

determinative, however, is extremely limited. Only documents that were "a substantial inducement to the government to enter into the consent decree" are subject to disclosure. *United States v. Bleznak, et al.*, 153 F.3d 16, 20–21 (2d Cir. 1998). See also *Massachusetts School of Law at Andover, Inc. v. United States*, 118 F.3d 776, 784 (D.C. Cir. 1997) (only documents, "such as reports to the government, 'that individually had a significant impact on the government's formulation of relief—i.e., on its decision to propose or accept a particular settlement'" need be disclosed). Even the one case cited by CVT recognized that the Tunney Act "does not require full disclosure of Justice Department files, or grand jury files, or defendant's files, but it does require a good faith review of all pertinent documents and materials and a disclosure of those 'materials and documents that substantially contribute to the determination [by the government] to proceed by consent decree * * *.'" *United States v. Central Contracting Co.*, 537 F. Supp. 571, 577 (E.D. Va. 1982).

In this case, there are no determinative documents. The United States conducted a thorough investigation, involving the review of extensive documents from MHC as well as from MHC physicians, customers, and competitors. None were determinative in the decision to seek MHC's dissolution, nor were there any that constituted a substantial inducement to seek such relief.

4. The Dissolution of Mountain Health Care Is a Reasonable Remedy Given Its Substantial Market Power and Conduct Over the Past Nine Years

The dissolution of MHC is an appropriate remedy based upon the facts cited in the Complaint and CIS. These facts show that MHC was created in part to enhance its market power through collective negotiations, that it has effectively used that market power through the use of a common fee schedules since its creation, and continued to enter or renew contracts under that common fees schedules until shortly before agreeing to dissolve. The Court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.⁷

An argument that injunctive relief would be appropriate here, because the FTC accepted injunctive relief in other cases involving physicians, has no legal basis. The settlement in a matter between two parties is in no way binding on the manner in which a future matter between two different parties is settled, even if there are some similarities between the matters. Antitrust investigations are very fact specific matters. The particular facts in this investigation led the United States to conclude that the dissolution of MHC was likely to be far more effective than any injunctive relief would be.⁸

5. None of the Various and Inconsistent Request for Relief Made by CVT and Oliva Are in the Public Interest

In the *amicus* brief, Oliva requests the Court to require the United States to file a revised Complaint and Competitive Impact Statement, and then extend the public notice and comment period to permit third parties to comment on these revised disclosures. Exh. A at 7. In his comment on behalf of CVT, however, he makes the contradictory request that the Court reject the proposed Final Judgment, dismiss the Complaint with prejudice, and impose sanctions on the United States under Rule 11.⁹ Exh. B at 46–47.

There is no justification for either of these contrary request. The United States made appropriate disclosures of all information. Further, to delay this proceeding would not be in the public interest. Mountain Health Care has been in existence for nine years, using its uniform fee schedule during that entire time. Entry of the Proposed Final Judgment would quickly remedy the competitive harm caused by this conduct.

B. Comment From Center for the Advancement of Capitalism

The Center for the Advancement of Capitalism ("CAC") submitted a comment raising, in summary form, the same arguments raised by the comment

and brief filed by CVT and Oliva.¹⁰ CAC claims, based solely on MHC's assertions, that MHC is complying with the government's Health Care Policy Statements because it is using a "messenger model." Exh. C at 1–2. It accuses the United States, in seeking to reduce health care costs, of ignoring the individual rights of Physicians and resulting in the "the partial socialization of medicine absent clear congressional authority." *Id.* at 2. It accuses the United States of specifically targeting physician groups that are unlikely to offer a defense. *Id.* at 2. And it repeats CVT's assertions that the United States has limited jurisdiction ("tenuous at best") because MHC's conduct did not affect interstate commerce. *Id.* at 2–3.

All but one of these arguments have been addressed, in detail, in response to CVT's and Oliva's comments. CAC's general accusation that the United States targets physician groups unable to defend themselves is not correct. In this matter, as in all of its matters, the United States targets conduct that is causing substantial anticompetitive effects and is harming consumers.

C. Comment From Marcia L. Brauchler, Physicians Ally, Inc.

Ms. Brauchler, who operates Physicians Ally, Inc., a consulting business which assists physicians in dealing with insurance companies and other payors, submitted a comment opposing the proposed Final Judgment. In her view, the United States "lacks insights into the practices of MHC's business," which was trying in good faith to comply with the government's Health Care Policy Statements. From her personal experience, she believes that the government claims that "no one operates the messenger model correctly," and that physicians are therefore presumed guilty from the outset of an antitrust investigation. She believes that the antitrust laws were intended to be applied to insurance companies, not physicians, who are not, in her view, the cause of rising health insurance premiums. She does not believe that anyone was hurt by MHC's practices. Like CVT and CAC, she states that physicians, as United States citizens, have an absolute right to associate with other professionals for their mutual benefit unless they implement "actual force against other individuals." Finally, she questions

States v. BNS, Inc., 858 F.2d 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States v. Gillette Co.*, 406 F. Supp. at 716. See also *United States v. American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), cert. denied, 465 U.S. 1101 (1984).

⁸ CVT's allegation that the United States never consulted customers who would be affected by the dissolution of MHC during the course of the investigation is correct. The United States discussed this possible remedy with numerous MHC customers.

⁹ Oliva and CVT have opposed several recent antitrust consent decrees. Many of their comments, both official and unofficial, can be read at the CVT Web site, www.voluntarytrade.org.

¹⁰ Oliva is currently a senior fellow at CAC. Exh. A at 1. According to its comment, CAC is a tax-exempt organization that applies Ayn Rand's philosophy of Objectivism to contemporary public policy issues in order to identify and protect the individual rights of the American people. Exh. C at 1 n.1.

⁷ *United States v. Bechtel Corp.*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United*