

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA and
STATE OF MONTANA,

Plaintiffs,

v.

BLUE CROSS AND BLUE SHIELD
OF MONTANA, INC., BILLINGS
CLINIC, BOZEMAN DEACONESS
HEALTH SERVICES, INC.,
COMMUNITY MEDICAL CENTER,
INC., NEW WEST HEALTH
SERVICES, INC., NORTHERN
MONTANA HEALTH CARE, INC.,
and ST. PETER'S HOSPITAL,

Defendants.

Case No.1:11-cv-00123-RFC

ASSET PRESERVATION STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Asset Preservation Stipulation and Order

(“Stipulation and Order”):

- A. **“Acquirer”** means the entity to whom the Divestiture Assets are divested.
- B. **“Agreement”** means the Letter of Intent dated on or around August 1, 2011, by and among Blue Cross and the Hospital Defendants.
- C. **“Billings Clinic”** means Defendant Billings Clinic, a Montana non-profit corporation based in Billings, Montana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees.
- D. **“Blue Cross”** means Defendant Blue Cross and Blue Shield of Montana, Inc., a Montana corporation based in Helena, Montana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees.

E. **“Bozeman Deaconess”** means Defendant Bozeman Deaconess Health Services, Inc., a Montana non-profit corporation based in Bozeman, Montana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees.

F. **“Community Medical Center”** means Community Medical Center, Inc., a Montana non-profit corporation based in Missoula, Montana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees.

G. **“Divestiture Assets”** means:

- (1) New West’s Commercial Health Insurance Business;
- (2) all business, financial, and operational books, records, and data, both current and historical, that relate to New West’s Commercial Health Insurance Business.

H. **“Health-Care Provider”** means any person or entity that provides any health-care service, including hospitals, physician groups,

laboratories, ambulatory surgical centers, nursing facilities, and other providers of health-care services.

I. **“Health Insurer”** means any entity that is responsible for all or part of any expense for health-care services provided to any person or group. The term includes commercial health-insurance plans, including health-maintenance organizations, preferred-provider organizations, and indemnity plans; health-care provider rental networks, union trust funds, and multiple employer trusts; and self-insured health plans.

J. **“Hospital Defendants”** means Billings Clinic, Bozeman Deaconess, Community Medical Center, Northern Montana Health Care, and St. Peter’s.

K. **“New West”** means New West Health Services, Inc., a Montana non-profit corporation based in Helena, Montana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees.

L. **“New West’s Commercial Health Insurance Business”** means all of New West’s health-insurance contracts and policies for products providing commercial health insurance, including fully-insured and administrative-services-only products, health-maintenance organization products, preferred-provider organization products, point-of-service products, and indemnity-insurance products, for both groups and individuals. The term **“New West’s Commercial Health Insurance Business”** does not include (1) New West’s Medicare Advantage products and (2) New West’s health-insurance contracts and policies covering employees of the Hospital Defendants.

M. **“Northern Montana Health Care”** means Northern Montana Health Care, Inc., a Montana non-profit corporation based in Havre, Montana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees.

N. **“Provider Network”** means all of the health-care providers that have contracted with a health insurer to provide medical services.

O. “**St. Peter’s**” means St. Peter’s Hospital, a Montana non-profit corporation based in Helena, Montana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees.

II. OBJECTIVES

The proposed Final Judgment filed in this case is meant to ensure New West and the Hospital Defendants’ prompt divestiture of the Divestiture Assets for the purpose of preserving viable competition in the sale of commercial health insurance in the Billings Metropolitan Statistical Area (“MSA”), Bozeman Micropolitan Statistical Area (“MiSA”), Helena MiSA, and Missoula MSA, in order to remedy the effects that the United States and the State of Montana allege would otherwise result from the Agreement. This Stipulation and Order ensures, prior to such divestitures, that the Divestiture Assets remain economically viable, competitive, and ongoing business concerns, and that competition is maintained during the pendency of the ordered divestitures.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over each of the Defendants, and venue of this action is proper in the United States District Court for the District of Montana.

IV. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that the proposed Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (the "APPA"), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the Defendants and by filing that notice with the Court.

B. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notices required by the APPA. The publication must be arranged no later than five calendar days after

Defendants' receipt from the United States of the text of the notice and the identity of the newspapers within which the publication must be made.

Defendants must promptly send to the United States (1) confirmation that publication of the newspaper notices has been arranged, and (2) the certification of the publication prepared by the newspapers within which the notices were published.

C. Defendants must abide by and comply with the provisions of the proposed Final Judgment, pending its entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and must, from the date of the signing of this Stipulation and Order by the parties, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

D. Defendants may not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Stipulation and Order.

E. This Stipulation and Order applies with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

F. If (1) the proposed Final Judgment is not entered pursuant to this Stipulation and Order and the time has expired for all appeals of any court ruling declining entry of the proposed Final Judgment, or (2) the United States has withdrawn its consent as provided in Paragraph A above, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

G. New West and the Hospital Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that Defendants will later raise no claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. PRESERVATION OF THE DIVESTITURE ASSETS

Until the divestiture required by the Final Judgment has been accomplished or until New West and the Hospital Defendants have no further obligations to preserve the divestiture assets pursuant to Section VI(G) of the proposed Final Judgment, whichever is later:

A. Hospital Defendants and New West must preserve, maintain, and continue to operate the Divestiture Assets in a manner consistent with this Stipulation and Order and the proposed Final Judgment.

B. Defendants may not take any action that would jeopardize, delay, or impede the sale of the Divestiture Assets. Provided, however, that nothing in this Stipulation and Order and the Final Judgment precludes Blue Cross from competing for New West's commercial health-insurance customers, before or after the divestiture.

C. Hospital Defendants and New West must take all steps necessary to preserve and maintain the value and goodwill of New West's Commercial Health Insurance Business, and continue to operate that

Business as an economically viable, competitive, and ongoing line of business.

D. Hospital Defendants and New West must use all reasonable efforts to maintain and increase the sales and revenues of New West's Commercial Health Insurance Business, and must maintain at 2010 levels or previously approved levels for 2011, whichever are higher, all operational, promotional, advertising, sales, technical, customer-service, and marketing support for that Business.

E. Hospital Defendants and New West must provide sufficient working capital and lines and sources of credit to continue to maintain New West's Commercial Health Insurance Business as an economically viable, competitive, and ongoing line of business.

F. Hospital Defendants and New West may not, except as part of a divestiture approved by the United States in accordance with the proposed Final Judgment, remove, sell, lease, assign, transfer, destroy, pledge, or otherwise dispose of any of the Divestiture Assets.

G. New West's employees whose duties are primarily related to the operation of the Divestiture Assets may not be terminated or reassigned to other areas within the company except for transfer bids initiated by employees pursuant to New West's regular, established job-posting policy. New West must provide the United States with 10 calendar days' notice of such transfer.

H. Hospital Defendants and New West must operate New West's Commercial Health Insurance Business as an economically viable, competitive, and ongoing line of business. Operating this Business may require the provision of services such as federal and state regulatory compliance; human resources; legal; finance; actuarial; claims processing; software and computer operations support; eligibility; enrollment; utilization management; and administrative and such other services as are reasonably necessary to operate the Business.

I. Hospital Defendants and New West must use their best efforts to preserve the existing contractual or other relationships with each health-care provider, customer, and other entity or individual having business

relations relating to New West's Commercial Health Insurance Business, in accordance with current practice.

J. Hospital Defendants and New West must maintain, in accordance with sound accounting principles, accurate and complete books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income attributable to the Divestiture Assets.

K. Subject to the approval of the United States, Hospital Defendants and New West must appoint New West Chief Executive Officer David Kibbe or another person or persons to oversee the Divestiture Assets. This person will be responsible for ensuring Defendants' compliance with this section, and will have complete managerial responsibility for the Divestiture Assets, subject to the provisions of this Final Judgment. If such person is unable to perform his or her duties, Hospital Defendants and New West must appoint, subject to the approval of the United States, a replacement within 10 working days. If Hospital Defendants and New West fail to appoint a replacement

acceptable to the United States within this time period, the United States will appoint a replacement.

L. Defendants may not take any action that would interfere with the ability of any trustee appointed pursuant to the proposed Final Judgment to complete the divestitures pursuant to the proposed Final Judgment to an Acquirer acceptable to the United States.

VI. DURATION OF ASSET-PRESERVATION OBLIGATIONS

Defendants' obligations under Section V of this Stipulation and Order remain in effect until consummation of the Divestiture required by the proposed Final Judgment or until New West and the Hospital Defendants have no further obligations to preserve the divestiture assets pursuant to Section VI(G) of the proposed Final Judgment, whichever is later. If the United States voluntarily dismisses the Complaint in this matter, Defendants are released from all further obligations under this Stipulation and Order.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA

A handwritten signature in cursive script that reads "Peter J. Mucchetti". The signature is written in black ink and is positioned above the typed name.

Peter J. Mucchetti

Antitrust Division

U.S. Department of Justice

450 Fifth Street, NW, Suite 4100

Washington, DC 20530

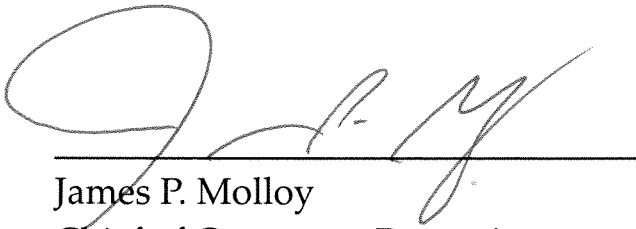
Tel.: (202) 353-4211

Fax: (202) 307-5802

peter.j.mucchetti@usdoj.gov

Dated: November 8, 2011

FOR PLAINTIFF STATE OF MONTANA:

A handwritten signature in black ink, appearing to read 'J. P. Molloy', is written over a solid horizontal line.

James P. Molloy
Chief of Consumer Protection
215 N. Sanders
P.O. Box 201401
Helena, MT 59620
Telephone: (406) 444-2026
JMolloy@mt.gov

Dated: November 2, 2011

FOR DEFENDANT
BLUE CROSS AND BLUE SHIELD OF MONTANA, INC.

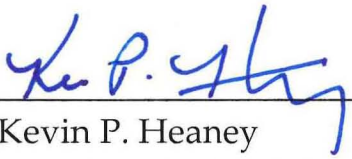


Sean Slanger

Associate General Counsel
Blue Cross and Blue Shield of Montana, Inc.
560 North Park Avenue
Helena, MT 59601
Tel: (406) 437-5262
Fax: (406) 447-8607
sean_slanger@bcbsmt.com

Dated: November 7, 2011

FOR DEFENDANTS
BILLINGS CLINIC,
BOZEMAN DEACONESS HEALTH SERVICES, INC.,
COMMUNITY MEDICAL CENTER, INC.,
NEW WEST HEALTH SERVICES, INC.,
NORTHERN MONTANA HEALTH CARE, INC., and
ST. PETER'S HOSPITAL



Kevin P. Heaney
Crowley Fleck PLLP
Transwestern Plaza II
490 N. 31st St., Suite 500
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Tel.: (406) 457-2023
kheaney@crowleyfleck.com

Dated: November 8, 2011

ORDER

IT IS SO ORDERED by the Court, this ____ day of _____:

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that, on November 8, 2011, a copy of the foregoing document was served on the following persons by the following means:

- 1 CM/ECF
- Hand Delivery
- U.S. Mail
- Overnight Delivery Service
- Fax
- 2,3 E-Mail

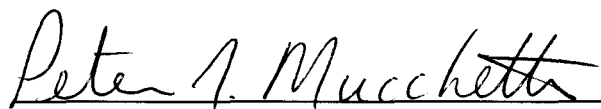
1. Clerk, U.S. District Court

2. Counsel for Defendant Blue Cross and Blue Shield of Montana:

David C. Lundsgaard
Graham & Dunn PC
Pier 70
2801 Alaskan Way Suite 300
Seattle, WA 98121-1128

3. Counsel for Billings Clinic; Bozeman Deaconess Health Services, Inc.; Community Medical Center, Inc.; New West Health Services, Inc.; Northern Montana Health Care, Inc.; and St. Peter's Hospital:

Kevin P. Heaney
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A handwritten signature in black ink, reading "Peter J. Mucchetti". The signature is written in a cursive style and is positioned above a solid horizontal line.

Peter J. Mucchetti

Antitrust Division

U.S. Department of Justice

450 Fifth Street, NW, Suite 4100

Washington, DC 20530

Tel.: (202) 353-4211

peter.j.mucchetti@usdoj.gov

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA and
STATE OF MONTANA,

Plaintiffs,

v.

BLUE CROSS AND BLUE SHIELD
OF MONTANA, INC., BILLINGS
CLINIC, BOZEMAN DEACONESS
HEALTH SERVICES, INC.,
COMMUNITY MEDICAL CENTER,
INC., NEW WEST HEALTH
SERVICES, INC., NORTHERN
MONTANA HEALTH CARE, INC.,
and ST. PETER'S HOSPITAL,

Defendants.

Case No.1:11-cv-00123-RFC

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiffs, the United States of America and the State of Montana, filed their Complaint on November 8, 2011, alleging that Defendants Blue Cross, New West, Billings Clinic, Bozeman Deaconess,

Community Medical Center, Northern Montana Health Care, and St. Peter's, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights and assets by New West and the Hospital Defendants to ensure that competition is not substantially lessened by the Agreement;

AND WHEREAS, the United States and the State of Montana require Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, New West and the Hospital Defendants have represented to the United States and the State of Montana that the divestiture required by this Final Judgment can and will be made, and that

they will not later raise any claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions of this Final Judgment;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of, and each of the parties to, this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 1 of the Sherman Act, 15 U.S.C. § 1; Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18; and the Montana Unfair Trade Practices Act, Mont. Code Ann. § 30-14-205.

II. DEFINITIONS

As used in this Final Judgment:

A. **“Acquirer”** means the entity to whom the Divestiture Assets are divested.

B. **“Agreement”** means the Letter of Intent dated on or around August 1, 2011, by and among Blue Cross and the Hospital Defendants.

C. “**Billings Clinic**” means Defendant Billings Clinic, a Montana non-profit corporation based in Billings, Montana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees.

D. “**Blue Cross**” means Defendant Blue Cross and Blue Shield of Montana, Inc., a Montana corporation based in Helena, Montana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees.

E. “**Bozeman Deaconess**” means Defendant Bozeman Deaconess Health Services, Inc., a Montana non-profit corporation based in Bozeman, Montana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees.

F. “**Broker**” means any insurance agent, producer, or broker who facilitates the sale of health-insurance plans to individuals or groups.

G. **“Community Medical Center”** means Community Medical Center, Inc., a Montana non-profit corporation based in Missoula, Montana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees.

H. **“Divestiture Assets”** means:

- (1) New West’s Commercial Health Insurance Business;
- (2) all business, financial, and operational books, records,

and data, both current and historical, that relate to New West’s Commercial Health Insurance Business.

I. **“Health-Care Provider”** means any person or entity that provides any health-care service, including hospitals, physician groups, laboratories, ambulatory surgical centers, nursing facilities, and other providers of health-care services.

J. **“Health Insurer”** means any entity that is responsible for all or part of any expense for health-care services provided to any person or group. The term includes commercial health-insurance plans, including

health-maintenance organizations, preferred-provider organizations, and indemnity plans; health-care provider rental networks, union trust funds, and multiple employer trusts; and self-insured health plans.

K. **“Hospital Defendants”** means Billings Clinic, Bozeman Deaconess, Community Medical Center, Northern Montana Health Care, and St. Peter’s.

L. **“Most-Favored-Nation Provision”** means any most-favored-nation, most-favored-discount, or most-favored-pricing provision in any health-care provider agreement. The term includes any Blue Cross policy, practice, or contractual provision that conditions Blue Cross’s payment rate or discount to any health-care provider on another health insurer’s payment rate or discount to that provider, regardless of how such policy, practice, or contractual provision is denominated.

M. **“New West”** means New West Health Services, Inc., a Montana non-profit corporation based in Helena, Montana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and

joint ventures, and their respective directors, officers, managers, agents, and employees.

N. **“New West’s Commercial Health Insurance Business”** means all of New West’s health-insurance contracts and policies for products providing commercial health insurance, including fully-insured and administrative-services-only products, health-maintenance organization products, preferred-provider organization products, point-of-service products, and indemnity-insurance products, for both groups and individuals. The term **“New West’s Commercial Health Insurance Business”** does not include (1) New West’s Medicare Advantage products and (2) New West’s health-insurance contracts and policies covering employees and dependents of the Hospital Defendants.

O. **“Northern Montana Health Care”** means Northern Montana Health Care, Inc., a Montana non-profit corporation based in Havre, Montana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees.

P. **“PacificSource”** means PacificSource Health Plans, an Oregon non-profit corporation based in Springfield, Oregon.

Q. **“Provider Network”** means all of the health-care providers that have contracted with a particular health insurer to provide medical services.

R. **“St. Peter’s”** means St. Peter’s Hospital, a Montana non-profit corporation based in Helena, Montana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees.

III. APPLICABILITY

A. This Final Judgment applies to Blue Cross, New West, and the Hospital Defendants, as defined above, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, before complying with Sections IV and VI of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets,

they must require the purchaser to be bound by the provisions of this Final Judgment. Defendants do not need to obtain such an agreement from the Acquirer of the assets divested pursuant to this Final Judgment.

IV. DIVESTITURES

A. New West and the Hospital Defendants are ordered, within 30 calendar days after the filing of the Complaint in this matter, to divest the Divestiture Assets in a manner consistent with this Final Judgment (1) to an Acquirer acceptable to the United States in its sole discretion, after consultation with the State of Montana; and (2) on terms acceptable to the United States in its sole discretion, after consultation with the State of Montana. The United States in its sole discretion, after consultation with the State of Montana, may grant one extension of this time period not to exceed 30 calendar days in total, and shall notify the Court in such circumstances.

B. New West and the Hospital Defendants must obtain all regulatory approvals necessary for such divestitures as expeditiously as possible. If applications for approval have been filed with the appropriate

governmental units within 5 calendar days after the United States has provided written notice, pursuant to Section VII(C), that it does not object to a proposed divestiture, but these required approvals have not been issued before the end of the period permitted for Divestiture in Section IV(A), the United States will extend the period for Divestiture until five business days after all necessary government approvals have been received.

C. New West and the Hospital Defendants must permit prospective Acquirers of the Divestiture Assets to have reasonable access to New West personnel and access to any and all financial, operational, or other documents and information customarily provided as part of a due-diligence process.

D. New West and the Hospital Defendants must divest New West's fully-insured Commercial Health Insurance Business to the Acquirer through a bulk-reinsurance agreement, as provided by Mont. Code Ann. § 33-2-1212. New West and the Hospital Defendants must divest the remainder of New West's Commercial Health Insurance

Business, including its administrative-services-only contracts, to the Acquirer at the same time as they divest New West's fully-insured business.

E. The Divestiture must be accomplished in such a way as to satisfy the United States in its sole discretion, after consultation with the State of Montana, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business engaged in the sale of commercial health insurance, and that the Divestiture will remedy the competitive harm alleged in the Complaint. The Divestiture must be:

(1) made to an Acquirer that, in the United States' sole judgment, after consultation with the State of Montana, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the sale of commercial health insurance in the Billings Metropolitan Statistical Area ("MSA"), Bozeman Micropolitan Statistical Area ("MiSA"), Helena MiSA, and Missoula MSA; and

(2) accomplished so as to satisfy the United States, in its sole discretion, after consultation with the State of Montana, that none of the terms of any agreement between New West or the Hospital Defendants and the Acquirer gives New West and the Hospital Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere with the Acquirer's ability to compete effectively.

F. New West and the Hospital Defendants must first attempt to sell the Divestiture Assets to PacificSource.

G. For three years, the Hospital Defendants must contract to participate in the Acquirer's provider network on terms that are substantially similar to the Hospital Defendants' existing contractual terms with New West as determined by the United States in its sole discretion, after consultation with the State of Montana.

H. At the Acquirer's option, New West and the Hospital Defendants must use their best efforts to assign to the Acquirer all

contracts for the provision of medical services that New West has with health-care providers that are not controlled by the Hospital Defendants.

I. For three years, at the Acquirer's option, New West must also lease its provider network to the Acquirer. Until the expiration of such a lease, New West and the Hospital Defendants must use their best efforts to maintain New West's provider network, including maintaining contracts, with substantially similar terms, with all health-care providers in New West's provider network as of August 1, 2011.

J. New West and the Hospital Defendants must use their best efforts to maintain New West's contracts for coverage of at least 14,600 enrollees in fully- or self-insured commercial health-insurance plans until the Divestiture Assets are transferred to the Acquirer. To encourage New West's management to meet this membership target, the Hospital Defendants and New West will fund an incentive pool of at least \$50,000, which will be available to New West's management if they meet the membership target as of the closing date for the sale of the Divestiture Assets.

K. New West must provide the plaintiffs with bi-weekly reports on total commercial health-insurance membership until the divestitures required by this Final Judgment are complete.

L. New West and the Hospital Defendants must provide the Acquirer, the United States, and the State of Montana with information relating to the personnel involved in the operation of the Divestiture Assets to enable the Acquirer to make offers of employment. For a period of two years from the filing of the Complaint in this matter, New West may not hire or solicit to hire any such person who was hired by the Acquirer, unless the Acquirer has notified such person that the Acquirer does not intend to continue to employ the person. Until the divestiture is completed, Blue Cross may not solicit to hire any such person who was hired by the Acquirer.

M. At the Acquirer's option, and subject to approval by the United States, after consultation with the State of Montana, New West and the Hospital Defendants must provide transitional support services that are reasonably necessary for the Acquirer to operate the Divestiture Assets,

including but not limited to medical-claims processing, appeals and grievances, call-center support, enrollment and eligibility services, access to form templates, pharmacy services, disease management, and quality-assurance services, and may charge the Acquirer commercially reasonable rates for these services. The Hospital Defendants and New West may not provide such transitional support services for more than 12 months from the date of the completion of the Divestiture unless the United States, after consultation with the State of Montana, shall otherwise approve.

N. To ensure an effective transition of the Divestiture Assets to the Acquirer, New West and the Hospital Defendants must cooperate and work with the Acquirer in transition planning and implementation of the transfer of the Divestiture Assets.

O. Defendants may not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

P. New West and the Hospital Defendants must communicate and cooperate fully with the Acquirer to promptly identify and obtain all consents of government agencies necessary to divest the Divestiture Assets.

V. INJUNCTIVE RELIEF AS TO BLUE CROSS

A. Blue Cross may not, without providing 30 days' advance written notification to the Plaintiffs:

(1) condition the right of any broker to sell Blue Cross health-insurance products based on whether the broker sells non-Blue Cross health-insurance products; or

(2) require any broker to be, or agree with any broker that it will become, an exclusive broker for Blue Cross.

Provided, however, that this Section does not apply to brokers who are employees of Blue Cross or entities wholly or partially owned by Blue Cross. Provided, further, that nothing in this Final Judgment prohibits Blue Cross from terminating or refusing to appoint any broker, or dealing with brokers on any terms, so long as Blue Cross does not violate the prohibitions in this Section.

B. Blue Cross, without providing 30 days' advance written notification to the Plaintiffs, may not enter into, adopt, maintain, or enforce any term in any agreement that directly or indirectly:

(1) prohibits or discourages a health-care provider from (a) participating in another health insurer's provider network or (b) negotiating or contracting with another health insurer; or

(2) conditions the price that Blue Cross will pay a health-care provider, or other contract term, on whether the provider participates in another health insurer's provider network.

C. Blue Cross, without providing 30 days' advance written notification to the Plaintiffs, may not enter into, adopt, maintain, or enforce any most-favored-nation provision in any agreement with a health-care provider.

D. Within 30 days of receiving the notice required by Sections V(A)–(C) of this Final Judgment, representatives of the Antitrust Division may issue a Civil Investigative Demand ("CID"), pursuant to 15 U.S.C. §§ 1311-14, for additional information or documentary material relevant to the notification. The Antitrust Division may share the information and documentary material produced in response to the CID with the State of Montana. If the Antitrust Division issues a CID, Blue Cross may not enter

into, adopt, maintain, or enforce the notified agreement until 30 calendar days after certifying compliance with the CID.

E. Nothing in this Final Judgment prohibits Blue Cross from undertaking the actions described in Sections V(A)–(C), provided that Blue Cross provides the required notice and, if necessary, waits for the expiration of the periods described in Section V(D).

F. This Section expires six years from the date of entry of the Final Judgment.

VI. APPOINTMENT OF TRUSTEE

A. If New West and the Hospital Defendants have not divested the Divestiture Assets within the time period specified in Section IV(A) and (B), they must notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee may have the right to sell the Divestiture Assets. The trustee will

have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, after consultation with the State of Montana, at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, VI, and VII of this Final Judgment, and will have such other powers as this Court deems appropriate. Subject to Section VI(D) of this Final Judgment, the trustee may hire at the cost and expense of New West and the Hospital Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants may not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States, the State of Montana, and the trustee within 10 calendar days after the trustee has provided the notice required under Section VII.

D. The trustee must serve at the cost and expense of New West and the Hospital Defendants, on such terms and conditions as the United

States approves, and must account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to New West and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. New West and the Hospital Defendants must use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee must have full and complete access to the personnel, books, records, and facilities relating to the Divestiture Assets, and New West and the Hospital Defendants must develop financial and other information relevant to such business as the trustee may reasonably

request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information.

Defendants may not take any action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee must file monthly reports with the United States, the State of Montana, and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent that such reports contain information that the trustee deems confidential, such reports may not be filed in the public docket of the Court. Such reports must include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the Divestiture Assets, and must describe in detail each contact with any such person. The trustee must maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six months after its appointment, the trustee must promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent that such reports contain information that the trustee deems confidential, such reports may not be filed in the public docket of the Court. The trustee must at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it deems appropriate to carry out the purpose of the Final Judgment. The Court may, if necessary and requested by the United States, extend the trust and the term of the trustee's appointment by a period no longer than six months. If at the end of all extensions of the trustee's term, the trustee has not accomplished the divestiture, then New West and the Hospital Defendants will have no further obligations to preserve the divestiture

assets as required by Section V of the Asset Preservation Stipulation and Order in this matter.

VII. NOTICE OF PROPOSED DIVESTITURE

A. Within two business days following execution of a definitive divestiture agreement, New West and the Hospital Defendants, or the trustee, whichever is then responsible for effecting the divestiture required herein, must notify the United States and the State of Montana of any proposed divestiture required by Section IV or VI of this Final Judgment. If the trustee is responsible, it must similarly notify Defendants. The notice must set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within five business days of receipt by the United States and the State of Montana of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the

proposed Acquirer, and any other potential Acquirer. Defendants and the trustee must furnish any additional information requested within five business days of the receipt of the request, unless the parties shall otherwise agree.

C. Within 15 calendar days after receipt of the notice or within 10 calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States must provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section VI(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section VI may not be consummated. Upon objection by Defendants under Section VI(C), a

divestiture proposed under Section VI may not be consummated unless approved by the Court.

VIII. FINANCING

Defendants may not finance all or any part of any Purchase made pursuant to Section IV or VI of this Final Judgment.

IX. ASSET PRESERVATION

Until the divestiture required by this Final Judgment has been accomplished, Defendants must take all steps necessary to comply with the Asset Preservation Stipulation and Order entered by this Court.

Defendants may not take any action that will jeopardize the divestiture ordered by this Court. Provided, however, that nothing in this Final Judgment precludes Blue Cross from competing for New West's commercial health-insurance customers, before or after the sale of the divestiture assets.

X. AFFIDAVITS AND RECORDS

A. Within 10 calendar days of the filing of the Complaint in this matter, and every 10 calendar days thereafter until the divestiture has been

completed under Section IV or VI, New West and the Hospital Defendants must deliver to the United States and the State of Montana an affidavit as to the fact and manner of its compliance with Section IV or VI of this Final Judgment. Each such affidavit must include the name, address, and telephone number of each person who, during the preceding 10 calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and must describe in detail each contact with any such person during that period. Each such affidavit must also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming that the information set forth in the affidavit is true and complete, any objection by the United States, after consultation with the State of Montana, to information provided by Defendants, including limitation on information, must be made within 14 calendar days of receipt of such affidavit.

B. Within 10 calendar days of the filing of the Complaint in this matter, Defendants must deliver to the United States and the State of Montana an affidavit that describes in reasonable detail all actions that Defendants have taken and all steps that Defendants have implemented on an ongoing basis to comply with Section IX of this Final Judgment.

Defendants must deliver to the United States and the State of Montana an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within 10 calendar days after the change is implemented.

C. New West and the Hospital Defendants must keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

XI. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States

Department of Justice, including persons retained by the United States, must, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy and electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding these matters. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants must submit written reports, or responses to written interrogatories, under

oath if requested, relating to any of the matters contained in this Final Judgment.

C. The United States may share information or documents obtained under Section XI with the State of Montana.

D. No information or documents obtained by the means provided in this section may be divulged by the United States or the State of Montana to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States or the State of Montana is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

E. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the

Federal Rules of Civil Procedure,” then the United States must give Defendants 10 calendar days notice before divulging such material in any legal proceeding (other than grand jury proceedings).

XII. NO REACQUISITION

Defendants may not acquire or reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XIII. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire 10 years from the date of its entry.

XV. PUBLIC-INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' response to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures set forth in the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

United States District Judge