

why MHC is being forced to disband while other physician groups which have been sued in the past were allowed to continue to operate. Exh. D at 1–2.

As she states in her comment, Ms. Brauchler has had personal experience in settling government antitrust cases. Exh. D at 1. She was a defendant in two antitrust actions brought by the Federal Trade Commission last year, challenging her role representing two physician groups in fee negotiations with managed care purchasers.<sup>11</sup> As with CVT and CAC, the vast majority of her comments relate to whether the United States had a valid basis for finding a violation and filing this case, matters not relevant to this proceeding. *See supra*, Section II.A.1. Based on its thorough investigation during the past two years, the United States believes it obtained evidence about the business practices of MHC and that evidence shows that employers, particularly those employers who opt to self-insure for their employees health care benefits, were hurt by MHC's actions. Ms. Brauchler's implication that the United States is not applying the antitrust laws to insurance companies is simply not true. The United States has brought a number of actions against firms in the health insurance industry.<sup>12</sup>

Finally, the argument that injunctive relief would be appropriate here, because the FTC accepted injunctive relief in other cases involving physicians, as noted in response to the CVT's comments, has no legal basis. Antitrust investigations are very fact-specific matters. The particular facts in this investigation led the United States to conclude that the dissolution of MHC is likely to be far more effective than any injunctive relief would be.

#### *D. Comment From Anonymous "Concerned Employees"*

An anonymous group of "concerned employees," submitted a comment in support of the proposed Final Judgment. This comment states that is "common

knowledge" among current and former employees that Ellen Wells, MHC's chief executive officer, "purposely put off changing to Messengering because she was under the impression that the DOJ would just disappear," and because she believed that it would affect MHC's collections and impact her bonus. Exh. E. Other than expressing support for the dissolution of MHC this comment is primarily a personal criticism of Ms. Wells and raises issues that are not relevant to the relief contained in the proposed Final Judgment.

#### *E. Comment From Anonymous Person Attaching Newspaper Advertisements*

An anonymous person submitted a comment asking why MHC, if it engaged in the conduct alleged in this case, would run newspaper advertisements implying that it did nothing wrong. Exh. F. This comment does not address the substance of the proposed Final Judgment, and should be considered by the Court.

#### *F. Comment From Janine Mazur, Mountain Health Care Department Head*

Ms. Mazur submitted a comment criticizing the government's investigation and filing of this case. She states her opinion that MHC's collective rate setting has not resulted in higher physician reimbursements, claiming that MHC's fee schedule had not been changed since the start of the company. She opines that the physicians intended to provide cost-effective health care, not increase their fees. She believes that the dissolution of MHC will increase the cost of health care because it will increase the market power of national insurance carriers such as Aetna and Cigna, which have higher fee schedules than MHC's schedule. Exh. G.

Ms. Mazur is a department head of MHC, a fact that she does not disclose to the Court in her letter. Although she criticizes the proposed dissolution of MHC, her substantive comments relate entirely to the decision to bring this case in the first instance. As noted above, such comments lack any relevancy in this Tunney Act proceeding. *See supra*, Section II.A.1. Moreover, the United States conducted a thorough investigation of MHC's conduct here, and concluded that MHC's conduct reduced competition, increased prices, and that its dissolution will have a procompetitive effect on the market.

#### *G. Comment From Steward M. Auten, President of Auten Printing, Inc.*

Mr. Auten submitted a comment criticizing the government's decision to file this case. In his view, the case is based on "emotions, circumstantial

evidence, hype and superficial information." He believes that MHC gives quality care and lower rates, and that the dissolution of MHC will increase health care costs in Western North Carolina. Exh. H.

Again, Mr. Auten's comment relates to the government's decision to file this case, which is not a relevant issue here. *See supra*, Section II.A.1. That decision was made after a thorough, two-year investigation of the local market. One focus of that investigation was to assess the effect that Mountain's collective rate setting conduct had on the fees paid by employers in Western North Carolina. To do that, the government interviewed numerous employers in the area and concluded that MHC's conduct was increasing their health care costs.

#### *H. Two Comments From Individual Consumers*

Two comments were received from individual consumers, Mike and Gale Grooms, who have been satisfied with the medical services they have received from Mountain Health Care. (Exh. I) Both oppose this case and the proposed dissolution of MHC. Another consumer submitted a comment that characterizes the filing of this case as "tyrannical" and questions how MHC could increase medical costs in the area given that they cover only 8% of the population. Exh. J. Even though these customers liked the service they received from Mountain Health Care, they could have received lower prices and better service with competition. These comments do not raise specific facts relevant to this Tunney Act proceeding.

### **III. Conclusion**

After careful consideration of these public comments, the United States has concluded that entry of proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint, and is therefore in the public interest. Once these comments and this Response are published in the **Federal Register**, the United States will move the Court to enter the proposed Final Judgment.

Dated: June XX, 2003.

Respectfully submitted.

David C. Kelly,  
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#### **Motion of S.M. Oliva for Leave To File Brief *Amicus Curiae***

Before: Judge Lacy Thornburg

Pursuant to 15 U.S.C. 16(f), I, S.M. Oliva, acting *pro se*, respectfully move

<sup>11</sup> Docket No. C-4054, In the Matter of Physician Integrated Services of Denver, Inc., Michael J. Guese, M.D., and Marcia L. Brauchler; Docket No. C-4055, In the Matter of Aurora Associated Primary Care Physicians, L.L.C., Richard A. Patt, M.D., Gary L. Gaede, M.D., and Marcia L. Brauchler, at <http://www.ftc.gov/bc/CommissionActions/2002.htm>.

<sup>12</sup> *United States and Texas v. Aetna Inc. and The Prudential Insurance Company of America*, 1999–2 Trade Cas. (CCH) ¶ 72,730 (N.D. Texas 1999); *United States v. Medical Mutual of Ohio, Inc.*, 63 Fed. Reg. 52,764 (October 1, 1998); *United States v. Delta Dental of Rhode Island*, 943 F. Supp. 172 (D.R.I. 1996) & 1997–2 Trade Cas. (CCH) ¶ 71,860 (D.R.I. July 2, 1997); *United States v. Vision Service Plan*, 1996–1 Trade Cas. (CCH) ¶ 71,404 (D.D.C. 1996); *United States v. Oregon Dental Service*, 1995–2 Trade Cas. (CCH) ¶ 71,062 (N.D. Ca. 1995); *United States v. Delta Dental Plan of Arizona, Inc.*, 1995–1 Trade Cas. (CCH) ¶ 71,048 (D. Ariz. 1995).