Please be assured this is not an attempt to limit the Department's review in any way.

We appreciate the Department's cooperation. If this is a problem, please let me know. Thanks.

Alan F. Berliner |Thompson Hine LLP
41 South High Street, Suite 1700 | Columbus, OH 43215-6101
Office: 614.469.3268 | Cell: 614.354-3416
Fax: 614.469.3361 | Email: Alan.Berliner@ThompsonHine.com
Web: <http://www.thompsonhine.com>



Chronister, Ronald

From: Berliner, Alan [Alan.Berliner@thompsonhine.com]
Sent: Monday, January 23, 2012 5:14 PM
To: Berliner, Alan
Subject: FW: Highmark - West Penn. Affiliation

From: Berliner, Alan
Sent: Tuesday, November 08, 2011 5:01 PM
To: James May (james.may@insurance.ohio.gov)
Subject: Highmark - West Penn. Affiliation

Hi Jim,

I just wanted to give you a heads up regarding the Highmark - West Penn. Affiliation that the Form A was filed with the Pennsylvania Insurance Department yesterday. We've already been working on the Form A filing for Ohio and I expect we will have that ready within the next 10 days to 2 weeks, if not sooner.

If you have questions or need any information in the meantime, please let me know, thanks.

Alan F. Berliner |Thompson Hine LLP
41 South High Street, Suite 1700 | Columbus, OH 43215-6101
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Chronister, Ronald

From: Berliner, Alan [Alan.Berliner@thompsonhine.com]
Sent: Monday, January 23, 2012 4:45 PM
To: Berliner, Alan
Subject: FW: Gateway Health Plan of Ohio

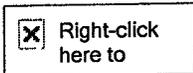
From: Berliner, Alan
Sent: Wednesday, August 03, 2011 2:00 PM
To: James May (james.may@insurance.ohio.gov)
Subject: Gateway Health Plan of Ohio

Jim, as I said on our call, I am sending this to you since you are the analyst assigned to Gateway Health Plan of Ohio. Below is a press release that announces an affiliation between Highmark Inc. and West Penn Allegheny Health Systems. As you will recall, Highmark is the ultimate parent company of Gateway Health Plan of Ohio, so there will be a change in control of Gateway.

The definitive agreement is still in the negotiation stage, but it is anticipated that the agreement will be signed by the end of this month and Form As will be filed in Pennsylvania and Ohio shortly thereafter.

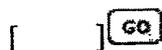
This is just for your information at this time, but if the Department has any questions, please let me know, otherwise we will be back in touch after the agreement is finalized. Thanks.

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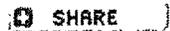
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Highmark

Highmark and West Penn Allegheny Health System announce plans to pursue affiliation

June 28, 2011 | Pittsburgh, Pa. —

Affiliation will assure Western Pennsylvania consumers availability of provider choice for high-quality care

Highmark Inc. and the West Penn Allegheny Health System (WPAHS) today announced their intentions to pursue an affiliation aimed at maintaining the health system as a high-quality choice for health care services to millions of Western Pennsylvanians.

As part of the initial arrangement, Highmark is immediately providing a \$50 million grant to the WPAHS, enabling the health system to sustain and strengthen its West Penn and Forbes Regional hospitals while assuring the continued delivery of quality medical services by the entire system. Highmark is making a total financial commitment of up to \$475 million over four years, including \$75 million to fund scholarships for students attending medical schools affiliated with WPAHS, and to support other health professional education programs.

The management and boards of directors of Highmark and WPAHS will continue discussions in the weeks ahead with the goal of finalizing a definitive agreement.

"Today is an important first step to ensuring the continued viability of the West Penn Allegheny Health System and a choice of health care services in our region," said Kenneth R. Melani, M.D., Highmark's president and chief executive officer.

"For generations, the residents of our community and physicians have had broad choices in the health care marketplace," Dr. Melani said. "For consumers, we want to preserve their choices. For physicians and other health care providers, we want to ensure multiple patient referral options. This affiliation will help preserve those very options. In addition, the \$75 million that we will be contributing for scholarships for medical school students and other educational programs will go a long way in addressing the shortage of physicians in the region, and help us retain highly trained doctors to serve our community."

"West Penn Allegheny has been recognized nationally for its leading doctors and nurses who provide high-quality, personalized care; however, there is no doubt that we have lacked the capital necessary to deliver on our full potential," said David L. McClenahan, West Penn Allegheny's chairman of the board. "We share a common goal with Highmark to focus on the patient experience, improve health care and ensure choice for both those seeking care and those seeking employment in the health care sector in our region. We look forward to finalizing our affiliation agreement in the weeks ahead."

McClenahan also announced a transition in the West Penn Allegheny leadership, stating, "Dr. Christopher Olivia will be leaving his role as President and CEO on June 28, 2011. He will be consulting with Highmark and assisting Dr. Melani in connection with the conclusion of this transaction and other strategic issues."

"Dr. Chris Olivia has been a valuable change agent for West Penn Allegheny. Since he arrived in 2008, Chris has been steadfast in his belief about a bright future for the System. He has led the organization through some difficult changes while laying groundwork for exciting developments such as the medical school partnership with Temple University School of Medicine," said McClenahan." The board and the entire West Penn Allegheny Health System are grateful for Chris' vision and leadership that has brought us to this remarkable announcement." He also announced that Dianne Dismukes has been named President and CEO of WPAHS.

The proposed affiliation of Highmark and the West Penn Allegheny Health System is the first step in a broader Highmark effort to develop alternative health care options that offer high-quality care at a lower price and more coordinated and patient-driven delivery of medical care.

"It is critical to the economic and financial health of the community that Western Pennsylvanians have a choice of health care providers and that we preserve strong and valuable community institutions like the West Penn Allegheny Health System," Dr. Melani said.

Kenneth R. Melani, M.D., Highmark's president and chief executive officer, talks about the importance of maintaining choice for consumers.

[Read the transcript.](#) 

About Highmark Inc.

Highmark Inc., based in Pittsburgh, is an independent licensee of the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield plans. Highmark serves 4.8 million members in Pennsylvania and West Virginia through the company's health care benefits business and is one of the largest Blue plans in the nation. Highmark has 19,500 employees across the country. For more than 70 years, Highmark's commitment to the community has consistently been among the company's highest priorities as it strives to positively impact the communities where we do business. For more information, visit www.highmark.com.

About West Penn Allegheny Health System

West Penn Allegheny Health System (WPAHS) is a physician-led healthcare organization based in Pittsburgh, Pa. Recognized as a health care quality and personalized service leader in its market, the organization's sole purpose is to improve the health of people in the Western Pennsylvania region. West Penn Allegheny Health System's specialty programs continually receive national and international recognition — particularly in the areas of Bone and Joint, Cardiovascular, Neurosciences and Oncology, which make up the organization's four Institutes of Excellence. The System offers 46 graduate medical programs, two nursing schools, and will host the first undergraduate medical school class of the Temple University School of Medicine at West Penn Allegheny Health System in 2013. WPAHS is also home to the Allegheny-Singer Research Institute, which sponsors interdisciplinary programs to understand, treat and prevent human diseases. The System is comprised of five hospitals, including Allegheny General Hospital on the North Side, West Penn Hospital in Bloomfield, Allegheny Valley Hospital in Natrona Heights, Canonsburg General Hospital in Canonsburg, and Forbes Regional Hospital in Monroeville.

Highmark Inc. is an independent licensee of the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield Plans. For more information, visit www.highmark.com.

For more information, contact:
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Highmark

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[Recently lost your group health care coverage? Highmark can help.](#)

MEDIATION

**U.S. District Court
Western District of Pennsylvania (Pittsburgh)
CIVIL DOCKET FOR CASE #: 2:09-cv-00480-AJS**

WEST PENN ALLEGHENY HEALTH SYSTEM, INC. v. UPMC et al
Assigned to: Arthur J. Schwab
related Case: 2:10-cv-01609-AJS
Case in other court: USCA, 09-04468
Cause: 15:1 Antitrust Litigation

Date Filed: 04/21/2009
Jury Demand: Plaintiff
Nature of Suit: 410 Anti-Trust
Jurisdiction: Federal Question

Plaintiff

**WEST PENN ALLEGHENY
HEALTH SYSTEM, INC.**

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Barbara W. Mather

		before January 5, 2012, at 3:00 P.M. Signed by Judge Arthur J. Schwab on 12/29/2011. (lcb) (Entered: 12/29/2011)
01/04/2012	<u>176</u>	MOTION for Reconsideration re <u>175</u> Order on Motion to Unseal the Record by WEST PENN ALLEGHENY HEALTH SYSTEM, INC.. (Attachment: # <u>1</u> Proposed Order) (Sicalides, Barbara) Modified on 1/5/2012. (jsp) (Entered: 01/04/2012)
01/05/2012		ORDER OF COURT: In light of <u>176</u> Plaintiff West Penn Allegheny Health System, Inc.'s Motion for Partial Reconsideration re <u>175</u> Order of Court Granting in Part and Denying in Part <u>140</u> PG Publishing Co.'s Motion to Unseal the Record, West Penn Allegheny shall fully comply with <u>175</u> this Court's December 29, 2011 Order, except as to Schedules 4.15 and 4.15(d). Intervenor PG Publishing Co. and Defendant UPMC shall file their responses to <u>176</u> said Motion on or before January 9, 2012 at NOON. Lead trial counsel and/or general counsel for West Penn Allegheny shall personally show in Pittsburgh the entirety of Schedules 4.15 and 4.15(d) to lead trial counsel and/or general counsel for Intervenor PG Publishing Co. and lead trial counsel and/or general counsel for Defendant UPMC, on or before January 6, 2012 at NOON, to ascertain whether West Penn Allegheny, PG Publishing Co. and UPMC can reach a stipulated agreement as to the sealing/unsealing of all or portions of Schedules 4.15 and 4.15(d). Signed by Judge Arthur J. Schwab on 1/5/2012. Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. (lcb) (Entered: 01/05/2012)
01/05/2012	<u>177</u>	Affiliation Agreement filed in its entirety pursuant to Orders of 12/29/11 and 1/5/12 by WEST PENN ALLEGHENY HEALTH SYSTEM, INC. (Bomstein, Alexander) Modified on 1/6/2012. (jsp) (Entered: 01/05/2012)
01/05/2012	<u>178</u>	Schedules and Exhibits to Affiliation Agreement Filed with Selective Redactions and Without Schedules 4.15 and 4.15(d) Pursuant to Orders of 12/29/11 and 1/5/12 by WEST PENN ALLEGHENY HEALTH SYSTEM, INC.. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Exhibit, # <u>11</u> Exhibit, # <u>12</u> Exhibit) (Bomstein, Alexander) Modified on 1/6/2012. (jsp) (Entered: 01/05/2012)
01/09/2012	<u>179</u>	REPLY BRIEF in Opposition to <u>176</u> Motion for Reconsideration by PG PUBLISHING CO. filed by PG PUBLISHING CO. (Frank, Frederick) Modified on 1/10/2012. (jsp) (Entered: 01/09/2012)
01/09/2012	<u>180</u>	MOTION to Withdraw <u>176</u> MOTION for Reconsideration re <u>175</u> Order on Motion to Unseal the Record by WEST PENN ALLEGHENY HEALTH SYSTEM, INC. (Sicalides, Barbara) Modified on 1/10/2012. (jsp) (Entered: 01/09/2012)
01/09/2012	<u>181</u>	BRIEF in Opposition re <u>176</u> Motion for Reconsideration filed by UPMC. (Titus, Paul) (Entered: 01/09/2012)
01/09/2012	<u>182</u>	JOINT STATUS REPORT by WEST PENN ALLEGHENY HEALTH SYSTEM, INC. (Sicalides, Barbara) Modified on 1/10/2012. (jsp) (Entered: 01/09/2012)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WEST PENN ALLEGHENY HEALTH
SYSTEM, INC.,

Plaintiff,

09cv0480

ELECTRONICALLY FILED

v.

UPMC,

Defendant.

**MEMORANDUM OPINION AND ORDER OF COURT
REGARDING PLAINTIFF'S MOTION FOR PARTIAL RECONSIDERATION OF
THIS COURT'S ORDER (DOC. NO. 175) UNSEALING PORTIONS OF DOC. NO. 133**

Before the Court is Plaintiff's Motion for Partial Reconsideration of the Court's December 29, 2011 Order (doc. no. 175) which required Plaintiff to file on the docket (and thus make available to the public) a completely unredacted version of its Affiliation Agreement with Highmark (previously filed under seal at doc. no. 132) and a largely unredacted version of the Schedules and Exhibits attached to the Affiliation Agreement (previously filed separately under seal at doc. no. 133). See doc. no. 176.

Plaintiff's Motion for Partial Reconsideration is very narrow in scope. It does not take serious issue with the Court's Order requiring the filing of the Affiliation Agreement in an unredacted format, nor did it take serious issue with the Court's Order requiring that most of the Schedules and Exhibits to the Affiliation Agreement be filed in unredacted format. *Id.* In fact, Plaintiff complied with the December 29, 2011 Court Order (doc. no. 175) (hereinafter "Court Order 175") and filed an unredacted copy of the Affiliation Agreement and all of the Schedules and Exhibits in the format required by Court Order 175, with two exceptions – Schedules 4.15 and 4.15(d). See doc. nos. 177 and 178. Plaintiff did not file Schedules 4.15 and 4.15(d). These

omissions were made with the Court's permission and in accordance with this Court's January 5, 2012 Text Order. See January 5, 2012 Text Order requiring Plaintiff to "fully comply with [Court Order 175], except as to Schedules 4.15 and 4.15(d)."

With respect to Schedules 4.15 and 4.15(d), Plaintiff filed the instant Motion for Partial Reconsideration requesting that this Court revisit those Schedules in light of its overall opinion and ruling on the issue of sealing versus "publishing" the documents at issue. See doc. no. 176. Plaintiff slightly modified its Motion for Partial Reconsideration (see doc. no. 180 – Plaintiff's Motion to Withdraw a portion of its Partial Reconsideration Motion).¹

Intervenor, PG Publishing Co., ("Intervenor PG") filed a Brief in Opposition to Plaintiff's Motion for Reconsideration (see doc. no. 179). Defendant also filed a Brief in Opposition to Plaintiff's Motion for Reconsideration (doc. no. 181).

Counsel for the parties and Intervenor PG met and conferred on January 6, 2012, in compliance with this Court's January 5, 2012 Text Order, to attempt to resolve the disclosure matters with respect to Schedules 4.15 and 4.15(d). Plaintiff fully disclosed these two Schedules to counsel for Defendant and Intervenor PG as furthered required by this Court's January 5, 2012 Text Order. Unfortunately, counsel for the parties and Intervenor PG could not agree on either of the Schedules' alleged confidentiality. See the Joint Status Report filed at doc. no. 182. Thus, this matter is now ripe for decision.

¹ Plaintiff's Motion to Withdraw a portion of its Partial Reconsideration Motion relates to a document Plaintiff filed with the Internal Revenue Service. This document, which was published on Plaintiff's own website, identified several entities (at least one of which, "Premier Medical Associates, P.C.," appears to be a physician group), on Schedule 4.15, as well as the value of Plaintiff's agreement with each of those entities.

I. Factual History

The Court has previously written a set of facts pertinent to its prior determination on disclosure (Court Order 175, pp. 3-7) and those facts will not be repeated here. Although this Court writes primarily for the parties and Intervenor PG, the recent facts relevant to this decision shall be recited.

Shortly before this Court issued Court Order 175 requiring the complete disclosure of the Affiliation Agreement as well as the disclosure of the vast majority of the Schedules and Exhibits with a few, limited redactions, Intervenor Highmark filed a Notice indicating that it was about to submit the Affiliation Agreement, along with the Schedules and Exhibits, to the Pennsylvania Department of Insurance. See doc. no. 173. Highmark further indicated that prior to submitting the documents it would redact those portions it considered “highly confidential” but would make the submitted documents (in their redacted form) available on their own website. *Id.* The Court, in footnote 12 of Court Order 175, acknowledged Highmark’s submission to Pennsylvania’s Insurance Department and its posting of the redacted Affiliation Agreement and its Schedules and Exhibits, and noted that much of the material Highmark and Plaintiff had previously regarded (and alleged) as “highly confidential” was no longer confidential. This Court also noted that Highmark failed to set forth the reason(s) much of the previously “highly confidential” information had suddenly become non-confidential. See doc. no. 175, fn 12.

Court Order 175 required Plaintiff to produce the Affiliation Agreement in an unredacted format by January 5, 2012. Court Order 175 also required Plaintiff to produce the Schedules and Exhibits in an unredacted format by January 5, 2012, with the following limited exceptions:

- The license numbers and dates in Schedule 4.8 were to be redacted,
- Items 4, 5, and 6 of Schedule 4.11 were to be redacted,
- Schedule 4.13 was to be redacted in its entirety,
- The dollar amounts only in Schedule 4.15 were to be redacted,
- Schedule 4.20(e) was to be redacted in its entirety,
- Schedule 4.20(g) was to be redacted in its entirety,
- The “not-yet-filed” potential cases in Schedule 4.22(a) were to be redacted,
- Schedule 6.3 was to be redacted in its entirety, and
- Exhibit H was to be redacted in its entirety.

On January 4, 2012, Plaintiff filed its Motion for Partial Reconsideration asking that this Court also permit Schedule 4.15 to be redacted in its entirety (instead of merely redacting the dollar amounts), and also requested permission to redact Schedule 4.15(d) in its entirety. Doc. no. 176. As noted above, this Motion for Partial Reconsideration was somewhat modified by Plaintiff in its Motion to Withdraw a portion of the Motion for Partial Reconsideration. Doc. no. 180.

II. Standard of Review

The purpose of a Motion for Reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence. *Howard Hess Dental Laboratories Inc. v. Dentsply Intern., Inc.*, 602 F.3d 237, 251 (3d Cir. 2010), citing *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985). Generally, a Motion for Reconsideration will only be granted on one of the following three grounds: (1) if there has been an intervening change in controlling law; (2) if new evidence, which was not previously available, has become available; or (3) if it is necessary to correct a clear error of law or to prevent manifest injustice. See *Howard Hess Dental*, 602

F.3d at 251, citing *Max's Seafood Café by Lou Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999).

A court may not grant a Motion for Reconsideration when the motion simply restyles or rehashes issues previously presented. *Pahler v. City of Wilkes Barre*, 207 F.Supp.2d 341, 355 (M.D. Pa. 2001); see also *Carroll v. Manning*, 414 Fed. Appx. 396, 398 (3d Cir. 2011) (affirming denial of “motion for reconsideration and ‘petition’ in support thereof appears to merely reiterate the allegations made in the . . . petition and does not set forth any basis justifying reconsideration.”); and *Grigorian v. Attorney General of U.S.*, 282 Fed. Appx. 180, 182 (3d Cir. 2008) (affirming denial of Motion to Reconsider because it “does nothing more than reiterate the arguments underlying his motion to reinstate the appeal.”).

A Motion for Reconsideration “addresses only factual and legal matters that the Court may have overlooked It is improper on a motion for reconsideration to ask the Court to rethink what [it] had already thought through rightly or wrongly.” *Glendon Energy Co. v. Borough of Glendon*, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993) (internal citation and quotes omitted). Because federal courts have a strong interest in the finality of judgments, motions for reconsideration should be granted sparingly. *Rossi v. Schlarbaum*, 600 F.Supp.2d 650, 670 (E.D. Pa. 2009).

III. Discussion

The Court is not in the business of allowing a party to produce evidence that it deems helpful for some purpose, and then permit that same party to refuse to produce (or shield from public disclosure) information that is not. Indeed, as discussed at length in Court Order 175, this Court took great pains to weigh the private versus public interests utilizing *Pansy*² and its

² *Pansy v. Borough of Stroudsburg*, 23 F.3d 772 (3d Cir. 1994).

progeny when ascertaining which of the Schedules and Exhibits (or portions thereof) should remain under seal. While the Court of Appeals has stressed the importance of the finality of judgments and concluded that reconsideration be granted sparingly, because of the continually evolving disposition of the parties and the shifting relationships between them and the former-Defendant-now-Intervenor, Highmark, this Court is constrained to revisit its prior ruling on this matter with respect to the two Schedules presently at issue.

A. Schedule 4.15

The Court notes that despite Court Order 175 which permitted Plaintiff to redact the dollar values from Schedule 4.15, Plaintiff's Motion for Partial Reconsideration disclosed those dollar amounts. See doc. no. 176 at p. 3 ("Schedule 4.15 identifies physicians who earn in excess of \$500,000 per year and material contracts involving the receipt or payment of \$900,000 or more annually."). In addition, as stated in Plaintiff's Motion for Partial Reconsideration, section 4.15 of the Affiliation Agreement which Intervenor Highmark, had already published on its website, indicated that Schedule 4.15 "identifies . . . the physicians . . . [who] earn in excess of \$500,000 and that the listed contracts [on Schedule 4.15] involve receipt or payment in excess of \$900,000." *Id.* Thus, because Intervenor Highmark chose to post the Affiliation Agreement with these dollar values prior to this Court issuing Court Order 175, this Court finds itself in a position where, if it deems the physicians' salaries to be protectable and the confidential in nature, it must now order redaction the names of the individual physicians instead of the dollar values on Schedule 4.15.³

Court Order 175 clearly stated that this Court, after applying the reasoning and guidance set forth in *Pansy* and its progeny, found that redacting limited portions of the Schedules

³ This Court also acknowledges that Court Order 175 requiring the production of the Affiliation Agreement in an unredacted format produced the same result.

(including Schedule 4.15) would “primarily protect[] information important to public health and safety, and secondarily protect[] information which this Court has deemed as confidential, personal, or business information.” Given the Court’s secondary reason for redacting the dollar values of the physician’s salaries in Schedule 4.15, and given the publication of these dollar values – first by Intervenor Highmark on its own website, and now, by Court Order 175 requiring the filing of the Affiliation Agreement – the Court finds that to prevent manifest injustice to those physicians listed in Schedule 4.15, it must order the redaction of the names of the individual doctors. The names of the practice groups listed on Schedule 4.15 are not to be redacted unless the name(s) of the individual doctor(s) is/are contained in the name of the practice group. Also, see fn. 1, *supra.*, wherein this Court notes that Plaintiff has already begun to disclose the names of certain practice groups and other entities listed on Schedule 4.15.

For the foregoing reasons, the Court will partially grant Plaintiff’s Motion for Partial Reconsideration solely with respect to Schedule 4.15 in the manner set forth above.

B. Schedule 4.15(d)

This Court next considers Plaintiff’s request that Schedule 4.15(d) be redacted in its entirety. Plaintiff contends that the material contracts listed on Schedule 4.15(d) need to be redacted because those contracts, like the ones West Penn lists on Schedule 4.15 are similarly entitled to be sealed and not made public. This Court disagrees.

As stated above in subpart “A.” and in Court Order 175, it is this Court’s opinion that the physicians’ individual salaries is private interest held by each physician -- not West Penn -- and, when balanced against the public interest in the context of this lawsuit, should remain private. Schedule 4.15(d) does not present any individual physician’s salary.

Schedule 4.15(d) contains a list of material contracts, and, (as pointed out by West Penn in its brief in support of its Motion for Partial Reconsideration), the Affiliation Agreement generically describes these contracts as containing “any (i) non-competition restriction, (ii) take-or-pay arrangement or (iii) other term that . . . requires the Business to deal exclusively with a particular party with respect to goods or services.” Doc. no. 176, p. 6. As this Court noted in Court Order 175, none of these material contracts are actually attached to Schedule 4.15(d), nor does Schedule 4.15(d) provide any further description of the terms or details regarding these restrictions (*i.e.* time, place, manner, etc.). For these reasons, the Court will deny Plaintiff’s Motion for Partial Reconsideration with respect to Schedule 4.15(d).

IV. Conclusion

Based on the foregoing law and authority, this Court grants, in part, Plaintiff’s Motion for Partial Reconsideration (doc. no. 176) of this Court’s December 29, 2011 Order (doc. no. 175). Specifically, this Court will modify its prior December 29, 2011 Order (doc. no. 175), to permit Plaintiff to only redact the individual physicians’ names (and any practice group name that is comprised of individual physician(s) name(s)) from Schedule 4.15. All other requested modifications set forth in Plaintiff’s Motion for Partial Reconsideration (doc.no. 176) will be denied.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

ORDER OF COURT

AND NOW, this 13th day of January, 2012, **IT IS HEREBY ORDERED** that West Penn's Motion for Partial Reconsideration (doc. no. 176) of this Court's December 29, 2011 Order (Doc. No. 175) ("Court Order 175") is **GRANTED IN PART** in that Court Order 175 is hereby **MODIFIED** as follows:

- The physicians' names (and any practice group name bearing individual physician(s)' name(s)) set forth on Schedule 4.15 shall be redacted instead of the dollar values as per Court Order 175.

All remaining portions of Court Order 175 remain in full force and effect. Plaintiff's Motion for Partial Reconsideration (doc. no. 176) is denied with respect to its request that Schedules 4.15 and 4.15(d) be redacted in their entirety.

Plaintiff shall comply with this Order by noon on January 17, 2012.

SO ORDERED this 13th day of January 2012.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All ECF Counsel of Record

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WEST PENN ALLEGHENY HEALTH
SYSTEM, INC.,

Plaintiff,

09cv0480

ELECTRONICALLY FILED

v.

UPMC,

Defendant.

MEMORANDUM OPINION AND ORDER OF COURT
RE: SEALING/UNSEALING OF DOC. NOS. 132 AND 133

Before the Court are two Motions. One Motion, filed by the Plaintiff, West Penn Allegheny Health System (“West Penn Allegheny” or “WPAHS”), requests that this Court permanently seal a document, commonly referred to as the “Affiliation Agreement” (as well as its related Schedules and Exhibits), to which Plaintiff and a former Defendant in this lawsuit, Highmark, Inc. (“Highmark”) are parties. See doc. no. 127. The second Motion, filed by an intervenor, PG Publishing Co., seeks to unseal the same Affiliation Agreement (and related Schedules and Exhibits) which this Court temporarily sealed pending further briefing by the parties. See doc. no. 140. This Opinion and subsequent Order of Court address both Motions.

First, despite the numerous representations by West Penn Allegheny and Highmark that their ninety-two page Affiliation Agreement (filed under seal with this Court’s permission at doc. no. 132) and the related four hundred and twenty-four pages of Schedules and Exhibits (filed under seal at doc. no. 133) are “Privileged and Confidential” and “Highly Confidential – Outside

Counsel/Experts Only”¹ and are so marked on each page,² this Court’s detailed examination of each of the five hundred and sixteen pages revealed that nearly all of said information already exists in the public domain through: (1) Highmark’s own website,³ (2) frequent West Penn Allegheny/Highmark news conferences and news releases, (3) easy internet searches, (4) publicly available governmental filings of West Penn Allegheny and Highmark, (5) governmental websites, and (6) West Penn Allegheny’s and Highmark’s own advertisements. Simply stated, to date, West Penn Allegheny and Highmark have released specific financial and other purportedly confidential business information through their own websites, advertisements, and news releases, which is contained in the sealed documents at doc. nos. 132 and 133 and alleged to be “Highly Confidential.”

Secondly, based on the law applicable to the facts presented in the excellent briefs submitted by the parties to this action and the intervenors, Highmark and PG Publishing Co., this Court has determined that the entire ninety-two page Affiliation Agreement and most of the attached four hundred and twenty-four pages of Schedules and Exhibits should not be sealed (except for certain specific information described below and set forth in the accompanying Order); but instead, said materials should be published on the docket and thereby made part of the public record.

¹ See doc. no. 127-1, filed by West Penn Allegheny, at 2: “[H]ighly sensitive, confidential information about West Penn Allegheny’s existing business organizations as well as the Affiliation Agreements planned integrated healthcare system.” See doc. no. 156, filed by Highmark, at 3: “. . . Highmark’s highly sensitive and confidential business information . . .” See the numerous related Affidavits which parrot the same language. Compare to recently filed doc. No. 173.

² See doc. nos. 132 and 133.

³ <https://www.highmark.com/hmk2/about/newsroom/2011/hmwp/forma.pdf>; see also www.postgazette.com, 11/08/11 at 4:32 PM, Breaking News, by Steve Twedt.

I. Factual and Procedural History

Although this Court writes primarily for the parties and intervenors, the facts relevant to this decision shall be recited.

On April 21, 2009, Plaintiff, West Penn Allegheny sued Defendants, University of Pittsburgh Medical Center (“UPMC”) and Highmark, primarily alleging that since 2002, UPMC (“Pittsburgh’s dominant hospital system”), and Highmark (Pittsburgh’s “dominant health insurer”), conspired to reduce competition and raise prices at the expense of the community’s employers, consumers, and patients. Doc. no. 1, ¶ 2.

In furtherance of this alleged conspiracy, West Penn Allegheny claimed that Highmark “agreed to . . . pay inflated reimbursement rates to UPMC while depressing rates for UPMC’s competitors, especially . . . West Penn Allegheny.” *Id.* West Penn Allegheny also claimed that Highmark passed on the costs of the alleged inflated UPMC rates “to employers, consumers, and patients by charging higher premiums.” *Id.* One of the goals of this alleged conspiracy was to “destroy West Penn Allegheny, the sole surviving competitor to UPMC in sophisticated tertiary and quaternary care.”⁴ *Id.* at ¶ 3.

West Penn Allegheny’s Complaint asserted several causes of action. Counts I and II asserted that UPMC and Highmark violated Sections 1 and 2 of the Sherman Act. More specifically, in these first two counts, West Penn Allegheny alleges that UPMC and Highmark formed an illegal agreement with one another “to restrain trade by protecting and reinforcing one another’s market power” and created two monopolies in Allegheny County – one for UPMC (an acute inpatient and/or high-end tertiary and quaternary acute inpatient services monopoly) and

⁴ Tertiary care is defined as “highly specialized medical care usually over an extended period of time that involves advanced and complex procedures and treatments performed by medical specialists in state-of-the-art facilities.” Merriam Webster. Quaternary care is a more specialized extension of tertiary care.

one for Highmark (a health care financing and administration for private employers and individuals monopoly). *Id.* at ¶¶ 151, 156.

Count III alleged a Sherman Act violation against UPMC solely for its alleged “attempted monopolization” for acute inpatient and/or high-end tertiary and quaternary acute inpatient services. Counts IV and V averred state-based tort claims alleging that UPMC engaged in “employee raiding”/unfair competition and tortuously interfered with West Penn Allegheny’s existing and prospective contractual relations with physicians and with Highmark. *Id.* at ¶¶ 168-171, 173-184.

Motions to Dismiss the Complaint were filed by both Defendants, and this Court granted those Motions on October 29, 2009. Doc. No. 98. West Penn Allegheny timely appealed this Court’s decision. On November 29, 2010, the United States Court of Appeals for the Third Circuit reversed in part and vacated in part this Court’s decision, remanding the matter. Doc. Nos. 102, 103. In January of 2011, UPMC requested a stay from this Court in order to appeal the decision of the Court of Appeals with the United States Supreme Court. Doc. No. 107. On January 31, 2011, this Court granted UPMC’s stay request, but lifted the stay on October 18, 2011, when the Supreme Court denied UPMC’s Petitions for Writ of Certiorari. Doc. No. 119, Text Order of October 18, 2011.

On October 31, 2011, West Penn Allegheny filed a Notice of Voluntary Dismissal as to Highmark, and on November 1, 2011, this Court approved the Dismissal of Highmark as a defendant to this lawsuit. See doc. nos. 123 and 125. (Importantly, while Highmark has been dismissed from this case, the antitrust class action, captioned *Royal Mile Company, Inc. et al. v. UPMC et al.*, No. 2:10 cv 1609 against UPMC and Highmark, based in part upon allegations similar to Counts I and II in this case, continues.)

In early November of 2011, the boards of directors at Highmark and West Penn Allegheny formally entered into what has become commonly known as an “Affiliation Agreement.” One of the main terms of this Agreement was for Highmark to provide millions of dollars in funding to West Penn Allegheny.⁵ Highmark’s first installment of its cash infusion to West Penn Allegheny occurred in June of 2011, close in time to the when contract negotiations between Highmark and UPMC broke down.⁶

In light of the Supreme Court’s refusal to issue a Writ of Certiorari to UPMC, as well as West Penn Allegheny’s voluntary dismissal of Highmark and the new alliance between the two, on November 8, 2011, this Court ordered the remaining parties to this action to file a joint status report. See November 8, 2011 Text Order. As part of that report, the Court ordered that West Penn Allegheny address the legal implications of its “recent agreement” (*i.e.*, the Affiliation Agreement) with Highmark and ordered that the Agreement itself be submitted as part of the report. *Id.*

In response to this Order, West Penn Allegheny filed a motion under seal at doc. no. 127, requesting that the Court allow the Affiliation Agreement along with the voluminous Schedules and Exhibits attached to the Affiliation Agreement, to be filed under seal because they

⁵ On November 9, 2011, the Pittsburgh Post Gazette at post-gazette.com, published an online article which included a link to a document filed with the Insurance Department of the Commonwealth of Pennsylvania. See “Highmark lays out plan to resurrect West Penn” which included a link to <https://www.highmark.com/hmk2/about/newsroom/2011/hmwp/forma.pdf>. Page seven of the document located at this address, read, “Under the terms of the Affiliation Agreement Highmark has agreed to provide funding to [West Penn Allegheny] in an aggregate amount not to exceed \$400 million”

⁶ The UPMC’s contract with Highmark has a term of ten years which will be fulfilled in June of 2012. See <https://www.highmark.com/hmk2/about/newsroom/2011/hmwp/forma.pdf> at p. 66. Likewise, negotiations for a new UPMC-Highmark contract were terminated (at least for a period of time) by UPMC because of Highmark’s recent affiliation with West Penn Allegheny. See *Id.* But see Pittsburgh Post-Gazette article “Highmark, UPMC reach temporary contract agreement” dated Thursday, December 22, 2011, <http://www.post-gazette.com/pg/11356/1198673-100-0.stm#ixzz1hN575uPG> <http://www.post-gazette.com/pg/11356/1198673-100-0.stm>. Based on this article, Highmark is now in a position where it will be negotiating contracts/reimbursement rates for services performed by UPMC while simultaneously working on its new affiliation and setting rates for services provided by West Penn Allegheny.

purportedly “contain[ed] highly sensitive, confidential and proprietary information that[,] if disclosed[,] would jeopardize West Penn Allegheny’s business interests.” See doc. no. 128, pp.1-2.

On November 17, 2011, this Court provisionally granted West Penn Allegheny’s request to file the Affiliation Agreement under seal, but requested that the parties file cross-briefs on whether the seal should be permanent or should be lifted. See doc. no. 131.

In compliance with this Order, on November 18, 2011, West Penn Allegheny filed the Affiliation Agreement (under seal at doc. no. 132) and the Affiliation Agreement’s Schedules and Exhibits (under seal at doc. no. 133). On November 18, 2011, former Defendant, Highmark, filed a Motion to Intervene “for the limited purpose of protecting its proprietary business interest in the confidential treatment of the Affiliation Agreement.” Doc. no. 136.

After granting Highmark’s Motion to Intervene (doc. no. 139), PG Publishing Co. filed a Motion to Intervene and Unseal the Record – meaning the Affiliation Agreement and its attached Schedules and Exhibits. See doc no. 140. On November 28, 2011, this Court granted the portion of PG Publishing’s Motion allowing it to intervene, but deferred ruling on the portion of its Motion seeking to unseal the Affiliation Agreement, along with its Schedules and Exhibits, until all briefing on this matter was complete. See Text Order dated November 28, 2011.

To date, West Penn Allegheny has filed its brief arguing the Affiliation Agreement and the attached Schedules and Exhibits (doc. nos. 132 and 133) should be permanently sealed. See West Penn Allegheny’s brief at doc. no. 157. Highmark, as intervenor and a party to the Affiliation Agreement, similarly filed a Brief arguing in favor of a permanent seal on the Affiliation Agreement and the attached Schedules and Exhibits. See Highmark’s brief at doc. no. 156. Defendant UPMC filed its brief (under seal) urging this Court to lift the seal and

publicly disclose the contents of the Affiliation Agreement and the attached Schedules and Exhibits. See UPMC's brief (filed under seal) at doc. no. 163. And, as noted above, intervenor PG Publishing Co. also filed briefs arguing in favor of lifting the seal on the documents. See doc. nos. 140 and 174.

II. Standard of Review

A party seeking the closure of a hearing or the sealing of part of the judicial record "bears the burden of showing that the material is the kind of information that courts will protect" and that "disclosure will work a clearly defined and serious injury to the party seeking closure." *In re Cendant Corp.*, 260 F.3d 183, 194 (3d Cir. 2001), citing *Miller v. Indiana Hosp.*, 16 F.3d 549, 551 (3d Cir. 1994) and *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1071 (3d Cir. 1984). The burden is on the party who seeks to overcome the presumption of access to show that the interest in secrecy outweighs the presumption. *Leucadia, Inc. v. Applied Extrusion Tech., Inc.*, 998 F.2d 157, 165 (3d Cir. 1993). In order to meet this burden, the party seeking closure must provide specificity when delineating the injury to be prevented. See *Publicker*, 733 F.2d at 1071. Broad allegations of harm, bereft of specific examples or articulated reasoning, are insufficient. *In re Cendant Corp.*, 260 F.3d at 194.

III. Discussion

A. Balancing Test

It is well-settled among courts within this Circuit that there exists a common law public right of access to judicial proceedings and records. See *Littlejohn v. BIC Corporation*, 851 F.2d 673, 677-78 (3d Cir. 1988). The right of access doctrine extends beyond a person's ability to

attend court proceedings – it also encompasses a person’s right “to inspect and copy public records and documents, including judicial records.” *Leucadia, Inc. v. Applied Extrusion Tech., Inc.*, 998 F.2d 157, 161 (3d Cir.1993).

Thus, judicial records are subject to the common law presumption of public access. *In re Cendant Corp.*, 260 F.3d at 192. A document is deemed to be a “judicial record” if the document is “filed with the court, or otherwise somehow incorporated or integrated into a district court’s adjudicatory proceedings.” *Id.*, citing *Pansy v. Borough of Stroudsburg*, 23 F.3d 772 (3d Cir. 1994).

Although the common law right to public access is a recognized and venerated principle, courts have also recognized the accompanying principle that “the right is not absolute.” *Id.*, citing *Littlejohn*, 851 F.2d at 678; *Leucadia*, 998 F.2d at 165; and *Publicker*, 733 F.2d at 1070. The presumption of public access may be rebutted. *Id.*, citing *Republic of Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653, 662 (3d Cir. 1991).

A party wishing to obtain an order of protection must demonstrate that “good cause” exists for the order of protection. *Pansy*, 23 F.3d at 786. “Good cause” can be established by showing that disclosure will work a clearly defined and serious injury to the party seeking closure. *Id.*, citing *Publicker*, 733 F.2d at 1071.

In *Pansy*, the United States Court of Appeals for the Third Circuit recognized several, non-mandatory and non-exhaustive, factors which a court could consider to assist it when evaluating whether “good cause” exists to protect the umbrella of confidentiality. Those factors included:

- 1) whether disclosure would violate any privacy interests;
- 2) whether the information was being sought for a legitimate purpose or for an improper purpose;

- 3) whether disclosure of the information would cause a party embarrassment;
- 4) whether confidentiality was being sought over information important to public health and safety;
- 5) whether the sharing of information among litigants would promote fairness and efficiency;
- 6) whether a party benefitting from the order of confidentiality was a public entity or official; and
- 7) whether the case involves issues important to the public.

Glenmede Trust Co. v. Thompson, 56 F.3d 476, 483, citing *Pansy*, 23 F.3d at 787–91.

Simply stated, the Court of Appeals has, on more than one occasion, directed the district courts to balance the private versus public interests when determining whether documents should be sealed:

Discretion should be left with the court to evaluate the competing considerations in light of the facts of individual cases. By focusing on the particular circumstances in the cases before them, courts are in the best position to prevent both the overly broad use of [confidentiality] orders and the unnecessary denial of confidentiality for information that deserves it. . . .

Glenmede, 56 F.3d at 483 (citations omitted).

Here, West Penn Allegheny bears the burden of proving that the documents at issue should be protected, and argues that the public should be denied access to them. In order to meet its burden of proof, West Penn Allegheny needed to assert specific examples of harm that would ensue upon public disclosure of the Affiliation Agreement and its Schedules and Exhibits.

1. The Affiliation Agreement (filed under seal at doc. no. 132)

West Penn Allegheny argued that the “. . . Affiliation Agreement contains highly sensitive, confidential information about West Penn Allegheny’s existing business organizations and strategic future planning for the integrated health system contemplated by the [Affiliation] [A]greement.” Doc. no. 157 at 7. This bald assertion is not sufficient to meet its burden to convince this Court that protecting the Affiliation Agreement trumps the right of the public to access. In fact, no specific harm is alleged with respect to the Agreement itself. West Penn Allegheny’s failure to provide specific examples of harm which would ensue upon the disclosure of the Affiliation Agreement causes this Court to deem it a document that should be available to the public.

Next, West Penn Allegheny argues that because this Court ordered the production of the Affiliation Agreement (as well as the attached Schedules and Exhibits), these documents are not discovery documents. West Penn Allegheny then concludes that the Affiliation Agreement (as well as the attached Schedules and Exhibits) cannot be considered “judicial records,” because (per West Penn Allegheny) they do not have “a role in [this] adjudication process” and thus, may not “be accessed by the public.” See doc. no. 157 at p. 14. As noted above, West Penn Allegheny claims that because these documents are “neither relevant to [its] claims against UPMC nor [its] motion to amend [the Complaint], the openness typically afforded to judicial documents does not apply.” *Id.*

This Court recognizes that these documents were not requested by UPMC during discovery and acknowledges that West Penn Allegheny believes these documents have no relevance in this lawsuit (and thus, per West Penn Allegheny, Federal Rule of Civil Procedure 26 would not require their production). However, this Court disagrees with West Penn Allegheny’s

argument that Fed.R.Civ.P. 26 would not require the production of the Affiliation Agreement and its Schedules and Exhibits. The Court ordered the filing of the complete Affiliation Agreement (which encompassed the related Schedules and Exhibits) because of their relevancy to West Penn Allegheny's pending Motion for Leave to File a Second Amended Complaint (doc. no. 124). See this Court's Text Order dated November 8, 2011.

Additionally, the body of case law governing when a party's right to obtain a protective order trumps the public's right to access to a document is not obviated by the fact that this Court ordered production of those documents instead of UPMC requesting them. To the contrary, the fact that this Court ordered the production of these documents implies that this Court believed the documents at issue (*i.e.*, the Affiliation Agreement and its attached Schedules and Exhibits) are relevant to: (1) West Penn Allegheny's Sherman Act claim asserted against UPMC, and (2) West Penn Allegheny's Motion for Leave to File a Second Amended Complaint.

Simply put, notwithstanding the distinctions between this case and those referenced in this Opinion (namely *Littlejohn*, *Leucadia*, *Publicker*, *Pansy*, *Glenmede*, and *Cendant*), the rationale, the instructions to the district courts, and the findings set forth in *Littlejohn*, *Leucadia*, *Publicker*, *Pansy*, *Glenmede*, and *Cendant*, which established the relevant body of law, apply in the instant case.

Finally, as noted by this Court in great detail in Subpart "B." of this Opinion (below), essentially all of the information contained within the Affiliation Agreement is already available to the public via other sources. See discussion in Subpart "B." *infra*. Thus, this Court cannot justify the continued sealing of a document that is readily available to the public via other sources.

**2. The Schedules and Exhibits Attached to the Affiliation Agreement
(filed under seal at doc. no. 133)**

Turning to the Schedules and Exhibits which are attached to and referenced within the Affiliation Agreement, West Penn Allegheny contended that disclosure of sixteen of these Schedules and Exhibits would provide UPMC, its principal competitor, with information that would result in specific harm to West Penn Allegheny. Doc. no. 157 at pp. 7-10. West Penn Allegheny claimed specific harm would ensue – generally, and most notably, because the information contained in the following fourteen schedules and two exhibits allegedly could be used by competitors to gain a distinct and unfair business advantage – if the following information found within these the Schedules and Exhibits was made public:

- Schedule 4.2 (b)
- Schedule 4.2(c)
- Schedule 4.3
- Schedule 4.4
- Schedule 4.8
- Schedule 4.11
- Schedule 4.13
- Schedule 4.15
- Schedule 4.15(d)
- Schedule 4.20(e)
- Schedule 4.20(g)
- Schedule 4.21(c)
- Schedule 4.22(a)
- Schedule 6.3

- Exhibit H
- Exhibit I

After reviewing each of these Schedules and Exhibits, the Court finds that only a very limited amount of specific information contained within Schedule 4.8, Schedule 4.11, Schedule 4.13, Schedule 4.15, Schedule 4.20(e), Schedule 4.20(g), Schedule 4.22(a), Schedule 6.3, and Exhibit H, should be kept sealed because these are documents which are confidential (mostly, salary and personal information as well as certain patient and pharmacy information) and could be used by competitors to gain an unfair business advantage, or cause harm to employees, patients, and/or pharmacies. See the chart prepared by the Court in Subpart “B” below for additional detail relating to these and all other portions of the Schedules and Exhibits.⁷ The remainder of the Schedules and Exhibits are not confidential and, therefore, are not entitled to remain hidden from public access.

The decision to seal only very limited portions of the Schedules and Exhibits conforms with the non-mandatory factors set forth in *Pansy*. Specifically, the portions of the Schedules and Exhibits that this Court has agreed to seal (*i.e.*, portions of Schedule 4.8, portions of Schedule 4.11, Schedule 4.13, portions of Schedule 4.15, Schedule 4.20(e), Schedule 4.20(g), portions of Schedule 4.22(a), Schedule 6.3, and Exhibit H) primarily protects information important to public health and safety, and secondarily protects information which this Court has deemed as confidential, personal, or business information. However, as to those portions of the

⁷ This Court endeavored to review in great detail every one of the Schedules and Exhibits attached to the Affiliation Agreement (not just the sixteen argued by West Penn Allegheny nor the twenty discrete portions of the Affiliation Agreement and Schedules and Exhibits argued by Highmark in their respective briefs) and, as noted below in Subpart “B.” of this Opinion, outlined what each Schedule and Exhibit contains. Notably, many, if not most, of the Schedules and Exhibits contain basic information, such as the parties to a contract or agreement and/or dates relating to those contracts and agreements, but the Schedules and Exhibits do not contain the terms and conditions of the contracts or agreements, nor do they contain or attach the actual contracts or agreements.

Schedules and Exhibits that this Court has declined to permanently seal, this Court finds that no such public health or safety concerns exist. This Court also finds that the sharing of all other information contained in the Schedules and Exhibits would promote fairness and efficiency between the litigants. Furthermore, because this case involves issues important to the public, the unsealing of these documents is warranted and justifiable.

B. Documents and Information Already Available to the Public

A protective order prevents a party from disseminating only that information obtained through use of the discovery process. *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 34 (1984). Thus, a party may disseminate the identical information covered by the protective order as long as the information is gained through means independent of the court's processes. *Id.* Where a protective order is entered and it is limited to the context of pretrial civil discovery, and it does not restrict the dissemination of the information if gained from other sources, it does not offend the First Amendment. *Id.* at 37.

As stated above, despite representations by West Penn Allegheny and Highmark that their ninety-two page Affiliation Agreement (filed under seal at doc. no. 132) and the related four hundred twenty-four page Schedules and Exhibits (filed under seal at doc. no. 133) are "Privileged and Confidential" and "Highly Confidential – Outside Counsel/Experts Only" and are so marked on each of the 516 pages thereof, this Court's personally-conducted, detailed examination of each of the 516 pages revealed that practically all of said information is already in the public domain – through Highmark's own website,⁸ the numerous West Penn Allegheny/Highmark news conferences and news releases, easy internet searches, publicly

⁸ <https://www.highmark.com/hmk2/about/newsroom/2011/hmwp/forma.pdf>.

available governmental filings, governmental websites, and West Penn Allegheny's and Highmark's own advertisements. West Penn Allegheny and Highmark have released more specific financial and other alleged confidential business information in their own websites/advertisements/news releases, and presentations recorded on YouTubetm⁹, than is contained in the sealed documents at doc. nos. 132 and 133.

1. Doc. no. 132 – The Affiliation Agreement (92 pages)

The following is the Court's detailed analysis of the Affiliation Agreement filed under seal at document number 132 (dated as of October 31, 2001) ("execution copy") (labeled "Highly Confidential - Outside Counsel/Experts Only"):

After reviewing and comparing the alleged ninety-two page, "highly confidential," Affiliation Agreement filed under seal at document number 132, to the two hundred and thirty pages posted on Highmark's website referenced above, this Court found that nearly all of the information set forth in the Affiliation Agreement is contained within the two hundred and thirty pages of material set forth on Highmark's website. In fact, the public information contained within the two hundred and thirty pages (especially when coupled with the West Penn Allegheny/Highmark news conferences/press releases) on Highmark's website is more detailed and discloses more information (and thus provides a greater level of transparency) than the alleged highly confidential Affiliation Agreement filed and sealed at document number 132.

The two hundred and thirty pages found on Highmark's website are entitled, "Form A – Statement Regarding the Acquisition of Control of or Merger with Domestic Insurers," by UPE,

⁹ E.g., "Highmark, WPAHS Agreement, Parts 1 through 4, on YouTubetm", total time of approximately 58 minutes, and numerous other videos by Highmark and/or WPAHS executives.

a Pennsylvania non-profit corporation [hereinafter the “Original Form A”].¹⁰ This document was filed with the Insurance Department of the Commonwealth of Pennsylvania, dated November 7, 2011.

“Original Form A” provides:

- the general description and organizational chart of Highmark and its affiliates (see pages 4-5 with attached chart at Tab B),
- the general description and organizational chart of West Penn Allegheny (see pages 5-6 with attached chart at Tab D),
- an “Overview of Highmark’s Strategic Vision” (at page 6 and Tab E),
- a detailed description of the “Affiliation Transaction” “to establish a new integrated health system” (at pages 6-9),
- details of the “Highmark’s Funding Commitment (in much more specificity than in the so-called “Highly Confidential” doc. nos. 132 and 133) (at pages 7-9), and
- detailed financial statements and exhibits (at pages 12-13 and Tab O).

Many of the paragraphs in the Affiliation Agreement filed under seal at document number 132 contain the same or nearly the same substantive information as that found within Original Form A, a document easily accessible by the public on Highmark’s website. For example, the information in Article 2 of the Affiliation Agreement at pages 13-20, entitled “Transaction Structure and Funding Commitments,” describes “UPE”,¹¹ attaches UPE’s bylaws, and defines the payments to be made by Highmark to West Penn Allegheny. Similarly, Original

¹⁰ Form A – Statement Regarding the Acquisition of Control of or Merger with Domestic Insurers defines “UPE” as the “new nonprofit parent company” that was formed at the closing of the Affiliation Agreement between West Penn Allegheny and Highmark. UPE is further described as the “sole corporate member within a new class of membership that will be established in Highmark”. See Form A – Statement Regarding the Acquisition of Control of or Merger with Domestic Insurers at p. 6.

¹¹ “UPE” is an acronym for “Ultimate Parent Entity.”

Form A at pages 6-9 and related Tabs (entitled “The Affiliation Transaction”) contains two subparts (the “Basic Structure of the New Affiliation” and “Highmark’s Funding Commitment”) wherein the by-laws of UPE are discussed and attached, and the payments to be made by Highmark to West Penn Allegheny are discussed. Thus, the substance of the structure of the “transaction” which has resulted from the affiliation West Penn Allegheny and Highmark and the related financial commitments between the two entities are fully disclosed in Form A, the public document.

2. Doc. no. 133 – Schedules to the Affiliation Agreement (424 pages)

Furthermore, several of the attached documents contained under the “Tabs” and much of the information set forth in Original Form A are marked as “Highly Confidential” in doc. nos. 132 and 133, as follows:

1. UPE’s Articles of Incorporation are available to the public on Highmark’s website through Original Form A at pages 78-84 (Tab F). These Articles are identical to the UPE Articles of Incorporation filed under seal at document number 133 at pages 186-192 (Exhibit A), except that those filed under seal: (1) contain the actual signature of the incorporator (Carol A. Soltes) on the final page instead of just a blank line, (2) contain a date and time stamp from the “PA Dept of State,” (3) provide the return name and address to whom the document should be returned, and (4) eliminate “Section 17 Effective Date.”
2. UPE’s Bylaws are available to the public on Highmark’s website through Original Form A at pages 85-102 (Tab G). These bylaws are substantially similar to those filed under seal at document number 133 at pages 195-213 (Exhibit B), except Exhibit B contains additional boilerplate paragraphs: 6.8 (corporate governance and

nominating committee), 6.9 (audit committee), 6.10 (personnel and compensation committee), and 7.12 (applicability to predecessor companies).

3. However, UPE's Amended and Restated Bylaws, available to the public on Highmark's website through Original Form A, at pages 103-122 (Tab H) are identical to those found in sealed document 133 at Exhibit B referred to immediately above.
4. Highmark's Amended and Restated Bylaws are available to the public on Highmark's website through Original Form A at pages 17-41 (Tab A). These bylaws are substantially similar to the Second Amended and Restated Bylaws of Highmark filed under seal at document number 133 at pages 246-270 (Exhibit E).
5. However, Highmark's Second Amended and Restated Bylaws, publicly available on Highmark's website through Original Form A at pages 123-148 (Tab I), are identical to those found in sealed document 133 at Exhibit E referred to immediately above.
6. Detailed Charts of West Penn Allegheny's subsidiaries are posted on the public Highmark website at pages 62-63 (Tab D) and list the same entities as "Highly Confidential" at 2-3 (Schedule R-1 - WPAHS Subsidiaries) of doc. no. 133.
7. The Articles of Incorporation for "UPE Provider Sub" are available to the public on Highmark's website through Original Form A at pages 149-155 (Tab J). These Articles are identical to the UPE Provider Sub Articles of Incorporation filed under seal at document number 133 at pages 214-220 (Exhibit C) except that those filed under seal: (1) contain the actual signature of the incorporator (Carol A. Soltes) on the final page instead of just a blank line, (2) contain a date and time stamp from the "PA Dept of State," (3) provide the return name and address to whom the document should be returned, and (4) eliminate "Section 17 Effective Date."

8. The Bylaws of "UPE Provider Sub" are available to the public on Highmark's website through Original Form A at pages at 156-175 (Tab K). These bylaws are substantially similar to the Amended and Restated Bylaws of the "Provider Subsidiary Entity" filed under seal at document number 133 at pages at 223-244 (Exhibit D) of doc. no. 133, except Exhibit D contains additional boilerplate paragraphs: 6.8 (corporate governance and nominating committee), 6.9 (audit committee), and 6.10 (personnel and compensation committee).
9. However, Amended and Restated Bylaws of UPE Provider Sub, publicly available on Highmark's website through Original Form A at pages at 176-198 (Tab L) are identical to those found in sealed document 133 at Exhibit D referred to immediately above.
10. West Penn Allegheny's Amended and Restated Bylaws publicly available on Highmark's website through Original Form A at 199-226 (Tab M) are identical to West Penn Allegheny's Amended and Restated Bylaws filed under seal at document number 133 at pages 280-306 (Exhibit F).
11. The "Overview of Highmark's Strategic Vision" publicly available on Highmark's website through Original Form A at pages 64-77 (Tab E) sets forth Highmark's Strategic Vision and Plan in greater specificity than anything contained in the alleged in sealed documents numbers 132 and 133.

In addition to this public document/sealed document comparison review, this Court also undertook a comprehensive and exhaustive review of each Schedule and Exhibit as alluded Subpart "A" of this Opinion.

The following chart reflects the Court's detailed analysis of each Schedule and Exhibit comprising the four hundred and twenty-four pages:

PAGE NO(S).	TITLE
1	Introduction
2-3	Schedule R-1: WPAHS Subsidiaries
4-5	Schedule R-2: WPAHS Affiliates
5-6	Schedule 2/6(a) Core Laboratory Assets of the WPAHS Parties (with asset no. and description)
7-10	Schedule 4.2(b) WPAHS Parties' Required Approvals and Notice to Governmental Authorities
11-13	Schedule 4.2(c) WPAHS Parties' Contractual Consents (including Hospital Service Agreements, Provider Agreements, Facility Agreements, and Lease Agreements) (no Agreements are attached)
14-15	Schedule 4.3 WPAHS Equity, Membership, or Similar Interests (names only) (percentage of ownership, cost basis, current market value, and other information are not included)
16	Schedule 4.4 WPAHS Parties' Third Party Rights (names only) (no terms or value are disclosed)
17	Schedule 4.5 Properties Owned, Leased or Operated by the WPAHS Parties (only references other schedules)
18	Schedule 4.7(b) WPAHS Parties' Changes in Accounting Policy or Methodology
19-44	Schedule 4.8 (1 of 2) WPAHS Parties' Material Licenses and Permits (lists only facility/address, license type, facility license number, license issue date, and license expiration date -- only said license numbers and dates are confidential, and need not be disclosed)
45	Schedule 4.8 (2 of 2) WPAHS Parties' Pending or Threatened Proceedings to Revoke Material Licenses or Permits
46	Schedule 4.9 WPAHS Parties' Exceptions to Accreditation
47	Schedule 4.10 WPAHS Parties' Government Program Participation and Reimbursement
48	Schedule 4.11 WPAHS Parties' Regulatory Compliance (items 4, 5 and 6 are deemed confidential, and need not be disclosed)
49	Schedule 4.13 WPAHS Parties' Medical Staff Matters (confidential - personnel matters - need not be disclosed)
50	Schedule 4.14(a) WPAHS Parties' Intellectual Property Royalties or Other Payments
51	Schedule 4.14(b) WPAHS Parties' Intellectual Property Infringement

52-62	Schedule 4.15 WPAHS Parties' Material Contracts (lists only name of the parties, type of agreement, and date -- the actual agreements/leases/etc. and the terms thereof are not attached) (obviously a list of doctors/medical providers working for/affiliated with WPAHS is publicly available -- through the efforts of WPAHS itself -- each of the names are available on WPAHS' website). Dollar amounts as to the particular list of doctors set forth in 4.15 are confidential, and said dollar amounts need not be disclosed
63	Schedule 4.15(d) WPAHS' Parties Material Contract Subject to Restrictions (lists only names of the parties, type of agreement and date - - the actual agreements are not attached, nor is the nature of any "restriction" described)
64-67	Schedule 4.18(a) WPAHS Parties' Owned Real Property
68-97	Schedule 4.18(b) WPAHS Parties' Leased Real Property (lists only date of lease, address, name of landlord, and name of tenant) (no leases are attached) (no terms of the leases are disclosed, nor any information relating to financial arrangements)
98-109	Schedule 4.18(c) WPAHS Parties' Third Party Leases (lists only date of lease, address, name of landlord, name of tenant, and start and end dates of lease) (no leases are attached) (no terms of the leases are disclosed, nor any information relating to financial arrangements)
110	Schedule 4.18(j) WPAHS Parties' Notices of ADA Non-Compliance
111	Schedule 4.20(d) WPAHS Parties' Compliance with Plans and Benefit Programs and Agreements
112-114	Schedule 4.20(e) WPAHS Parties' Employee Obligations Triggered by Transaction (confidential -- personal matters, and need not be disclosed)
115	Schedule 4.20(f) WPAHS Parties' Sanctions Under Section 280G, 4999 or 409A
116	Schedule 4.20(g) WPAHS Parties' Employee Plan Liabilities Beyond COBRA (confidential -- personnel matters - need not be disclosed)
117-118	Schedule 4.21(c) WPAHS Parties' Compliance with Employment Laws and Collective Bargaining Matters (lists name of hospital, covered unit, name of union, and effective date/expiration date) (all public information) (no financial terms described)
119-151	Schedule 4.22(a) WPAHS Parties' Litigation ("I. Employment -- Related litigation - - lists case name, court or agency, case number, and description of claims - - no attorney evaluation, no reserve amount, and no valuation of case - - not confidential) (II. Other Litigation -- not confidential, except for cases where "a request for payments has been made," but no lawsuit yet filed, since such disclosure would publish the name of the patients/doctors, before public litigation - - such information need not be disclosed)
152	Schedule 4.22(b) WPAHS Parties' Proceedings Before Governmental Authorities
153	Schedule 4.23 Tax-Exempt WPAHS Parties
154-155	Schedule 4.24 WPAHS Parties' Environmental Matters
156-158	Schedule 4.26 WPAHS Parties' Tax-Exempt Bond Matters (lists name of parties, type of document and date only - - no agreement/lease/etc. are

	attached, and no financial terms are disclosed)
159-161	Schedule 4.27 WPAHS Parties' Taxable Debt Matters (lists name of parties, type of document and date only - - no agreement/lease/etc. are attached, and no financial terms are disclosed)
162	Schedule 4.28(j) WPAHS Parties' Absence of Material Adverse Effect
163-164	Schedule 5.2(b) Highmark and UPE Parties' Approvals and Notices to Governmental Authorities
165	Schedule 5.2(c) Highmark and UPE Parties' Contractual Consents
166	Schedule 5.4(b) Highmark Changes in Accounting Policy or Methodology
167	Schedule 5.5 Highmark and UPE Parties' Regulatory Compliance (all public knowledge)
168-169	Schedule 5.6 Highmark and UPE Parties' Litigation (all public information - - no private opinion of counsel - - except standard "meritorious defenses" and "unable to predict outcome" - - no information of reserve or valuation)
170-176	Schedule 6.1(a)(1) WPAHS Parties' Due Diligence Update Timeline
177	Schedule 6.1(a)(2) WPAHS Parties' Interim Reports to Highmark
178-179	Schedule 6.1(b) Highmark and UPE Parties' Due Diligence Timeline
180	Schedule 6.2 WPAHS Parties' Exceptions to Conduct of Business
181	Schedule 6.3 WPAHS Parties' Exceptions to Negative Covenants (confidential - personal matters - need not be disclosed)
182	Schedule 6.3(g) WPAHS Parties' Agreed Capital Expenditures
183-184	Schedule 8.4 Highmark and UPE Parties' Pre-Closing Confirmations from Governmental Authorities
185	Schedule 9.4 WPAHS Parties' Pre-Closing Confirmations from Governmental Authorities
186-192	Exhibit A - Articles of Incorporation - Nonprofit (15 Pa.C.S.)
193-213	Exhibit B - Amended and Restated Bylaws of Ultimate Parent Entity
214-220	Exhibit C - Articles of Incorporation - Nonprofit (15 Pa.C.S.)
221-244	Exhibit D - Amended and Restated Bylaws of Provider Subsidiary Entity
245-270	Exhibit E - Second Amended and Restated Bylaws of Highmark Inc.
271-279	Exhibit F - Amended and Restated Articles of Incorporation of West Penn Allegheny Health System, Inc.
280-306	Exhibit F - Amended and Restated Bylaws of West Penn Allegheny Health System, Inc.
307-312	Exhibit F - Excerpt of Prototype Governance Document Provisions
313-315	Exhibit G - Joint Committee Charter
316-317	Exhibit H - Term Sheet for Loan Agreements (confidential)
318-350	Exhibit I - Joint Venture Option Agreement By and Between Highmark Inc. and West Penn Allegheny Health System, Inc., dated October 31, 2011
351	Schedule 1.1 Laboratory Facilities
352	Schedule 1.6(b) Initial Capital Contributions of Highmark and WPAHS
353-354	Schedule 2.1(c) Personal Property Included in the Laboratory Facility Assets
355	Schedule 2.1(k) Government and Third Party Payor Provider Agreements and Numbers; NPIs (none listed)

356	Schedule 2.1(m) Other Assets of WPAHS (none listed)
357-403	Exhibit A – Joint Venture Documents (basically blank standard formats)
404	Exhibit A – Members’ Capital Contributions (percentages indicated but no dollar amounts included – left blank)
405	Exhibit B – Initial Board of Directors (blank)
406-407	Exhibit B – General Bill of Sale (basically a standard blank form)
408-411	Exhibit C – Assignment and Assumption Agreement (basically a standard blank form)
412-414	Exhibit J – Spending Policy for Perpetual Special Purpose Endowment Fund (basically a standard blank form)
415-418	Exhibit K – Letter from Ropes & Gray LLP to Highmark, Inc. (standard letter)
419-424	Exhibit L – Form of Opinion of Highmark and UPE Parties’ Legal Counsel (emphasis on ‘form’ letter)

As to the Schedules, West Penn Allegheny and Highmark make much of the purported confidential and highly secretive “regulatory compliance issues” (see doc. no. 127-1 at 2) and “approval process” by various governmental agencies, with timetables (see Schedule 4.2(b)), and related necessary consents or notices required by contracts (see Schedule 4.2(c)). Much (if not all) of this “approval process” is detailed by Highmark and West Penn Allegheny in their numerous newspaper articles and other public statements. Further, any good attorney familiar with acquisitions in the healthcare field could easily determine this approval pathway/timetable. (The Court notes that the actual Hospital Service Agreements, Provider Agreements, Facility Agreements, and Lease Agreements are not part of this document -- see doc. no. 133.) Moreover, while arguably information relating to Schedules 4.8 (2 of 2), 4.9, 4.14(a), 4.14(b), 4.18(j), 4.20(f), 4.22(b), 4.28, 5.4(b), 6.2, and 6.3(g) might be confidential, the Court finds that these Schedules do not contain any confidential information, since the answer to each is “None.”

As to the Exhibits, the Exhibits are either: (i) documents which are already available publicly with the Pennsylvania Secretary of State or Pennsylvania Department of Insurance, (ii) generic form documents which contain only the standard articles of incorporation or standard

bylaws language, or (iii) available through Highmark/West Penn Allegheny websites. No financial information is contained in these Exhibits, except Exhibit H at 316-317, which contains financial information that West Penn Allegheny and Highmark have regularly released and disclosed in their news releases (concerning the cash infusions from Highmark to West Penn Allegheny) and on Highmark's own website. This Court might have found as confidential the names of members of the Board of Directors of the new entity/parent/subsidiary (however, this information is publicly available on Highmark's website), and the "draft" opinions of legal counsel (Exhibits K and L) (but said draft opinions simply contain the standard – albeit important – boilerplate language).

While West Penn Allegheny claims that the Schedules and Exhibits (doc. no. 133) contain confidential information about "contracts with third parties," "consents" required by certain leases/agreements, "rights to certain [West Penn Allegheny] assets" in contracts, "salary" information, "non-compete provisions," "take-or-pay provisions," and so on (see doc. no. 157 at 6-9), again no contracts/leases/agreements are attached, and no "terms" thereof are disclosed in doc. no. 133. See also Highmark's doc. no. 156 at 6-8, arguing that the disclosure of the "terms" of various agreements would cause harm to Highmark, when doc. nos. 132 and 133 do not set forth or attach the actual language or terms.

The West Penn Allegheny website is replete with the so-called "Highly Confidential" information from doctor's names, address, and specialties under "find a doctor" and "medical specialists," to location of hospitals, outpatient care centers, primary care centers, and outpatient diagnostic testing under "locations and directions." Financial disclosures and IRS filings are also on the West Penn Allegheny website. See also West Penn Allegheny new CEO's interview on KDKA-TV's Sunday Business Page re: Affiliation Agreement with Highmark, Inc., on

YouTube[™], through West Penn Allegheny's website; and West Penn Allegheny's website page describing the financial arrangement (<http://www.wpahs.org/news/newsletters/news-and-notes/july-2011/highmark-plans>). Further, although West Penn Allegheny (see doc. no. 127-1 at 2) and Highmark (see doc. no. 156 at 1, *et seq.*) claim doc. no. 132 contains "highly sensitive, confidential information" about "physicians contracts and salary information," a review of doc. nos. 132 and 133 reveal that no physician contracts are attached thereto and no specific salary of any particular physician(s) is disclosed.

Additionally, detailed quarterly financial information from 2006 through the second quarter of 2011 are available on the Highmark website. The financial reports of the second quarter of 2011 alone is 372 pages. This information is tied to the Highmark news release of November 1, 2011, entitled "Highmark, West Penn Allegheny boards approve definitive agreement on affiliation; announce new management and detailed next steps." The Highmark website states that Highmark "has made a total financial commitment of up to \$475 million" The 230 page filing with the Pennsylvania Insurance Department also is attached thereto. See also other Highmark news releases at www.highmark.com, "About Highmark," "Newsroom," "Our News 2011," and video of press conference of November 1, 2011 on YouTube[™].

Ironically, West Penn Allegheny complains that it does not want UPMC, "West Penn's direct competitor" (see doc. no. 130 at 2), to have the so-called confidential business information. However, Highmark does have some similar information as to UPMC, and if Highmark renews its contracts with UPMC, then Highmark will have said information of both competitors, and arguably may be able to use the UPMC information to advance the Highmark/West Penn Allegheny "affiliation." While said information may not be exactly

comparing “apples with apples,” in the context of this antitrust and the related class action, lifting of the seal will add an additional degree of transparency.

Further, Highmark’s overview of its publicly available “Strategic Vision” also supports the public disclosure of the documents at issue (with the limited exceptions noted in Subpart “A.” above) because a review of this Strategic Vision arguably demonstrates Highmark’s vision to “influence” pricing/costs not only at WPAHS but also, directly or indirectly, at UPMC. Assisting the public in discerning whether such a “Vision” and implementation thereof will lead to price fixing or price “leadership,” or Highmark serving as the “cost/price gate-keeper,” also supports public disclosure of the alleged “Highly Confidential” documents filed under seal at document numbers 132 and 133, and furthermore, is consistent with Highmark’s publicly-stated policy of more “transparency” in healthcare services. Disclosure will also permit the public to more accurately evaluate whether this Affiliation Agreement and the implementation thereof will produce “access to high-quality healthcare services built around a commercial product that will be less expensive than any product that includes UPMC at the contract rates it demanded.” See Highmark’s website (<https://www.highmark.com/hmk2/about/newsroom/2011/hmwp/forma.pdf>), Original Form A, at 66. Further, if UPMC continues its contractual relationship with Highmark, then arguably Highmark would be in control of, in whole or in part, or at least influence, pricing at the two dominant hospital systems in this region, potentially leading to further antitrust concerns. This Court cannot predict what will happen in the future. Rather, this Court simply finds that the public interest requires disclosure of this information so the public may make its own evaluations.

In summary, despite the representations by West Penn Allegheny that “regulatory compliance issues; material contracts; physician contracts and salary information; employee

contracts; pending litigation unrelated to this matter, many including detailed claim descriptions; required contractual consents; and material contracts subject to restrictions” (see doc. no. 128, at 2 and Ex. 2, ¶ 4) are “specific types of confidential information” (doc. no. 130 at 2) (which representations and documents remain on this record without amendment or correction), the review of the actual doc. nos. 132 and 133 reveals that said information is not in doc. nos. 132 and 133 (i.e., no contracts/agreements attached, no specific salary information included, and so on), or the information is already in the public domain by West Penn Allegheny or Highmark’s own public relations efforts.¹²

C. Conclusion

West Penn Allegheny and Highmark have failed to meet their burden with respect to the Affiliation Agreement. This Court finds after reviewing the case law relevant to this issue, West Penn Allegheny’s interest in sealing the document and Highmark’s interest in sealing portions of it, are outweighed by the public’s right to access. In addition, this Court also finds that much of what is contained in the Affiliation Agreement has already been disclosed to the public and is still readily available to the public vis-à-vis West Penn Allegheny’s and Highmark’s websites as well as through newspaper accounts and records related to same.

West Penn Allegheny and Highmark also generally failed to meet their burden with respect to the Schedules and Exhibits with a few, very specific exceptions as further detailed and

¹² After the Court had laboriously, over several weeks, compared line by line, and page by page, the 516 pages (*i.e.* the Affiliation Agreement and its Schedules and Exhibits) designated as “Highly Confidential,” to the publicly available information, including the Original Form A, filed with the Pennsylvania Department of Insurance, Highmark informed the Court on December 22, 2011, at doc. no. 173, that at least in its view, much of the alleged “Highly Confidential” material somehow was no longer confidential and released a “New Form A” (which overlaps and re-formats much of the Affiliation Agreement and Schedules and Exhibits). New Form A still contains redactions on approximately 115 of its 416 pages. Neither Doc. No. 173, nor the New Form A, indicates the reason(s) previously “Highly Confidential” information became non-confidential.

discussed in subpart B, above. In addition, as this Court has discussed at length and demonstrated through its charts, above, in subpart "B.," almost all of the Schedules and Exhibits are available to the public already, with a few exceptions. Those exceptions include the following:

- Schedule 4.8 (license numbers and dates only),
- Schedule 4.11 (items 4, 5, and 6 only),
- Schedule 4.13,
- Schedule 4.15 (dollar amounts only),
- Schedule 4.20(e),
- Schedule 4.20(g),
- Schedule 4.22(a) (potential lawsuits not yet filed),
- Schedule 6.3, and
- Exhibit H.

Accordingly, the portions of these Schedules and Exhibits identified immediately above are to remain under seal because this Court has found that they are, in fact, confidential, in accordance with *Pansy*, and because they have not been made available to public elsewhere.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

ORDER OF COURT

AND NOW, this 29th day of December, 2011, **IT IS HEREBY ORDERED** that PG Publishing Co.'s Motion to Unseal the Record (Doc. No. 140) is **GRANTED IN PART AND DENIED IN PART**; and the Court's November 17, 2011 Order is hereby **VACATED**.

Plaintiff is hereby required to file the entirety of the Affiliation Agreement (ninety-two pages, previously filed under seal at doc. no. 132), and shall also file the entirety of the Schedules and Exhibits (four hundred twenty-four pages, previously filed under seal at doc. no. 133) with the following exceptions, on or before January 5, 2012, at 3:00P.M.:

- The license numbers and dates in Schedule 4.8 shall be redacted,
- Items 4, 5, and 6 of Schedule 4.11 shall be redacted,
- Schedule 4.13 shall be redacted in its entirety,
- The dollar amounts only in Schedule 4.15 shall be redacted,
- Schedule 4.20(e) shall be redacted in its entirety,
- Schedule 4.20(g) shall be redacted in its entirety,
- The "not-yet-filed" potential cases in schedule 4.22(a) shall be redacted,
- Schedule 6.3 shall be redacted in its entirety, and
- Exhibit H shall be redacted in its entirety.

SO ORDERED this 29th day of December 2011.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All ECF Counsel of Record

Chronister, Ronald

From: Chambers, Sarah [Sarah.Chambers@thompsonhine.com]
Sent: Wednesday, January 18, 2012 2:18 PM
To: Chronister, Ronald
Cc: Berliner, Alan
Subject: FW: Form A Transmittal Letter and Filing Fee - v1.PDF - Adobe Acrobat Standard
Attachments: Tab D Post-Affiliation Org Chart of UPE - v1.PDF; Tab C Pre-Affiliation Org Chart of WPAHS - v1.PDF; Tab B Pre-Affiliation Highmark Org Chart - v1.PDF; Tab G Resolutions of Board of UPE - v1.PDF; Form A Filing - v1.PDF

Ron,

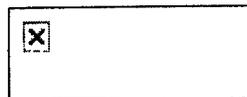
Alan forwarded me your email below. Attached is a copy of the Form A along with all exhibits other than the financial statements and the Affiliation Agreement. I also haven't attached copies of the biographical affidavits – please let us know if you would like a copy of those as well or if you need anything else.

Thank you,
 Sarah

Sarah Chambers | Associate | **Thompson Hine LLP**
 41 S. High Street, Suite 1700 | Columbus, Ohio 43215
Office: 614.469.3251 | **Mobile:** 614.531.7634
Fax: 614.469.3361 | **Email:** Sarah.Chambers@ThompsonHine.com
Web: <http://www.ThompsonHine.com>

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From: Chronister, Ronald [mailto:ronald.chronister@bipc.com]
Sent: Wednesday, January 18, 2012 8:45 AM
To: Berliner, Alan
Cc: Clouser, Belinda A; Enterline, Richard J
Subject: RE: Form A Transmittal Letter and Filing Fee - v1.PDF - Adobe Acrobat Standard

PRIVILEGED AND CONFIDENTIAL

Alan,

I would like a copy of the Form A without the exhibits related to the historical financial statements and the Affiliation Agreement, exhibits and schedules. You can send that to me electronically.

As you requested I am attaching the Court orders related to confidential treatment of certain provisions in the Affiliation Agreement and the related exhibits and schedules. Attached are an excerpt from the

1/18/2012

UPE-0006019

docket related to the Federal Court case involving WPAHS as well as two separate orders related to the confidentiality of the Affiliation Agreement, exhibits and schedules filed with the Court. The second page of the docket excerpt reflects the Court's response on January 5 to a request by WPAHS for partial reconsideration of the 12/29 Order. Additionally, WPAHS has asked for partial reconsideration of the 1/13/12 order as well and that request is currently pending.

The latest redacted version of the Affiliation Agreement, exhibits and schedules sent to you (and filed with the PID) continues to redact the materials that WPAHS has asked the Court to hold confidential through its request for reconsideration.

Please let me know if you need anything further in this regard.

Ron

From: Berliner, Alan [mailto:Alan.Berliner@thompsonhine.com]
Sent: Tuesday, January 17, 2012 4:29 PM
To: belinda.clouser@highmark.com
Cc: Chambers, Sarah; Chronister, Ronald; Enterline, Richard J
Subject: Form A Transmittal Letter and Filing Fee - v1.PDF - Adobe Acrobat Standard

Belinda,

The Form A is on its way to be filed at the Ohio Department of Insurance. Attached is a copy of the Form A transmittal letter and the check for the filing fee. Let me know if you need anything else, thanks.

Alan F. Berliner |Thompson Hine LLP
41 South High Street, Suite 1700 | Columbus, OH 43215-6101
Office: 614.469.3268 | Cell: 614.354-3416
Fax: 614.469.3361 | Email: Alan.Berliner@ThompsonHine.com
Web: <http://www.thompsonhine.com>

<input checked="" type="checkbox"/> Description: Description:
--

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If you are not the intended recipient, please advise the sender immediately.

Unauthorized use or distribution is prohibited and may be unlawful.

1/18/2012

UPE-0006020

Document Divider

Betty DeLargy

From: Jodi Rider [Jodi.Rider@tdi.state.tx.us]
Sent: Friday, February 17, 2012 10:11 AM
To: Betty DeLargy
Cc: Evangeland Barnes-Dickson; Kimberly Hammer; Teresa Saldana
Subject: United Concordia Dental Insurance Company
Attachments: 40447-FormA-LETTER.pdf

HCS#: 40447

Please see the attached letter regarding the captioned company's Form A application.

Thank you,
Jodi

Jodi Rider, Analyst
Financial Analysis
Texas Department of Insurance
Phone: 512-322-5095
Fax: 512-322-5082
jodi.rider@tdi.state.tx.us
Mail Code: 303-1A



Texas Department of Insurance

Financial Regulation Division – Financial Analysis Section, Mail Code 303-1A
333 Guadalupe • P. O. Box 149104, Austin, Texas 78714-9104
512-322-5002 telephone • 512-322-5082 fax • www.tdi.texas.gov

February 17, 2012

Via email: bdelargy@mwlaw.com

Ms. Betty DeLargy
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.
106 East Sixth Street, Suite 300
Austin, TX 78701

RE: United Concordia Dental Plans of Texas, Inc. ("Insurer")
Acquisition of Control by UPE
HCS# 40447

Dear Ms. DeLargy:

This Department is in receipt of the captioned acquisition application. A review of such application has revealed the need for the following information:

1. Provide the proposed close date of such acquisition.
2. Advise the benefit to Highmark Inc. acting through UPE instead of Highmark Inc. directly.
3. Provide an explanation as to why the affiliated agreement is redacted. It is noted that the redacted portion in the table of contents is in the "transaction structure and funding" section. We believe this is information that is pertinent to our review of the Form A. Provide same.
4. Provide further information regarding the funding mentioned in 2.5 of the Affiliate Agreement. (i.e. interest rate, length of funding, terms to pay funds back)
5. How does WPAHS fit in with the operations of Highmark Inc.?
6. Will Directors of WPAHS serve on UPE and Highmark Inc.'s board? If so, would there be experience with regards to insurance operations?
7. Advise how much health business Highmark subsidiaries have compared to dental business in Pennsylvania.
8. The projections provided reported a decrease in the administrative expense ratio as compared to previous years for UCDPTX. Advise what is being done differently to bring the ratio down.
9. Although UPE will be at the top of the Corporate Structure, confirm where funds would come from should the need arise for Insurer to need funding.
10. Although projections were provided for Insurer, TIC §7.209(m)(3) requires projections of the Applicant as well. Please provide same.
11. Advise why Insurer has not been making payments on their surplus debenture.

Pursuant to TEX. ADMIN. CODE §7.205(b), no statement required by §7.205(a) shall be deemed filed with the Commissioner until the date which all such material required

and sufficient to constitute a full statement has been provided. Pursuant to TEX. ADMIN. CODE §7.205(a), a failure to file complete and accurate information in all material aspects is grounds for a denial by the Commissioner under TEX. INS. CODE §823.157.

Sincerely,

A handwritten signature in cursive script that reads "Jodi Rider".

Jodi Rider, Analyst
Financial Analysis
Mail Code: 303-1A

Betty DeLargy

From: Jodi Rider [Jodi.Rider@tdi.state.tx.us]
Sent: Monday, February 13, 2012 9:21 AM
To: Betty DeLargy
Cc: Teresa Saldana
Subject: Fwd: Re: Criminal History Background Check

Betty:

Mr. David Matter needs to retake his prints or have a signed affidavit stating that his prints are unreadable. See below.

Thanks,
Jodi

>>>>>>>>>

Jodi, I have the DPS/FBI results on the following individuals.

I have 2 FBI rejects on Matter, David M. The dates of the rejects 1/12/2011 and 3/23/2011. The FBI will not run a CJIS if the rejects have been more than 90 days old. He will have to retake his prints.

Jodi Rider, Analyst
Financial Analysis
Texas Department of Insurance
Phone: 512-322-5095
Fax: 512-322-5082

jodi.rider@tdi.state.tx.us

Mail Code: 303-1A >>> Jodi Rider 2/10/2012 11:23 AM >>>

Could you please do a background check. I've attached the Spreadsheet and a pdf with all the fast pass receipts/numbers submitted by the Company.

Thank you,
Jodi

Jodi Rider, Analyst
Financial Analysis
Texas Department of Insurance
Phone: 512-322-5095
Fax: 512-322-5082

jodi.rider@tdi.state.tx.us

Mail Code: 303-1A

Betty DeLargy

From: Betty DeLargy
Sent: Thursday, February 09, 2012 12:17 PM
To: 'Jodi Rider'
Subject: RE: FW: Exhibit A - Affiliation Agreement (Redacted), Exhibits& Schedules.zip

Thanks—just thought I'd ask.

MITCHELL || WILLIAMS

Betty DeLargy
T 512.480.5117 | F 512.322.0301
bdelargy@mwlaw.com | MitchellWilliamsLaw.com
106 East Sixth Street | Ste. 300 | Austin, TX 78701
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

From: Jodi Rider [<mailto:Jodi.Rider@tdi.state.tx.us>]
Sent: Thursday, February 09, 2012 12:11 PM
To: Betty DeLargy
Subject: Re: FW: Exhibit A - Affiliation Agreement (Redacted), Exhibits& Schedules.zip

I do not believe this qualifies as an exemption. After reading p.12, section I, it states as a result of the Transaction, UPE will have and exercise direct control over both Highmark and Provider Subsidiary. Since it is saying it will have direct control, I think we still need to review it as a Form A.

Jodi Rider, Analyst
Financial Analysis
Texas Department of Insurance
Phone: 512-322-5095
Fax: 512-322-5082
jodi.rider@tdi.state.tx.us

Mail Code: 303-1A>>> Betty DeLargy <bdelargy@mwlaw.com> 2/9/2012 11:52 AM >>>

Hope the zip file will avoid crashing your system. The lists of WPAHS subsidiaries are in schedules R-1 and R-2.

Also, would you look at 823.163 (h)--is there any way that exemption would apply to this situation? Just a thought. I am working on getting the other info for you and will get back to you ASAP.

Betty

Betty DeLargy
T 512.480.5117 | F 512.322.0301
bdelargy@mwlaw.com | MitchellWilliamsLaw.com

106 East Sixth Street | Ste. 300 | Austin, TX 78701
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

IRS Circular 230 Disclosure: Any federal tax advice contained in this communication, including attachments and enclosures, is not intended or written to be used, and cannot be used, for the purpose of avoiding tax-related penalties under the Internal Revenue Code or promoting, marketing or recommending to another party any tax-related matters addressed herein.

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Betty DeLargy

From: Jodi Rider [Jodi.Rider@tdi.state.tx.us]
Sent: Thursday, February 09, 2012 12:11 PM
To: Betty DeLargy
Subject: Re: FW: Exhibit A - Affiliation Agreement (Redacted), Exhibits& Schedules.zip

I do not believe this qualifies as an exemption. After reading p.12, section I, it states as a result of the Transaction, UPE will have and exercise direct control over both Highmark and Provider Subsidiary. Since it is saying it will have direct control, I think we still need to review it as a Form A.

Jodi Rider, Analyst
Financial Analysis
Texas Department of Insurance
Phone: 512-322-5095
Fax: 512-322-5082
jodi.rider@tdi.state.tx.us

Mail Code: 303-1A>>> Betty DeLargy <bdelargy@mwlaw.com> 2/9/2012 11:52 AM >>>

Hope the zip file will avoid crashing your system. The lists of WPAHS subsidiaries are in schedules R-1 and R-2.

Also, would you look at 823.163 (h)--is there any way that exemption would apply to this situation? Just a thought. I am working on getting the other info for you and will get back to you ASAP.

Betty

Betty DeLargy
T 512.480.5117 | F 512.322.0301
bdelargy@mwlaw.com | MitchellWilliamsLaw.com
106 East Sixth Street | Ste. 300 | Austin, TX 78701
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

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Betty DeLargy

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Sent: Thursday, February 09, 2012 11:52 AM
To: 'Jodi Rider'
Subject: FW: Exhibit A - Affiliation Agreement (Redacted), Exhibits & Schedules.zip
Attachments: Exhibit A - Affiliation Agreement (Redacted), Exhibits & Schedules.zip

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bdelargy@mwlaw.com | MitchellWilliamsLaw.com
106 East Sixth Street | Ste. 300 | Austin, TX 78701 Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

Betty DeLargy

From: Betty DeLargy
Sent: Tuesday, February 07, 2012 10:30 AM
To: Jodi Rider
Subject: RE: United Concordia Dental Plans of Texas, Inc.

Perfect. Thank you.

MITCHELL || WILLIAMS

Betty DeLargy
T 512.480.5117 | F 512.322.0301
bdelargy@mwlaw.com | MitchellWilliamsLaw.com
106 East Sixth Street | Ste. 300 | Austin, TX 78701
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

From: Jodi Rider [<mailto:Jodi.Rider@tdi.state.tx.us>]
Sent: Tuesday, February 07, 2012 10:01 AM
To: Betty DeLargy
Subject: RE: United Concordia Dental Plans of Texas, Inc.

How about 10am...that gives us both time to get situated. I'll call you...I have unlimited with a flat fee, so no worries.

Jodi Rider, Analyst
Financial Analysis
Texas Department of Insurance
Phone: 512-322-5095
Fax: 512-322-5082
jodi.rider@tdi.state.tx.us
Mail Code: 303-1A>>> Betty DeLargy <bdelargy@mwlaw.com> 2/7/2012 8:44 AM >>>

I'm very open on Thursday—mornings are always better for me. You pick a time and do you want me to call you so it's on my phone bill, not yours?

MITCHELL || WILLIAMS

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From: Jodi Rider [<mailto:Jodi.Rider@tdi.state.tx.us>]
Sent: Tuesday, February 07, 2012 8:32 AM
To: Betty DeLargy
Subject: United Concordia Dental Plans of Texas, Inc.

I'm going to look over the Form A today, hopefully...tomorrow I have to leave early for kid's dentist appts, but was wondering if we could plan a call on Thursday? Would that work for you, and if so, what time....I should be available any time between 8:30-3:00...

Thanks.

Jodi Rider, Analyst
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Texas Department of Insurance
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Mail Code: 303-1A

MITCHELL || WILLIAMS

Elisabeth S. DeLargy
Direct Dial: 512-480-5117
Fax: 512-332-0301
E-mail: bdelargy@mwlaw.com

106 East Sixth Street, Suite 300
Austin, TX 78701-3661
Telephone: 512-480-5100
Fax: 512-322-0301

January 3, 2012

VIA HAND DELIVERY AND EMAIL

The Honorable Eleanor Kitzman
Commissioner of Insurance
Texas Department of Insurance
333 Guadalupe Street
Austin, Texas 78701

Attn: Ms. Jodi Rider

Re: Form A Statement Regarding the Acquisition of Control of United Concordia Dental Plans of Texas, Inc. ("the Domestic Insurer") by UPE (the "Applicant")

Dear Commissioner Kitzman:

Pursuant to Texas Insurance Code, Chapter 823, and 28 TAC § 7.201 *et seq.* (2011), I am enclosing for filing on behalf of the Applicant an original and copy of the Form A Statement regarding the above-captioned change of control of the Domestic Insurer. An electronic copy of the filing, with the exception of the information contained on the enclosed disks, is being transmitted today to Ms. Jodi Rider. Ms. Rider instructed me to send the disk copies with this letter and attachments so that department staff could transmit that information to her. A filing fee in the amount of \$500.00 is also being filed today with the Cashier's Office, pursuant to TAC § 7.1301(d)(20-21).

Highmark Inc. ("Highmark") owns 100% of the voting securities of United Concordia Companies, Inc., which, in turn, owns 100% of the voting securities of the Domestic Insurer.

Highmark and West Penn Allegheny Health System, Inc. ("WPAHS") have entered into an Affiliation Agreement, dated October 31, 2011, a copy of which is herewith filed as Exhibit A, pursuant to which a new nonprofit corporation was created to establish an integrated health care financing and delivery system in western Pennsylvania. Under the Agreement, at closing, the Applicant, the new nonprofit parent, will become the sole voting corporate member of Highmark.

The Applicant was formed on October 20, 2011 as a non-member Pennsylvania nonprofit corporation. The corporation was organized for scientific, educational and charitable purposes and in this connection has filed an application with the Internal Revenue Service requesting exemption from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. At closing of the affiliation transaction, the Applicant will be the sole member of the class of members of Highmark that will elect Highmark's Board of Directors. It is not anticipated that the Applicant will have significant operations separate from Highmark or WPAHS.

The Honorable Eleanor Kitzman
January 3, 2012
Page 2

This Form A Statement contains confidential and/or proprietary information and strategies that are not otherwise available to the public, that, if disclosed, could cause substantial injury to the competitive position of the Applicant. Accordingly, the Applicant respectfully requests that the Combined GAAP Financial Statements (2006-2010), attached as Exhibit G to the Form A, be afforded confidential treatment and be excepted from disclosure pursuant to Texas Govt. Code Section 552.110 (V.T.C.A. 1999), which exempts trade secrets and commercial or financial information, disclosure of which would cause substantial competitive harm to the person from whom the information was obtained, from Texas' Public Information Act (Texas Govt. Code Section 552.001 et seq. (V.T.C.A. 1993)).

In addition, the biographical affidavits, attached as Exhibit D to the Form A, are being submitted to the Commissioner in confidence and contain information that is not otherwise available to the public, are subject to financial privacy and individual privacy protections, and should be afforded confidential treatment. All such information is being provided with the express understanding that the confidentiality of such information will be safeguarded and protected pursuant to all provisions of law, including but not limited to, Texas Govt. Code Section 552.101 (V.T.C.A. 1993), which exempts information considered to be confidential by law, either constitutional, statutory, or by judicial decision, Texas Govt. Code Section 552.147 (V.T.C.A. 1993), which exempts social security numbers, and Texas Govt. Code Section 552.137, which exempts e-mail addresses from Texas' Public Information Act.

The Applicant further requests that it be notified in advance if any person requests access to any of these documents for confidentiality is requested so that it has the opportunity to take action to prevent or limit any such disclosure.

We look forward to working with your Department in this matter and appreciate your courtesy and assistance.

Sincerely,

MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, P.L.L.C.

By 
Elisabeth S. DeLargy

ESD:jm:ab
Enclosures

Betty DeLargy

From: Betty DeLargy
Sent: Tuesday, January 03, 2012 1:17 PM
To: Jodi Rider
Subject: Highmark Form A Filing #1
Attachments: Form A Cover Ltr with Delivery Confirmation & Check Receipt 01032012.PDF; Form A 01032012.PDF; Exhibit B to Form A 01032012.PDF; Exhibit C to Form A 01032012.PDF

Jodi, the original of this filing and one copy got delivered to TDI a short time ago. The filing fee check was delivered to the cashier's office as well. I am sending you four emails in addition to this one, so I don't crash your server with the exhibits. I am not sending electronic copies of Exhibits A, G and H—I sent over two sets of disc copies for those attachments and asked whoever handles the paper for you to forward the discs to you.

Please let me know if you don't get one of the five emails or if you can't open any of the attachments—and of course, if you have any questions.

Betty

MITCHELL || WILLIAMS

Betty DeLargy
T 512.480.5117 | F 512.322.0301
bdelargy@mwlaw.com | MitchellWilliamsLaw.com
106 East Sixth Street | Ste. 300 | Austin, TX 78701
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

Betty DeLargy

From: Betty DeLargy
Sent: Tuesday, January 03, 2012 1:17 PM
To: Jodi Rider
Subject: Highmark Form A Filing #2
Attachments: Exhibit D - Bio Aff Nanette P DeTurk - to Form A 01032012.PDF; Exhibit D - Bio Aff David A Blandino - to Form A 01032012.PDF; Exhibit D - Bio Aff for John R Baum - to Form A 01032012.PDF

MITCHELL || WILLIAMS

Betty DeLargy
T 512.480.5117 | F 512.322.0301
bdelargy@mwlaw.com | MitchellWilliamsLaw.com
106 East Sixth Street | Ste. 300 | Austin, TX 78701
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

Betty DeLargy

From: Betty DeLargy
Sent: Tuesday, January 03, 2012 1:18 PM
To: Jodi Rider
Subject: Highmark Form A Filing #3
Attachments: Exhibit D - Bio Aff Maureen L Hogel - to Form A 01032012.PDF; Exhibit D - Bio Aff Joseph C Guyaux - to Form A 01032012.PDF

MITCHELL || WILLIAMS

Betty DeLargy
T 512.480.5117 | F 512.322.0301
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Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

Betty DeLargy

From: Betty DeLargy
Sent: Tuesday, January 03, 2012 1:19 PM
To: Jodi Rider
Subject: Highmark Form A Filing #4
Attachments: Exhibit D - Bio Aff David J Malone - to Form A 01032012.PDF; Exhibit D - Bio Aff David M Matter - to Form A 01032012.PDF; Exhibit D - Bio Aff Kenneth R Melani - to Form A 01032012.PDF; Exhibit D - Bio Aff Victor A Roque - to Form A 01032012.PDF

MITCHELL || WILLIAMS

Betty DeLargy
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106 East Sixth Street | Ste. 300 | Austin, TX 78701
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

Betty DeLargy

From: Betty DeLargy
Sent: Tuesday, January 03, 2012 1:19 PM
To: Jodi Rider
Subject: Highmark Form A Filing #5
Attachments: Exhibit F to Form A 01032012.PDF; Exhibit E to Form A 01032012.PDF

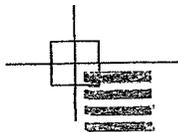
MITCHELL || WILLIAMS

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106 East Sixth Street | Ste. 300 | Austin, TX 78701
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

Document Divider

Chronister, Ronald

From: Captive Mail [captive@mail@state.vt.us]
Sent: Monday, December 12, 2011 3:47 PM
To: Sandra R. Milbank; Alan D. Port
Subject: 2011-12-12-1547 Department to PFC with approval of Change in Control Highmark and West Penn Allegheny--HCI 7407-1
Attachments: 2011-11-29 PFC to Department re Change in Control Highmark and West Penn Allegheny--HCI.PDF



PAUL FRANK + COLLINS P.C.

RECEIVED
STATE OF VERMONT
Nov 29, 2011
DEPT. OF BANKING, INS. & SEC.
CAPTIVE INSURANCE SECTION

Alan D. Port (VT)
aport@PFClaw.com

November 29, 2011

VERMONT DEPT. OF INSURANCE
CAPTIVE DIVISION
APPROVED
Alan D. Port
DEPUTY COMMISSIONER - CAPTIVES
3:46 pm, Dec 12, 2011

Mr. David F. Provost
Deputy Commissioner
Captive Insurance Division
Vermont Department of Banking, Insurance,
Securities and Health Care Administration
89 Main Street
Montpelier, VT 05620-3101

Re: HCI, Inc. ("HCI") – License #531

Dear Dave:

I am writing to advise you of an impending change in control of the ultimate parent company of HCI. You will recall that the direct and ultimate parent of HCI currently is Highmark Inc. ("Highmark").

Highmark and West Penn Allegheny Health System, Inc. ("WPAHS") have entered into an affiliation agreement dated as of October 31, 2011. Highmark is principally a health insurer. WPAHS is a health care provider through hospitals and affiliated organizations. A Form A filing, dated November 7, 2011, was submitted to the Pennsylvania Insurance Department, which describes the affiliation transaction. The Highmark press release with regard to the approval of the affiliation by the boards of Highmark and WPAHS can be found on the Highmark website at: <https://www.highmark.com/hmk2/about/newsroom/2011/prhmwp.shtml>. The press release contains a link to the Pennsylvania Form A filing, which provides much more detail with regard to the participants and the affiliation transaction.

Briefly, the transaction will result in the creation of a holding company for Highmark and WPAHS. The ultimate holding company has been formed as a Pennsylvania nonprofit corporation and is known as UPE. Speaking generally, the holding company scenario is being used to preserve the federal income tax exemption (under Internal Revenue Code §501(c)(3)) of WPAHS, while Highmark continues as a federal income taxable entity. I have attached a chart of the post-affiliation proposed corporate structure for your convenience of reference. The chart also appears as an attachment (Tab N) to the Form A filing.

By way of background, Highmark is a Pennsylvania nonprofit corporation, which is licensed in Pennsylvania to operate a nonprofit hospital plan and a nonprofit professional health services plan. Highmark is also an independent licensee of the Blue Cross Blue Shield Association. Highmark is organized as a membership nonprofit corporation, meaning that the board is elected

ATTORNEYS AT LAW | www.PFClaw.com

One Church Street P.O. Box 1307 Burlington, VT 05402-1307 phone 802.658.2311 fax 802.658.0042
A Member of TerraLex® The Worldwide Network of Independent Law Firms

UPE-0006043

by the members. In Highmark's case the directors are the members. At or prior to closing on the affiliation, UPE will become the voting member of Highmark with the right to elect the Highmark board of directors. (The directors of Highmark will remain members of Highmark for other purposes.) In essence, the ultimate control of Highmark (i.e., the power to elect its directors) will be transferred from the Highmark board to UPE. The Highmark directors, acting as members of Highmark, retain the exclusive right "to determine the requisites for persons of low income eligible for benefits under the Corporation's health plans," as is required under Pennsylvania law.

UPE's corporate documents establish it as a non-member corporation. The initial board of UPE consists of a subset of the pre-affiliation Highmark board. Those individuals will continue to serve on the Highmark board. Therefore, in general terms the control of Highmark, and thus the ultimate control of HCI, will rest with the UPE board of directors, each of whom will simultaneously serve on the Highmark board. In addition, the CEO of UPE and the other two principal officers of UPE are pre-affiliation Highmark executives.

To further define the control of Highmark, I advise you that the board of UPE will have the following characteristics:

- The CEO of UPE (a former CEO of Highmark) will serve on the board *ex officio*.
- Directors will have staggered three-year terms.
- At least a majority of the board members will be independent, as determined under IRS charitable organization rules.
- No director, other than the *ex officio* director, may be an employee of UPE or any organization controlled by UPE (i.e., Highmark, WPAHS and affiliates of either).

I will not describe the post-affiliation structure for the control of WPAHS because I do not believe that it is relevant to the change in control of Highmark, which causes the change in control of HCI.

The affiliation will occur after all necessary regulatory approvals have been secured. At present there is no targeted closing date. I will keep you advised as the affiliation transaction comes to its conclusion.

Pursuant to Section 14 of Regulation 81-2, I seek your approval of the change in control of HCI that will result from the affiliation transaction. I ask that you stamp a copy of this letter as "approved" and return it to me.

Mr. David F. Provost
November 29, 2011
Page 3

Should you require any further information, please let me know.

Cordially yours,

PAUL FRANK + COLLINS P.C.



By: Alan D. Port

ADP:srm

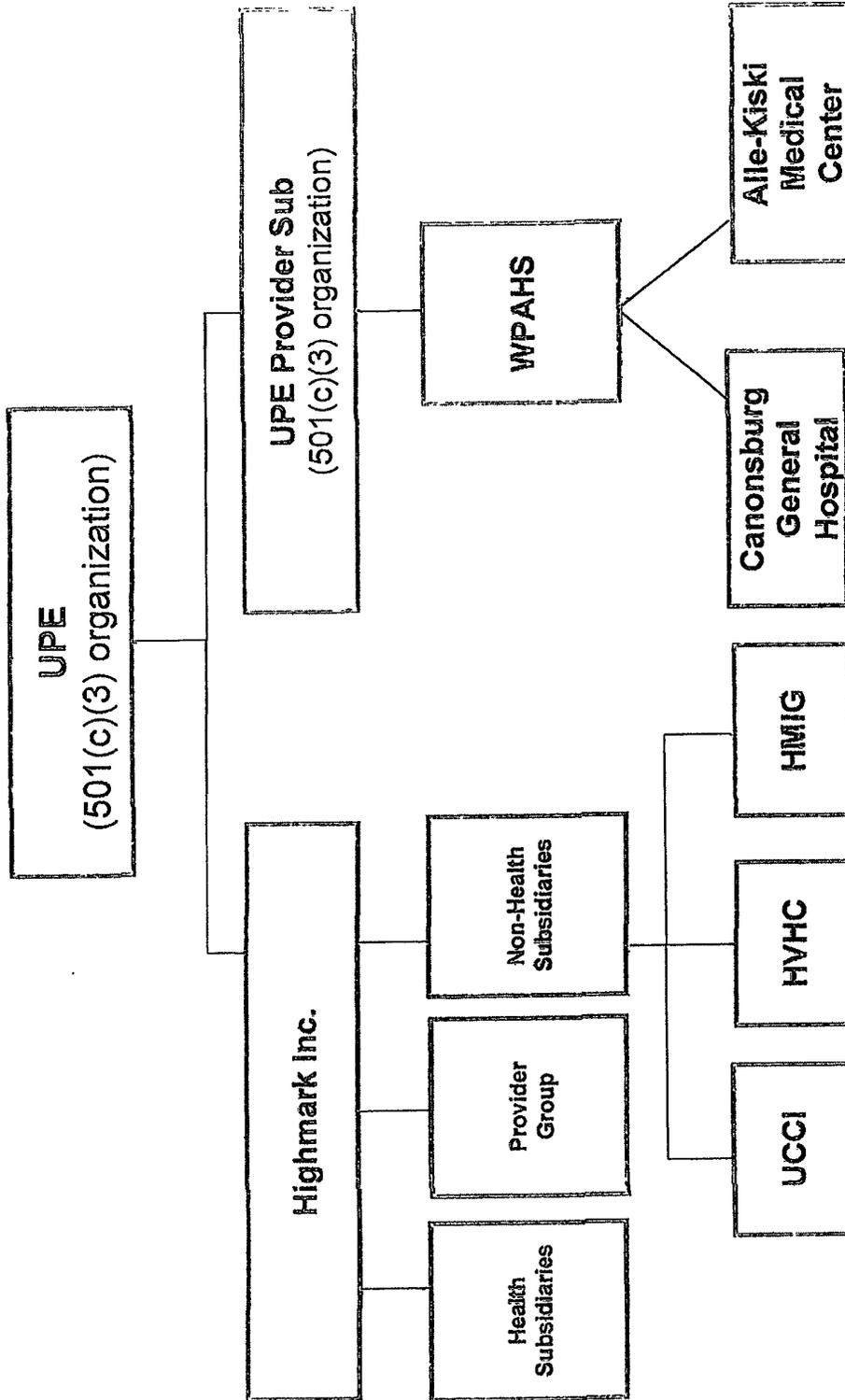
Enclosures

cc w/encs.: James A. M. Zarrella, Esq. (via email)
Ronald E. Chronister (via email)
Mr. Bill Mourelatos (via email)

1079612_v3: 7407-00003

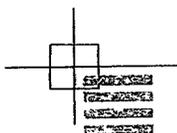
UPE-0006045

Proposed Corporate Structure



Chronister, Ronald

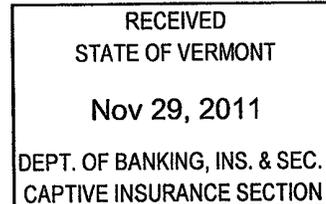
From: Captive Mail [captive@mail@state.vt.us]
Sent: Monday, December 12, 2011 3:46 PM
To: Alan D. Port
Subject: 2011-11-29 PFC to Department re Change in Control Highmark and West Penn Allegheny--HM
Captive.PDF
Attachments: 2011-11-29 PFC to Department re Change in Control Highmark and West Penn Allegheny--HM
Captive.PDF



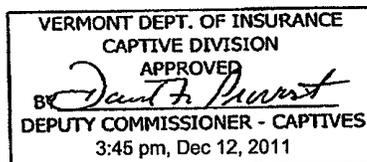
PAUL FRANK + COLLINS P.C.

Alan D. Port (VT)
aport@PFClaw.com

November 29, 2011



Mr. David F. Provost
Deputy Commissioner
Captive Insurance Division
Vermont Department of Banking, Insurance,
Securities and Health Care Administration
89 Main Street
Montpelier, VT 05620-3101



Re: HM Captive Insurance Company (“HM Captive”) – License #768

Dear Dave:

I am writing to advise you of an impending change in control of the ultimate parent company of HM Captive. HM Captive’s direct parent is HM Insurance Group, Inc. (“HMIG”), which is a direct subsidiary of Highmark, Inc. (“Highmark”). Accordingly, HM Captive’s ultimate parent is Highmark. (While we have not represented HM Captive on a regular basis, I have been asked to represent HM Captive in this limited matter.)

Highmark and West Penn Allegheny Health System, Inc. (“WPAHS”) have entered into an affiliation agreement dated as of October 31, 2011. Highmark is principally a health insurer. WPAHS is a health care provider through hospitals and affiliated organizations. A Form A filing, dated November 7, 2011, was submitted to the Pennsylvania Insurance Department, which describes the affiliation transaction. The Highmark press release with regard to the approval of the affiliation by the boards of Highmark and WPAHS can be found on the Highmark website at: <https://www.highmark.com/hmk2/about/newsroom/2011/prhmwp.shtml>. The press release contains a link to the Pennsylvania Form A filing, which provides much more detail with regard to the participants and the affiliation transaction.

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By way of background, Highmark is a Pennsylvania nonprofit corporation, which is licensed in Pennsylvania to operate a nonprofit hospital plan and a nonprofit professional health services

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UPE-0006048

Mr. David F. Provost
November 29, 2011
Page 2

plan. Highmark is also an independent licensee of the Blue Cross Blue Shield Association. Highmark is organized as a membership nonprofit corporation, meaning that the board is elected by the members. In Highmark's case the directors are the members. At or prior to closing on the affiliation, UPE will become the voting member of Highmark with the right to elect the Highmark board of directors. (The directors of Highmark will remain members of Highmark for other purposes.) In essence, the ultimate control of Highmark (i.e., the power to elect its directors) will be transferred from the Highmark board to UPE. The Highmark directors, acting as members of Highmark, retain the exclusive right "to determine the requisites for persons of low income eligible for benefits under the Corporation's health plans," as is required under Pennsylvania law.

UPE's corporate documents establish it as a non-member corporation. The initial board of UPE consists of a subset of the pre-affiliation Highmark board. Those individuals will continue to serve on the Highmark board. Therefore, in general terms the control of Highmark, and thus the ultimate control of HM Captive, will rest with the UPE board of directors, each of whom will simultaneously serve on the Highmark board. In addition, the CEO of UPE and the other two principal officers of UPE are pre-affiliation Highmark executives.

To further define the control of Highmark, I advise you that the board of UPE will have the following characteristics:

- The CEO of UPE (a former CEO of Highmark) will serve on the board *ex officio*.
- Directors will have staggered three-year terms.
- At least a majority of the board members will be independent, as determined under IRS charitable organization rules.
- No director, other than the *ex officio* director, may be an employee of UPE or any organization controlled by UPE (i.e., Highmark, WPAHS and affiliates of either).

I will not describe the post-affiliation structure for the control of WPAHS because I do not believe that it is relevant to the change in control of Highmark, which causes the change in control of HM Captive.

The affiliation will occur after all necessary regulatory approvals have been secured. At present there is no targeted closing date. I will keep you advised as the affiliation transaction comes to its conclusion.

Pursuant to Section 14 of Regulation 81-2, I seek your approval of the change in control of HM Captive that will result from the affiliation transaction. I ask that you stamp a copy of this letter as "approved" and return it to me.

Mr. David F. Provost
November 29, 2011
Page 3

Should you require any further information, please let me know.

Cordially yours,

PAUL FRANK + COLLINS P.C.



By: Alan D. Port

ADP:srm

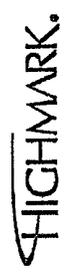
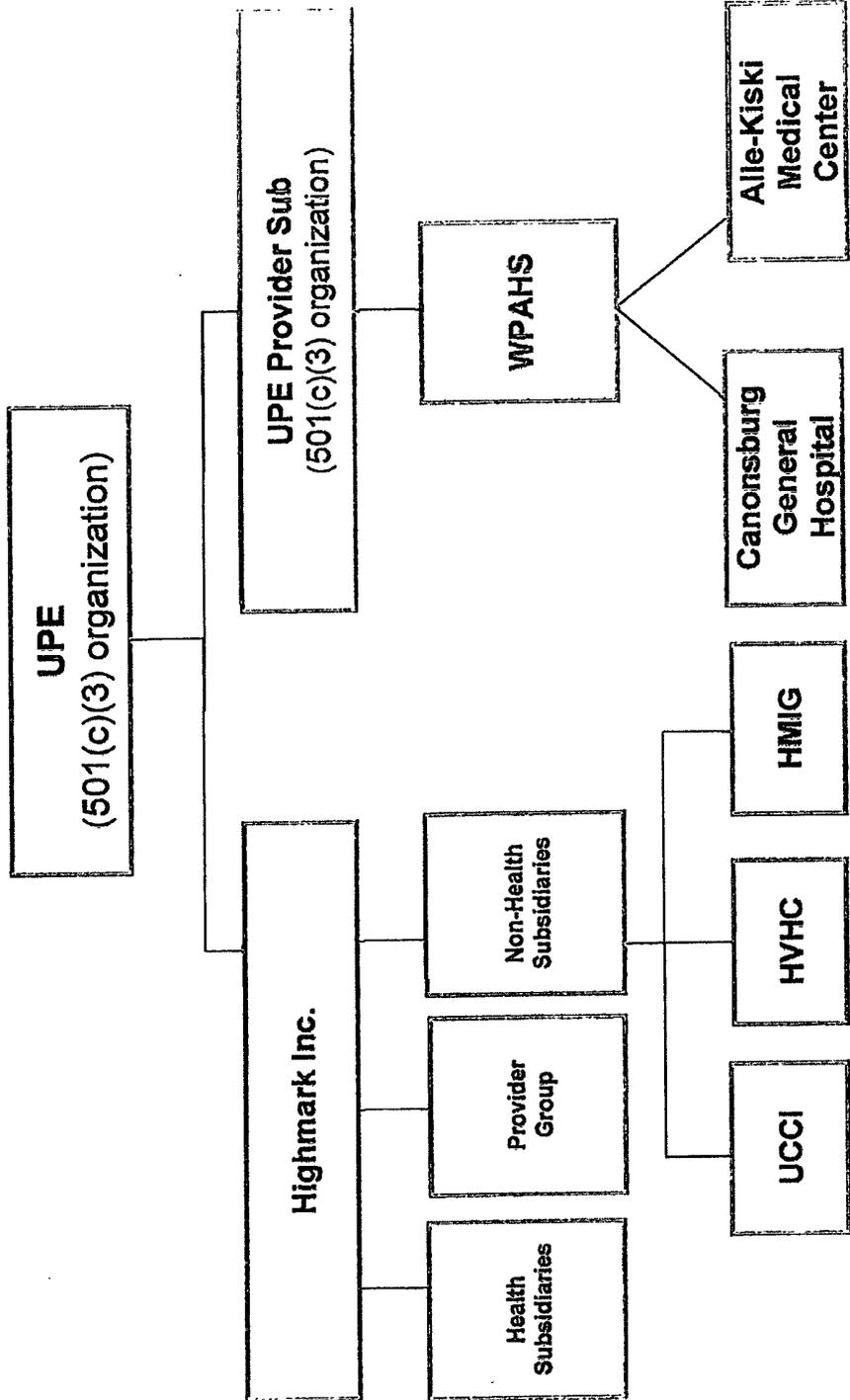
Enclosures

cc w/encs.: John L. Sencak, Esq. (via email)
Ronald E. Chronister (via email)
Mr. Andrew Sargeant (via email)

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UPE-0006050

Proposed Corporate Structure



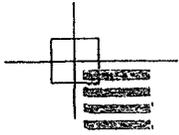
~~Confidential and proprietary~~

Chronister, Ronald

From: Sandra R. Milbank [smilbank@pfclaw.com] on behalf of Alan D. Port [APort@pfclaw.com]
Sent: Tuesday, November 29, 2011 3:19 PM
To: captivemail@state.vt.us
Cc: james.zarella@highmark.com; Chronister, Ronald; bill.mourelatos@aon.com; Alan D. Port
Subject: HCI, Inc. ("HCI") -- License #531
Attachments: 2011-11-29 PFC to Department re Change in Control Highmark and West Penn Allegheny--HCI.PDF

Sandra R. Milbank | Legal Administrative Assistant
Paul Frank + Collins P.C.
One Church Street | P.O. Box 1307 | Burlington, VT 05402-1307
phone 802.658.2311 | fax 802.658.0042 | web www.PFClaw.com | email
SMilbank@PFClaw.com

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November 29, 2011

Mr. David F. Provost
Deputy Commissioner
Captive Insurance Division
Vermont Department of Banking, Insurance,
Securities and Health Care Administration
89 Main Street
Montpelier, VT 05620-3101

Re: HCI, Inc. ("HCI") – License #531

Dear Dave:

I am writing to advise you of an impending change in control of the ultimate parent company of HCI. You will recall that the direct and ultimate parent of HCI currently is Highmark Inc. ("Highmark").

Highmark and West Penn Allegheny Health System, Inc. ("WPAHS") have entered into an affiliation agreement dated as of October 31, 2011. Highmark is principally a health insurer. WPAHS is a health care provider through hospitals and affiliated organizations. A Form A filing, dated November 7, 2011, was submitted to the Pennsylvania Insurance Department, which describes the affiliation transaction. The Highmark press release with regard to the approval of the affiliation by the boards of Highmark and WPAHS can be found on the Highmark website at: <https://www.highmark.com/hmk2/about/newsroom/2011/prhmwp.shtml>. The press release contains a link to the Pennsylvania Form A filing, which provides much more detail with regard to the participants and the affiliation transaction.

Briefly, the transaction will result in the creation of a holding company for Highmark and WPAHS. The ultimate holding company has been formed as a Pennsylvania nonprofit corporation and is known as UPE. Speaking generally, the holding company scenario is being used to preserve the federal income tax exemption (under Internal Revenue Code §501(c)(3)) of WPAHS, while Highmark continues as a federal income taxable entity. I have attached a chart of the post-affiliation proposed corporate structure for your convenience of reference. The chart also appears as an attachment (Tab N) to the Form A filing.

By way of background, Highmark is a Pennsylvania nonprofit corporation, which is licensed in Pennsylvania to operate a nonprofit hospital plan and a nonprofit professional health services plan. Highmark is also an independent licensee of the Blue Cross Blue Shield Association. Highmark is organized as a membership nonprofit corporation, meaning that the board is elected

by the members. In Highmark's case the directors are the members. At or prior to closing on the affiliation, UPE will become the voting member of Highmark with the right to elect the Highmark board of directors. (The directors of Highmark will remain members of Highmark for other purposes.) In essence, the ultimate control of Highmark (i.e., the power to elect its directors) will be transferred from the Highmark board to UPE. The Highmark directors, acting as members of Highmark, retain the exclusive right "to determine the requisites for persons of low income eligible for benefits under the Corporation's health plans," as is required under Pennsylvania law.

UPE's corporate documents establish it as a non-member corporation. The initial board of UPE consists of a subset of the pre-affiliation Highmark board. Those individuals will continue to serve on the Highmark board. Therefore, in general terms the control of Highmark, and thus the ultimate control of HCI, will rest with the UPE board of directors, each of whom will simultaneously serve on the Highmark board. In addition, the CEO of UPE and the other two principal officers of UPE are pre-affiliation Highmark executives.

To further define the control of Highmark, I advise you that the board of UPE will have the following characteristics:

- The CEO of UPE (a former CEO of Highmark) will serve on the board *ex officio*.
- Directors will have staggered three-year terms.
- At least a majority of the board members will be independent, as determined under IRS charitable organization rules.
- No director, other than the *ex officio* director, may be an employee of UPE or any organization controlled by UPE (i.e., Highmark, WPAHS and affiliates of either).

I will not describe the post-affiliation structure for the control of WPAHS because I do not believe that it is relevant to the change in control of Highmark, which causes the change in control of HCI.

The affiliation will occur after all necessary regulatory approvals have been secured. At present there is no targeted closing date. I will keep you advised as the affiliation transaction comes to its conclusion.

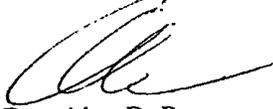
Pursuant to Section 14 of Regulation 81-2, I seek your approval of the change in control of HCI that will result from the affiliation transaction. I ask that you stamp a copy of this letter as "approved" and return it to me.

Mr. David F. Provost
November 29, 2011
Page 3

Should you require any further information, please let me know.

Cordially yours,

PAUL FRANK + COLLINS P.C.



By: Alan D. Port

ADP:srm

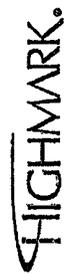
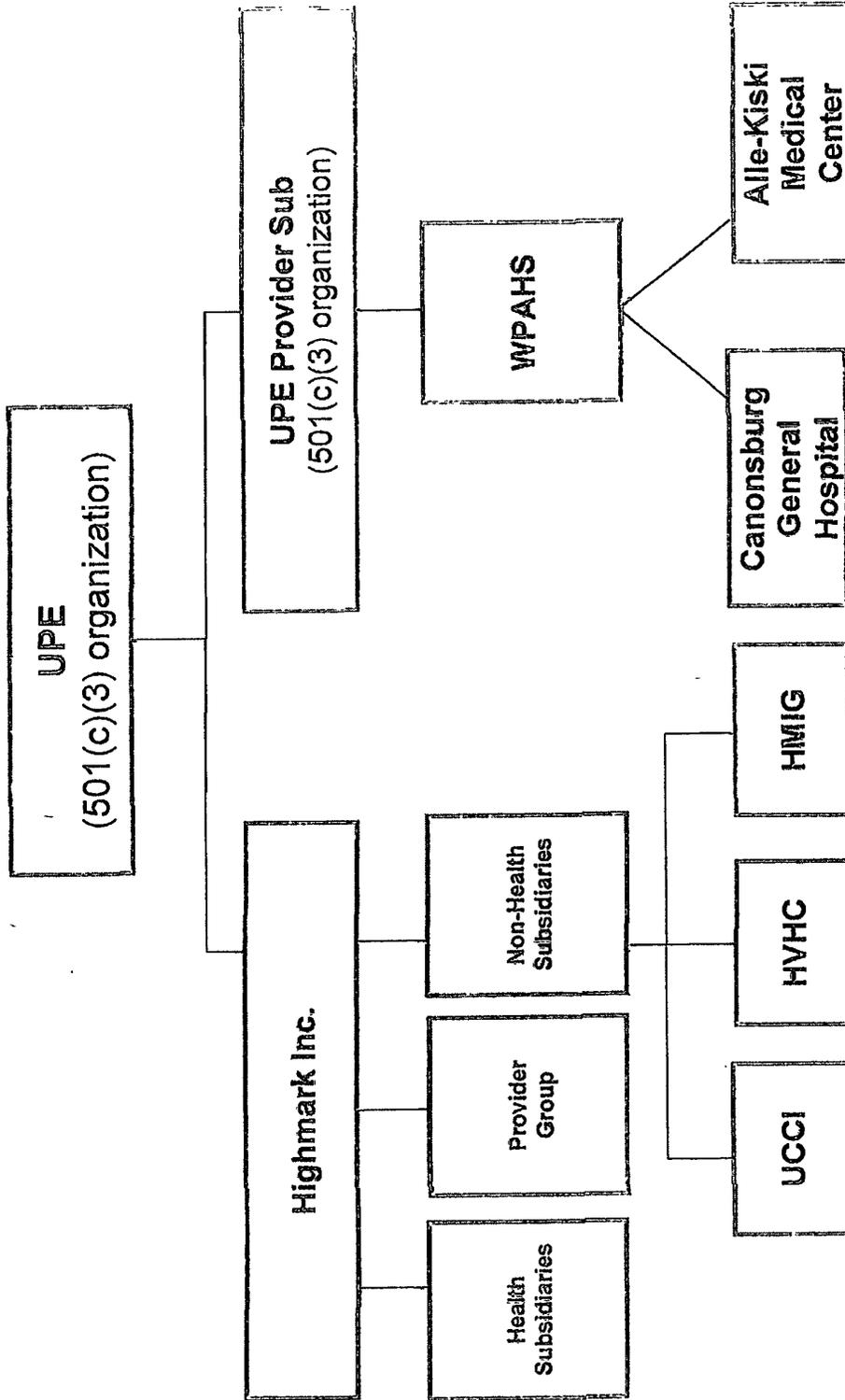
Enclosures

cc w/encs.: James A. M. Zarrella, Esq. (via email)
Ronald E. Chronister (via email)
Mr. Bill Mourelatos (via email)

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UPE-0006055

Proposed Corporate Structure

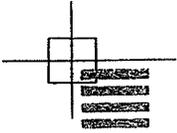


Chronister, Ronald

From: Sandra R. Milbank [smilbank@pfcclaw.com] on behalf of Alan D. Port [APort@pfcclaw.com]
Sent: Tuesday, November 29, 2011 3:11 PM
To: captivemail@state.vt.us
Cc: jack.sencak@highmark.com; Chronister, Ronald; ASargeant@vim.usarisk.com; Alan D. Port
Subject: HM Captive Insurance Company ("HM Captive") -- License #768
Attachments: 2011-11-29 PFC to Department re Change in Control Highmark and West Penn Allegheny--HM Captive.PDF

Sandra R. Milbank | Legal Administrative Assistant
Paul Frank + Collins P.C.
One Church Street | P.O. Box 1307 | Burlington, VT 05402-1307
phone 802.658.2311 | fax 802.658.0042 | web www.PFCclaw.com | email
SMilbank@PFCclaw.com

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PAUL FRANK & COLLINS P.C.

Alan D. Port (VT)
aport@PFClaw.com

November 29, 2011

Mr. David F. Provost
Deputy Commissioner
Captive Insurance Division
Vermont Department of Banking, Insurance,
Securities and Health Care Administration
89 Main Street
Montpelier, VT 05620-3101

Re: HM Captive Insurance Company ("HM Captive") – License #768

Dear Dave:

I am writing to advise you of an impending change in control of the ultimate parent company of HM Captive. HM Captive's direct parent is HM Insurance Group, Inc. ("HMIG"), which is a direct subsidiary of Highmark, Inc. ("Highmark"). Accordingly, HM Captive's ultimate parent is Highmark. (While we have not represented HM Captive on a regular basis, I have been asked to represent HM Captive in this limited matter.)

Highmark and West Penn Allegheny Health System, Inc. ("WPAHS") have entered into an affiliation agreement dated as of October 31, 2011. Highmark is principally a health insurer. WPAHS is a health care provider through hospitals and affiliated organizations. A Form A filing, dated November 7, 2011, was submitted to the Pennsylvania Insurance Department, which describes the affiliation transaction. The Highmark press release with regard to the approval of the affiliation by the boards of Highmark and WPAHS can be found on the Highmark website at: <https://www.highmark.com/hmk2/about/newsroom/2011/prhmwp.shtml>. The press release contains a link to the Pennsylvania Form A filing, which provides much more detail with regard to the participants and the affiliation transaction.

Briefly, the transaction will result in the creation of a holding company for Highmark and WPAHS. The ultimate holding company has been formed as a Pennsylvania nonprofit corporation and is known as UPE. Speaking generally, the holding company scenario is being used to preserve the federal income tax exemption (under Internal Revenue Code §501(c)(3)) of WPAHS, while Highmark continues as a federal income taxable entity. I have attached a chart of the post-affiliation proposed corporate structure for your convenience of reference. The chart also appears as an attachment (Tab N) to the Form A filing.

By way of background, Highmark is a Pennsylvania nonprofit corporation, which is licensed in Pennsylvania to operate a nonprofit hospital plan and a nonprofit professional health services

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UPE-0006058

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The affiliation will occur after all necessary regulatory approvals have been secured. At present there is no targeted closing date. I will keep you advised as the affiliation transaction comes to its conclusion.

Pursuant to Section 14 of Regulation 81-2, I seek your approval of the change in control of HM Captive that will result from the affiliation transaction. I ask that you stamp a copy of this letter as "approved" and return it to me.

Mr. David F. Provost
November 29, 2011
Page 3

Should you require any further information, please let me know.

Cordially yours,

PAUL FRANK + COLLINS P.C.



By: Alan D. Port

ADP:srm

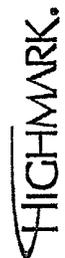
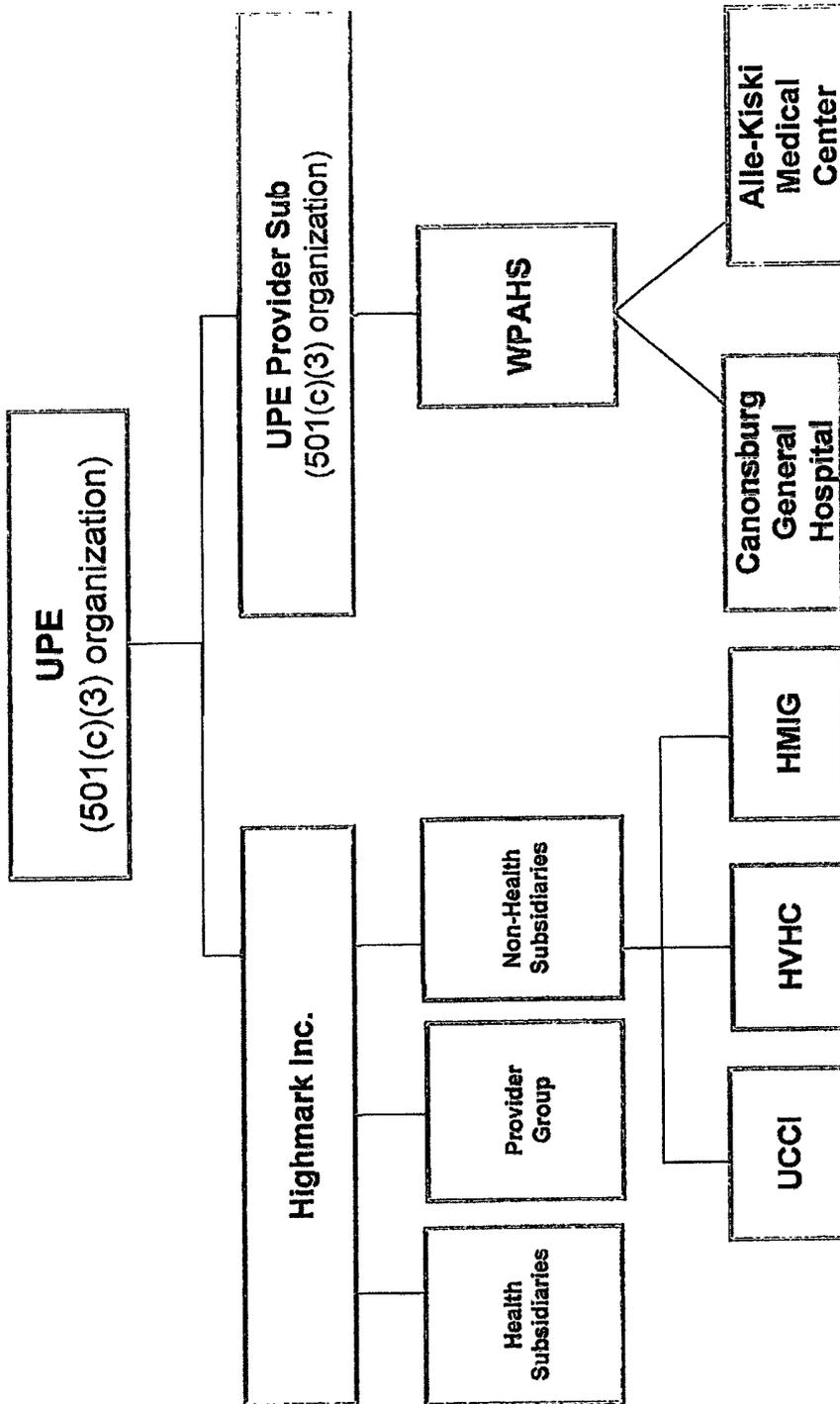
Enclosures

cc w/encs.: John L. Sencak, Esq. (via email)
Ronald E. Chronister (via email)
Mr. Andrew Sargeant (via email)

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UPE-0006060

Proposed Corporate Structure



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Frederick K. Campbell
Direct Dial: 501-688-8882
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E-mail: rcampbell@mwlaw.com

425 West Capitol Avenue, Suite 1800
Little Rock, Arkansas 72201-3525
Telephone: 501-688-8800
Fax: 501-688-8807

January 11, 2012

VIA FEDERAL EXPRESS

The Honorable Michael D. Riley
Acting Insurance Commissioner
West Virginia Offices of the Insurance Commissioner
1124 Smith Street
Charleston, West Virginia 25301

Attn: Andrew R. Pauley, Associate Counsel, APIR
Supervisor - Compliance & Enforcement
Legal Division

Re: Form A Statement Regarding the Acquisition of Control of Highmark West Virginia Inc. d/b/a Highmark Blue Cross Blue Shield West Virginia ("the Domestic Insurer") by UPE (the "Applicant")

Dear Commissioner Riley:

Pursuant to West Virginia Code § 33-27-1 *et seq.* and Regulation Series 35, I am enclosing for filing on behalf of the Applicant three copies of the Form A Statement dated January 11, 2012, all three of which contain originally executed Signature and Certification pages, regarding the above-captioned change of control of the Domestic Insurer. It is our understanding that there is no filing fee, per se, for a Form A filing, however, if the Articles of Incorporation or By-Laws are amended, then a fee is to accompany the filing. Please note that neither the Articles of Incorporation nor the By-Laws of the Domestic Insurer are being amended as a result of this transaction. Therefore, a filing fee is not included with this filing.

In 1999, Highmark Inc. ("Highmark") became the Ultimate Controlling Person of the Domestic Insurer and its wholly-owned subsidiary, Parker Benefits, Inc., under the provisions of W. Va. Code §§ 33-27-1 – 14 (the West Virginia Holding Company Systems Act). In 2004, Highmark became the sole corporate member of the Domestic Insurer, thereby acquiring the power to designate all of the members of the Board of Directors of the Domestic Insurer.

Highmark and West Penn Allegheny Health System, Inc. ("WPAHS") have entered into an Affiliation Agreement, dated October 31, 2011 (the "Agreement"), a copy of which is herewith filed as Exhibit A, pursuant to which a new nonprofit corporation was created to establish an integrated health care financing and delivery system in western Pennsylvania. Under the Agreement, at closing, the Applicant, the new nonprofit parent, will become the sole voting corporate member of Highmark.

There are a number of documents which we are submitting in sealed envelopes marked "Confidential." These include the biographical affidavits and certain financial statements. We ask that these documents be afforded confidential treatment and be excepted from disclosure (to the fullest extent permitted under West Virginia law) because they contain personal and/or proprietary information which we wish to remain as confidential. The Applicant also requests that it be notified in advance if any person requests access to any of these documents so that it has the opportunity to take action to prevent or limit any such disclosure.

The Applicant was formed on October 20, 2011 as a non-member Pennsylvania nonprofit corporation. The corporation was organized for scientific, educational and charitable purposes and in this connection has filed an application with the Internal Revenue Service requesting that the Applicant be recognized as exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986 as amended. At closing of the affiliation transaction, the Applicant will be the sole member of the class of members of Highmark which will elect Highmark's Board of Directors. It is not anticipated that the Applicant will have significant operations separate from Highmark or WPAHS.

Our client is actively pursuing approval of this affiliation in Pennsylvania and is hopeful that it will receive a final Order from the Pennsylvania Insurance Department in the next few months. It is also working in other states that require approval of some part of the affiliation effort. The goal is to obtain all necessary state approvals by March 29, 2012. Of course, some of these state approvals, including the one in West Virginia, will be conditioned upon the final approval of the proposed transaction by the Pennsylvania Insurance Department. We are, therefore, requesting an expedited review of the enclosed Form A and the scheduling of a hearing, if necessary, within a timeframe that will permit your office to issue a conditional approval order by March 29, 2012.

We look forward to working with your Department in this matter and appreciate your courtesy and assistance.

Sincerely,

MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, P.L.L.C.

By


Frederick K. Campbell

FKC/ka
Enclosures

The Honorable Michael D. Riley

January 11, 2012

Page 3

cc: Mr. J. Fred Earley II (w/enclosures)
Mr. Chad B. McIntosh (w/enclosures)
Mr. Edward A. Bittner, Jr. (w/enclosures)
Mr. Richard J. Enterline (w/enclosures)
Mr. Ronald E. Chronister (w/enclosures)