COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA INSURANCE DEPARTMENT

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IN RE: REQUEST FOR MODIFICATION OF CERTAIN CONDITIONS OF THE PENNSYLVANIA INSURANCE DEPARTMENT'S APPROVING DETERMINATION AND ORDER DATED APRIL 29, 2013 (ORDER NO. ID-RC-13-06)

PUBLIC HEARING

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BEFORE: MICHAEL HUMPHREYS, COMMISSIONER
Diana L. Sherman, Deputy Commissioner
Jodi Frantz, Chief of Staff

HEARING: May 1, 2024
10:00 a.m.

LOCATION: Pennsylvania Insurance Department
Administrative Hearings Office
901 North Seventh Street, Suite 200
Harrisburg, PA 17102

WITNESSES: David L. Holmberg, Cory S. Capps, Ph.D., Dr. Susan Manning, Margaret Guerin-Calvert, Johnathan Greer

Reporter: Jessica Ashman

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A P P E A R A N C E S

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1 P R O C E E D I N G S

2 --

3 COMMISSIONER HUMPHREYS: Good morning
4 and welcome to the Pennsylvania Insurance
5 Department's Public Informational Hearing on
6 Highmark Health's Request for Modification of the
7 Department's 2013 Order that approved Highmark,
8 Inc.'s proposed change of control and affiliation
9 with the West Penn Allegheny Health System.
10 I'm Mike Humphreys, Commissioner of
11 the Pennsylvania Insurance Department. As
12 Commissioner, I will make the ultimate decision
13 regarding Highmark Health's requirement Request for
14 Modification of the Order. The purpose of this
15 hearing today is to receive comments from interested
16 persons to aid the Department in ultimately reaching
17 a decision on the request.
18 This is a public informational
19 hearing similar to a town meeting or a city council
20 meeting. The entire record of the request,
21 including transcripts of this hearing, will be
22 considered by the Department before any final
23 conclusions are reached. The Department will
24 closely consider any comments about the request
25 presented here today, along with written comments

1 that have previously been submitted. No final
2 decision will be rendered immediately following the
3 conclusion of this hearing.
4 Department staff responsible for
5 helping with the review of the request are seated
6 with me today. To my immediate right is Jodi
7 Frantz, Chief of Staff for the Insurance Department.
8 To my left is Deputy Insurance Commissioner Diana
9 Sherman from the Office of Corporate and Financial
10 Regulation. Also in attendance are Margaret Guerin-
11 Calvert and Susan Manning from the Department's
12 Independent Economic Consultant, Compass Lexecon.
13 The Department's Chief Counsel, Kathy Speaks, is in
14 attendance, as well as outside Counsel to this
15 matter, Larry Beaser and Bill Gramlich from Blank
16 Rome.
17 The publicly available record thus
18 far consists of all public documents related to the
19 request, including those filed by Highmark Health
20 and its consultants, the reports of Compass Lexecon
21 and written comments received from the public or
22 interested persons and any responses to those
23 comments from Highmark Health. The Request for
24 Modification and related public documents, including
25 reports prepared by Compass Lexecon, have been and

1 will remain available on the Department's website,
2 www.Insurance.PA.Gov.
3 As for the format of today's hearing,
4 there's an Agenda on the table at the entrance. We
5 will begin with presentations from Highmark Health
6 and then from its Economist, Dr. Cory Capps of Bates
7 White. This will be followed by presentations from
8 the Department's consultants, Compass Lexecon.
9 These presentations will be limited to 15 minutes.
10 After this, the public comment portion of the
11 hearing will begin with presentations from those who
12 have registered to speak.
13 If you have not preregistered and
14 wish to speak, please see Ms. Karen Rodriguez at the
15 registration table so you may be placed on the
16 speaker list. The registration table is in the back
17 corner. Individuals participating in the public
18 comment portion of this hearing should limit their
19 presentations to five minutes or less. Additional
20 written comments will be accepted after the public
21 hearing.
22 I'd like to take a few moments to
23 review the procedures and ground rules for today. I
24 will be calling each commenter to the front table
25 when it's that individual's turn to present. When

1 speaking, please indicate if you are speaking on
2 your own behalf. If you are speaking in a
3 representative capacity, please identify your role
4 and relationship to the representative organization.
5 Please address your comments to me in the panel in
6 the front of the room.
7 Your remarks should be specific and
8 relate to the Request for Modification of the 2013
9 Order that is before the Department. Because of the
10 nature of today's public informational hearing,
11 cross examination or interrogation of speakers will
12 not be permitted. However, you may pose questions
13 to Highmark health during your presentation.
14 Following today's hearing, the Department will
15 require written responses from Highmark Health to
16 questions raised by both the Department and the
17 public during this hearing, and we will make those
18 responses available on our website.
19 Please note that today's hearing is
20 being recorded and we have a court reporter present
21 today to prepare a transcript of this hearing. In
22 addition, this hearing is being web streamed live
23 but with only viewing capabilities. The web stream
24 will be available on the Department's website after
25 today's hearing. Before we start, I just want to

1 ask everyone to check and make sure that your cell
2 phones are on mute so as not to interrupt the
3 hearing.
4 With that being said, Mr. David
5 Holmberg, you may come to the table and begin your
6 testimony on behalf of Highmark.
7 MR. HOLMBERG: Good morning,
8 Commissioner, Deputy, everybody. So I'm David
9 Holmberg. I'm CEO of Highmark Health, and I
10 appreciate the opportunity to speak with the
11 Department this morning in support of Highmark
12 Health's Request for Modification. I'd like to
13 focus on three things.
14 First, in the 2013 transaction that
15 created Highmark Health. Second, Highmark Health's
16 business model and financial strength as a blended
17 health organization and third, the current state of
18 competition that Highmark Inc. faces. My aim is to
19 show the Department, starting from the uncertainty
20 surrounding the 2013 transaction, Highmark Health
21 has navigated the marketplace to a position of
22 strength as an integrated system that's incentivized
23 to deliver high quality care at reasonable cost. I
24 ask that Highmark Health and Highmark be restored to
25 an equal playing field with other integrated systems

1 so we can deliver on our mission for the benefit of
2 our members and the Commonwealth.
3 Over the last ten years, Highmark has
4 transformed from a successful regional insurer into
5 an innovative, diversified healthcare organization
6 with comprehensive solutions and national impact.
7 Our living health model in Western Pennsylvania is
8 proving that we can integrate health, coverage and
9 care with positive impact for our members and the
10 community.
11 As a blended health organization,
12 Highmark Health operates a health system, the
13 Allegheny Health Network, through the lens of a
14 large health insurer, with a focus on reducing
15 current and long term costs of care by enhancing
16 health outcomes and quality at every step of the
17 patient experience. In every part of our business,
18 the most important proof point is that people are
19 choosing our products and services because we
20 deliver what they value.
21 In my role, I focus on Highmark
22 Health's future and on executing the blended
23 healthcare model that has served our members and
24 communities so well. For our discussion today, I'd
25 also like to look back at why and how Highmark

1 started on this path. More than ten years ago,
2 Highmark entered the transaction with West Penn
3 Allegheny's Health System that formed Highmark
4 Health and eventually Allegheny Health Network. The
5 transaction came about at a time of uncertainty for
6 West Penn and our community.
7 In the years leading up to the
8 transaction, West Penn suffered deepening annual
9 operating losses and relied on cash advances and
10 other financial support from Highmark to stay
11 afloat. Despite Highmark's support, West Penn
12 continued to face grave operational and financial
13 difficulties. West Penn employed more than 10,000
14 people, operated five hospitals and had hundreds of
15 millions of dollars in unfunded retirement
16 obligations; all of that was at risk.
17 To meet community needs with high
18 quality and affordable health care, save vital
19 health care jobs in institutions, as well as the
20 economies of their local communities, and sustain
21 healthcare competition, Highmark agreed to affiliate
22 with West Penn. Highmark ultimately launched
23 Allegheny Health Network and formed Highmark Health
24 as an enterprise that strategically aligns our
25 health insurance provider and diversified

1 businesses.
2 As the Department well knows, the
3 approving Determination and Order was entered on
4 April 29, 2013, and the transaction was permitted to
5 close. Highmark respects and appreciates the
6 Department's handling of the order and the process
7 that led to its implementation. The Order, of
8 course, contained conditions designed at the time of
9 uncertainty as to whether Highmark would ultimately
10 be able to achieve the strategy of creating a
11 thriving integrated payor and provider system.
12 The conditions were primarily
13 intended to ensure that, first, Highmark remained
14 financially stable so that the insurance assets in
15 the Commonwealth would be protected against the
16 concern of wasting those assets on a failing
17 provider system, unable to be rehabilitated, and
18 second, competition would be preserved in the
19 region.
20 The current state of Highmark
21 Health's finances and of competition would have been
22 difficult to foresee amidst the uncertainty of 2013,
23 but now it's clear that much has changed. Highmark
24 Health continues to be a financially-stable
25 participant in highly competitive markets. In this

1 new landscape, Highmark should be relieved of the
2 outdated conditions and permitted to abide by its
3 independent legal obligations, including to the
4 Department.
5 I'll now discuss the current state of
6 Highmark's finances and the competition it faces.
7 Today, Highmark Health is a financially strong
8 integrated system. During the last decade, Highmark
9 Health's annual revenue grew 72 percent from $15.8
10 billion to $27.1 billion. AHN's annual revenue more
11 than doubled from $2.2 billion to $4.7 billion. AHN
12 has also produced approximately $1.4 billion in
13 accumulated EBITDA that was used for its operations,
14 and Highmark's health plan membership rose 32
15 percent from 5.3 million members to about 7 million.
16 The financial rating agency's
17 comments about Highmark affirm our strong financial
18 position. AM Best stated that Highmark's excellent
19 ratings reflect its balance sheet strength, which by
20 the rating agency's assessment is strongest, as well
21 as its adequate operating performance, favorable
22 business model and appropriate enterprise risk
23 management. According to S&P Global Ratings, the
24 stable outlook reflects the agency's expectation
25 that Highmark will maintain its leading commercial

1 market positions and profitability in line with
2 similarly-rated peers and sustain excellent capital
3 and earnings, and Highmark's key rating strengths
4 includes its Blue Cross Blue Shield brand equity,
5 its leading commercial market position and
6 geographic diversification in four states and, by
7 the way, the diversified product portfolio across
8 commercial and government product segments.
9 In reaffirming Highmark's stable
10 outlook, Moody's praise the organization's success
11 integrating its affiliated and non-affiliated
12 hospital networks within its expanding health
13 insurance footprint and shared an expectation that
14 enhancements currently being made by Highmark to its
15 integrated model, alongside with technological
16 advancements to drive cost efficiencies and quality
17 improvements, should lead to continued enrollment
18 gains and drive non-insurance earnings
19 diversification.
20 Highmark's financial strength
21 underlies another aspect of our story that I want to
22 emphasize, Highmark's commitment to serving the
23 public interest by strengthening local communities.
24 This commitment goes beyond providing affordable,
25 high quality care. In 2023, for example, Highmark

1 Health provided $225 million of corporate giving,
2 including uncompensated care at AHN, and funded
3 another $826 million of capital investments.
4 Highmark's financial strength allows us to keep this
5 commitment to the community.
6 Highmark Health's track record of
7 success and stability since 2013 shows that the
8 uncertainty that gave rise to the conditions has
9 been replaced by a strong foundation and sustainable
10 business model. The Department's concern that
11 Highmark might be putting valuable insurance assets
12 at risk in the acquisition of West Penn has been
13 answered by Highmark Health's current financial
14 strength. The preservation and strengthening of AHN
15 as a provider in Western Pennsylvania's market is a
16 critical factor in the Highmark Health overall
17 financial strength. Highmark in particularly
18 remains on solid financial footing in the eyes of
19 the Department. Our risk-based capital is more than
20 sufficient on the Department's standards.
21 Strong financials, long term
22 stability, and relentless focus on the millions of
23 people we serve have been essential to the
24 transformation and growth we've achieved in the past
25 decade. They will continue to shape our

1 transformation and grow in the decades ahead as we
2 continue investing innovative programs and
3 technology, in digital and brick and mortar
4 infrastructure, and in our communities.
5 In addition, Highmark Health
6 currently operates in highly competitive markets.
7 There has been a clear increase in competition on
8 the insurance and provider sides since the Order was
9 introduced in 2013, as Highmark has shown in its
10 submissions. New and existing insurance competitors
11 have introduced new products in an ever-changing
12 competitive environment. Highmark has responded
13 with innovative products that fit its integrated
14 business model. Our Together Blue Health Plan is a
15 leading example. High satisfaction rates have made
16 it the most popular Affordable Care Act product in
17 western Pennsylvania. The number of people choosing
18 the plan doubled between 2021 and 2023.
19 In this intense competitive
20 environment, customers and consumers choose Highmark
21 because of access, affordability and quality, but
22 also because of everything we do to ensure an
23 outstanding consumer experience. On the provider
24 side of the market, AHN improved access to care and
25 maintained strong quality of care. This is a stark

1 change from West Penn's dim prospects prior to
2 affiliating with Highmark and the very real
3 possibility that Western Pennsylvania would be left
4 with a single dominant provider. With respect to
5 access, AHN has, among other things, created six
6 multispecialty health and wellness pavilions and six
7 outpatient centers.
8 We've also reopened the West Penn
9 Hospital Emergency Room and expanded inpatient care
10 and opened seven new cancer centers, including a
11 major new academic and research hub at Allegheny
12 General Hospital. AHN's quality metrics are strong
13 across the board. These and other expanded services
14 at ten serve as a critical community need. During
15 the COVID-19 pandemic, AHN provided much needed bed
16 capacity for patients hospitalized with severe
17 COVID-19.
18 AHN has also been recognized for its
19 exceptional quality of care, to name just a few of
20 AHN's successes. In 2023, two of AHN's facilities
21 received Press Ganey Guardian of Excellence Awards
22 for patient experience. That puts them in the top
23 five percent of the more than 40,000 healthcare
24 facilities across America. Five AHN facilities
25 received Leap Frog's highest A-grading for patient

1 safety. Allegheny General became the fourth AHN
2 hospital to earn the prestigious Magnet designation
3 for superior nursing and patient care. And U.S.
4 News and World Report ranked AHN West Penn
5 Hospital's Ob/GYN program as best in our region for
6 a second straight year.
7 As you can see, a lot has changed
8 since 2013. In this dynamic and competitive
9 environment, our request to the Department is that
10 Highmark be treated like other integrated systems.
11 The Department's order allowed for the formation of
12 Highmark Health and paved the way for Highmark's
13 activities throughout the last decade, but it was
14 not intended to be immutable or permanent. The
15 order contained a process for its own modification,
16 and Highmark properly invoked that process to ensure
17 that it's subject to a fair and appropriate
18 regulatory environment.
19 Since the Order was entered in 2013,
20 no similarly situated organization has faced such
21 extensive oversight from the Department. The 2013
22 Order costs us and our stakeholders solely in paying
23 for the Department's outside consultants more than
24 $2 million per year, amounting to over $20 million
25 in the last decade. This does not include our

1 internal costs of compliance, including the cost of
2 our consultants. Other integrated systems do not
3 face those same costs.
4 The extensive conditions not only impose
5 a unique burden on Highmark, but they're also
6 unnecessary. As we explained in our Request for
7 Modification, many of the conditions are addressed
8 by other laws, regulations, or are now obsolete.
9 Highmark takes its legal obligations seriously, and
10 the Department and other regulators have ample
11 authority outside of the conditions to ensure that
12 Highmark abides by these obligations.
13 Ultimately, what Highmark is looking
14 for, supported by the current state of competition
15 in Pennsylvania, is to be regulated like other
16 integrated systems. Similar conditions imposed by
17 the Department are not applicable to similarly-
18 situated integrated systems, with one recent
19 exception.
20 As of March 27th, the Department
21 imposed certain competitive conditions on Geisinger
22 in connection with its affiliation with Kaiser.
23 Those conditions are far more limited than those
24 Highmark endures. Importantly, those conditions
25 were designed and implemented to deal with present

1 facts and circumstances surrounding that
2 transaction. Highmark's conditions may have been
3 right in 2013, but they're not right for today.
4 Several other large integrated systems with which
5 Highmark vigorously competes face no such
6 regulations. The Department should avoid piecemeal
7 regulations of integrated systems that favor some
8 systems over others purely on the virtue of when and
9 how they were affiliated.
10 At this point, there can be no doubt
11 that Highmark continues to be a very strong,
12 financially-sound health insurance company and that
13 health care competition in Western Pennsylvania has
14 been enhanced following the creation of Highmark
15 Health as a blended health organization. Highmark
16 Health has preserved competition for healthcare
17 services in Western Pennsylvania, and it's enhanced
18 the healthcare jobs market in Western Pennsylvania
19 and maintained broad access to hospitals for
20 Highmark members and others, all while reducing the
21 cost of care and maintaining its financial strength.
22 For that reason, the conditions have
23 served their purpose. The conditions made sense
24 when they were implemented in 2013, and Highmark
25 Health's future as a blended health organization was

1 uncertain at that time. But that uncertainty in
2 2013 has been replaced by an 11-year track record of
3 success for Highmark Health and of increased
4 competition for the benefit of Pennsylvanians.
5 Highmark Health and Highmark, Inc.
6 Will remain subject to robust oversight from the
7 Department, the antitrust laws, and other regulatory
8 obligations ensuring that Highmark remains a viable
9 health insurer in the commonwealth of Pennsylvania,
10 subject to the same regulatory regime as its
11 integrated competitors. We're very proud of what
12 has been accomplished on behalf of the consumer in
13 the last decade, and we firmly believe the remaining
14 conditions of the order should respectfully be
15 lifted. Thank you, Mr. Commissioner.
16 COMMISSIONER HUMPHREYS: Thank you.
17 Mr. Holmberg. A number of questions for you. Other
18 than payment for the Department's oversight and
19 Highmark's cost of compliance, what examples can you
20 provide of Highmark or AHN being competitively
21 disadvantaged by the Commission's -?
22 MR. HOLMBERG: I would say
23 respectfully, it's anything that creates an uneven
24 playing field. When we think about our largest
25 competitors, they don't have the regulatory review,

1 some of the competitive limitations that we have.
2 So as we build for the future, we believe that
3 there's opportunity, as an integrated health system
4 to be even more competitive, deliver better care for
5 the people we serve. And we're asking that anything
6 that would be a competitive disadvantage be
7 eliminated.
8 COMMISSIONER HUMPHREYS: Because when
9 I think about it and some of the conditions in the
10 Order and what Highmark's plans would be, when we
11 talk about the contracting practices currently
12 prohibited, most favored nation, anti-tiering, anti-
13 steering, exclusive contracts, what would be your
14 plans to engage in that sort of contracting if the
15 conditions were to go away?
16 MR. HOLMBERG: Well, we certainly
17 support an open and - playing field. We would
18 support conditions that make it more competitive
19 versus less competitive. We think that part of our
20 success has been families have chosen us and
21 businesses have chosen Highmark, you know, because
22 we put better products and services in the
23 marketplace. And so our intention would be to
24 continue to refine, you know, the product services
25 we do on the insurance side, as well as the

1 healthcare delivery side, but we would do it in an
2 open way.
3 COMMISSIONER HUMPHREYS: And a number
4 of the other provisions talk to bylaws, which is not
5 uncommon with some of the largest health mergers
6 we've seen nationally. If those were eliminated,
7 would Highmark plan to maintain the firewalls and
8 the firewall policies required by the Commission?
9 MR. HOLMBERG: So we would comply to
10 all antitrust laws and the regulatory environment
11 that's out there. Absolutely. You know, we believe
12 that those are essential and that we appropriately,
13 you know, will respond to that.
14 COMMISSIONER HUMPHREYS: Okay.
15 You talked a number of times about
16 AHN and its growth over the last ten years. If we
17 look at the last five years, publicly available
18 financial statements show net transfers from
19 Highmark average $276 million a year, totaling more
20 than $1.3 billion.
21 Do you expect the net transfers from
22 Highmark to AHN to continue at a level of $200
23 million plus a year?
24 MR. HOLMBERG: So when we think
25 about, you know, how we go to market in Western

1 Pennsylvania, Highmark is an insurance company, you
2 know, we think about, you know, it is an integrated
3 approach, and so we will -. The investments that
4 you described were made on behalf of Highmark
5 members to build the capabilities that we felt were
6 needed.
7 So, you know, we anticipate we will
8 continue to be supportive because we look at the
9 integrated economics. So, you know, the
10 profitability, if you want to call it that, of both
11 Highmark and AHN combined in western Pennsylvania,
12 in the footprint we're in. And, you know, and what
13 that does for us is in our case, it was very clear
14 that we saw that there was a void in the cancer
15 space, and that's why we invested, Highmark did, in
16 cancer centers that gave our members access. Same
17 thing for why we built the West Penn - or the West
18 Penn Ob/GYN program. There was a need for the
19 members to have better access to a care, to improve
20 quality of care, those kinds of things.
21 So I would anticipate that we will
22 continue to make the appropriate investments, but
23 they'll be in the best interest of our members.
24 COMMISSIONER HUMPHREYS: Then could
25 AHN currently operate independently without relying

1 on direct cash or contributions from Highmark?
2 MR. HOLMBERG: I think AHN has done
3 very well in improving quality, safety, access and
4 affordability and that's been a combined strategy.
5 I suspect if we did not do anything on the Highmark
6 side, we would have a different relationship. It
7 would be more contractual, and it could lead
8 potentially to higher costs for the region, for all
9 healthcare providers.
10 So since AHN has, you know, become
11 part of Highmark and that was created, you know,
12 we've been able to slow the cost of inflation in
13 terms of healthcare. And I think you'll hear from,
14 you know, the economists that there's real data now
15 that shows the impact we've had on that. That's
16 part of our go-to market strategy on the insurance
17 side.
18 So, you know, we don't see where we
19 would want to disconnect it because it enables us to
20 be more affordable on insurance pricing, premium
21 pricing, things that we do in the marketplace to
22 create an overall competitive environment.
23 COMMISSIONER HUMPHREYS: So then
24 there wouldn't be a plan or a date expectation at
25 which it could independently operate financially?

1 MR. HOLMBERG: Yeah, we see it as an
2 integrated platform. When I think about the
3 economics, I think about both insurance and the
4 delivery systems, including AHN as one combined
5 entity.
6 COMMISSIONER HUMPHREYS: And you also
7 mentioned our recent Geisinger Risant and how those
8 provisions are more limited than yours. I'm curious
9 if you would object to Highmark being under the same
10 limitations as Geisinger and Risant?
11 MR. HOLMBERG: Well, the first thing
12 we would respectfully ask is that we be relieved of
13 the 2013 conditions, and we're certainly open to a
14 conversation on any conditions that are applied
15 equally across the board so we're all integrated
16 systems. You know, where - they're both an insurer.
17 COMMISSIONER HUMPHREYS: A lot of the
18 provisions or conditions that I mentioned earlier,
19 the contract and the bylaws, those are all
20 applicable in the Geisinger Risant sense. Not so
21 much necessarily that payment or Department's
22 oversight, but a lot of the substantive provisions
23 were intended to be the same as we tried to look at
24 it and how we regulate Highmark.
25 MR. HOLMBERG: So we're very

1 comfortable with a fair and level playing field. I
2 mean, we've had ten years of operating under the
3 conditions, and I think we've proven that we can not
4 only comply and do what's appropriate, but deliver
5 on the promises that we make. I assume that the
6 conditions associated with Geisinger related to the
7 situation there, and who their parent will be versus
8 who we are.
9 Again, I would just state that we're
10 very comfortable with provisions that apply to all.
11 COMMISSIONER HUMPHREYS: And kind of
12 moving off that for a moment, and this is a
13 question, you're first, so you'll get it, but
14 everyone behind you will also get it. And just -.
15 MR. HOLMBERG: Puts more pressure on
16 me for them.
17 COMMISSIONER HUMPHREYS: I've heard
18 from a number of insurers that looking to enter the
19 Western PA market, that it's a significant
20 challenge, more challenging than most states or most
21 markets in many other states, they say particularly
22 difficult to get into the Medicaid Medicare
23 Advantage space and to get contracts with provider
24 groups in western Pennsylvania. Just curious, kind
25 of your thoughts on that complaint that's coming to

1 me, and any commentary you'd like to share in that
2 regard?
3 MR. HOLMBERG: First of all, as you
4 know, we're an open system at AHN and we work with
5 anybody who wants to work with us. At the same
6 time, Highmark was instrumental in building the
7 capabilities that make Western Pennsylvania
8 attractive to other insurers. And those resources
9 came from the people of Pennsylvania and the
10 commonwealth. As people from out of state want to
11 enter the marketplace, we think that they need to
12 pay appropriate rates and be appropriate in terms of
13 investment in the region, just like we have been.
14 But I think that you have two very strong,
15 competitive, integrated systems in the west, but you
16 also have a number of insurers who operate in the
17 west.
18 And I think what we always look for
19 is people entering the market, are they willing to
20 invest in the communities? Are they willing to do
21 the kinds of work that we're doing with the $225
22 million last year that we put into uncompensated
23 care and shoring up the various neighborhoods, the
24 social determinants, health and those kinds of
25 things?

1 That's a different position than
2 maybe what some of them want to do, but we do think
3 that's part of the reason why it's a competitive
4 market, is because you have to show up and be part
5 of the community.
6 COMMISSIONER HUMPHREYS: Any
7 questions?
8 Okay.
9 Thank you very much.
10 MR. HOLMBERG: Thank you very much.
11 COMMISSIONER HUMPHREYS: Thank you.
12 MR. HOLMBERG: I appreciate it.
13 COMMISSIONER HUMPHREYS: Next, we
14 will have Mr. Capps, Cory Capps with Bates White.
15 Please again, introduce yourself and your
16 DR. CAPPS: Good morning. Thank you
17 for the opportunity to come here and summarize my
18 analyses of the evolution of healthcare competition
19 in Western Pennsylvania over the last 10 to 12
20 years. My name is Cory Capps, and I'm an Economist
21 at the Economic Consulting Firm Bates White in
22 Washington, D.C. I spent the bulk of my last 25
23 years doing economic research and economic analysis
24 and consulting related to healthcare competition in
25 general.

1 Today, I'll provide some evidence to
2 support four main points. Everything I talked about
3 today is substantiated in more detail on the written
4 comments that I submitted a week ago.
5 First point is that the 2013 Order
6 came about after an 18-month review process, roughly
7 starting with the announcement of the Highmark West
8 Penn transaction. It was designed, as I understand
9 it, to address the specific concerns that the PID
10 identified during the 2011 to 2013 period, and those
11 concerns related to sort of the two prongs of the
12 combined system now.
13 One concern is about the degree of
14 insurance competition as it existed at that time.
15 The second concern is related to the viability of
16 the West Penn system as it existed at that time.
17 And it was pretty dire, and I don't think that's a
18 controversial statement about the condition of West
19 Penn leading into 2011. So there was a lot of
20 uncertainty on the West Penn side and concerns about
21 competition on the insurance aside. And much of
22 what I present today will be talking about how that
23 has changed over time.
24 Second main point is that imposing
25 regulatory constraints through oversight on just one

1 competitor among several or many is going to
2 necessarily reduce competition to at least some
3 degree. If the restraint has no impact, then really
4 what's the point of having it in the first place?
5 May still be sound policy nonetheless, to impose
6 such constraints if there's specific concerns and
7 bases that would warrant the slowing of competition.
8 As I showed at that time, the
9 concerns were, as noted, insurance competition and
10 the viability of the AHN system. Both of those, as
11 I will show today and you can see in my written
12 remarks, have changed greatly since 2013. Highmark
13 now faces significantly greater insurance
14 competition than it did in 2013. That's actually
15 true for both commercial products and Medicare
16 Advantage products, which I will get to shortly.
17 And then second, AHN, the successor to West Penn, is
18 today, a greatly improved and stable hospital
19 system.
20 Next point. These competitive
21 changes are significant in total, what's happened
22 over the last decade. The conditions in the 2013
23 order were specifically crafted to address the
24 insurance competitive landscape and the condition of
25 West Pent is they existed in 2011 to 2013 when the

1 order came out. If the conditions, the competitive
2 landscape has changed substantially since then, the
3 conditions that were right as of a decade or so ago
4 are not logically going to be right for today and in
5 the future.
6 In particular, conditions that were
7 premised on a concern over a potential exercise of
8 insurer market power or lack of competition when it
9 comes to insurance should be absent or less
10 stringent when the degree of insurance competition
11 is greater as it is today.
12 Second, conditions premised on
13 concern over the financial viability of then-
14 flailing West Penn system, or that it might drag
15 down the parent entity of Highmark Health are not
16 warranted when the successor system AHN has grown,
17 has good quality performance and is stable.
18 Okay.
19 So let me jump into some of the main
20 findings, and I'll start with insurance competition,
21 and I'll start on the commercial side. The main
22 competitors to Highmark in Western Pennsylvania are
23 UPMC Health Plan, Aetna, United and Cigna. All of
24 them have increased their share of commercial
25 enrollment since 2013. Since about 2017, UPMC

1 Health Plan has had about 25 percent of commercial
2 enrollment in Western Pennsylvania, and that's up
3 from about a little over 15 percent in 2013 at the
4 time the transaction closed.
5 If you look just in Allegheny County,
6 where Pittsburgh is, you'll see that its share of
7 commercial enrollment is even higher. If you look
8 at United, Cigna, and Aetna together, they've
9 increased from a combined Western Pennsylvania
10 enrollment share of 10 percent in 2013 to 18 percent
11 in 2023. So across the board, the competitors are
12 growing. One other thing that's happened recently
13 and its impact is unrolling now, is the settlement
14 of the Blue Cross and Blue Shield litigation, which
15 was not specifically related to Pennsylvania or
16 Highmark, but does have competitive implications.
17 In particular, it is now allowing,
18 and will continue to allow other Blue entities,
19 think of Anthem, which now calls itself Elevance,
20 which is the Blue Cross and Blue Shield carrier in
21 Ohio, New York and a dozen other states are going to
22 now be able to enter and compete to provide health
23 insurance coverage to commercial customers, large
24 commercial customers in Western Pennsylvania. And
25 that's referring to the second Blue bid provision

1 that you can see in more detail in my written
2 remarks, as well as the submissions from Compass
3 Lexecon.
4 They've also eliminated the National
5 Best Efforts rule that had prevented Blue Cross and
6 Blue Shield entities in other states from offering
7 non Blue-branded products outside of their home
8 areas. So those types of products will both be
9 entering in Western Pennsylvania, potentially in the
10 near future.
11 Next Medicare Advantage. That's the
12 privately administered alternative to the federal
13 original Medicare program. In Western Pennsylvania,
14 there's also been an increase for Highmark's
15 competitors in Medicare Advantage. Aetna has
16 actually more than doubled its share of enrollment,
17 and it reached nearly 30 percent as of 2024.
18 UPMC, when it comes to Medicare
19 Advantage, has been over 30 percent in terms of its
20 share of enrollment since at least 2016. United,
21 which is one of the largest national providers of
22 Medicare Advantage coverage, was almost out of
23 Western Pennsylvania entirely in 2014. It has since
24 been growing slowly, but steadily, and has reached
25 an eight percent share of enrollment.

1 Overall, we've seen that this
2 competition is benefiting seniors in Western
3 Pennsylvania as more and more of them are choosing
4 Medicare Advantage products over the original
5 Medicare option. It's now up to about two-thirds
6 picking Medicare Advantage instead of original
7 Medicare. This has benefited all the insurers who
8 offer Medicare Advantage coverage because it's
9 basically grown by the enrollees that they serve.
10 So these are large changes and
11 increases in competition, which is why I began by
12 pointing out that conditions tailored to the
13 conditions of the competitive circumstances of 2011
14 to 2013 are not as good of a fit for today.
15 Next, I want to turn to hospital
16 competition. I will show or explain that AHN has
17 improved on multiple dimensions, especially as
18 compared to the state of the West Penn system over a
19 decade ago. It now has a higher share of discharges
20 in Western Pennsylvania. It has more hospitals.
21 It's improved its performance and now does well on
22 CMS quality metrics and it's sustainable.
23 Focusing first on the discharge
24 share. Heading into 2011, it was losing discharge -
25 the West Penn system was losing discharges every

1 year. It reached a low of about ten percent of
2 discharges in 2011. From 2011 to 2013, while the
3 review was ongoing, West Penn stabilized and it just
4 sort of hovered at about ten percent share. Then,
5 for several years after 2013, AHN began to grow and
6 increase its share, the original five West Penn
7 hospitals went up from ten percent in 2013 to about
8 15 percent in 2023. So that's a 50 percent increase
9 in the share of those hospitals.
10 If we add to that the hospitals that
11 AHN has acquired or opened, including the 2021
12 opening at Wexford Hospital, the share of commercial
13 discharges is now over 20 percent. So overall, the
14 initial effect of the announcement of the
15 transaction seems to have been to stop the decline.
16 Thereafter, came a period of growth, and after that,
17 it's been a period of stability where the system
18 hovers at about a 20 percent share of commercial
19 discharges and a slightly lower share of all payor
20 discharges in Western Pennsylvania.
21 Turning to quality, the details are
22 in my written comments, but if you look at CMS
23 metrics over the last decade on three domains,
24 patient safety, mortality and patient satisfaction,
25 you'll see good performance for AHN. In my written

1 comments, I compare AHN to other hospitals in
2 Western Pennsylvania, as well as hospitals
3 nationwide and track performance over time. If you
4 look at patient safety, AHN is tracking all the
5 other comparison groups, and they've all improved a
6 lot since 2016, which is good news for all of us.
7 If you look at mortality metrics
8 since 2020, the AHN hospitals have actually been
9 outperforming, meaning lower mortality on a risk-
10 adjusted basis than other hospitals in Western
11 Pennsylvania or even hospitals on average
12 nationwide. And if you look at patient
13 satisfaction, AHN again improved, and in 2022 and
14 2023, the last two years of available data has
15 outperformed the two comparison groups on patient
16 satisfaction as well. High-quality helps reinforce
17 the growth and preserve the growth in this
18 discharged share that I described before.
19 Next point is that AHN is
20 sustainable. I'm going to address two topics on
21 this one, the 2019 Highmark UPMC contract, and two,
22 the incentives of the overall entity, Highmark
23 Health, to continue to invest in the AHN system,
24 despite some year's operating losses as you
25 discussed recently.

1 The 2019 contract between Highmark
2 and UPMC put the UPMC - or the Pittsburgh Area, UPMC
3 hospitals, in-network with Highmark, and there was a
4 concern at the time that would shift a lot of volume
5 from AHN hospitals to UPMC hospitals, and possibly
6 threaten the growth and success of AHN.
7 It is true that some Highmark
8 enrollees began choosing UPMC hospitals when it
9 appears that they otherwise would have chosen AHN
10 hospitals. Not all of that was a volume loss to AHN
11 though, because there were other hospitals in
12 network and some of those members began choosing
13 UPMC hospitals. So most of the redirection to UPMC
14 was McGee Women's for labor and delivery, where it's
15 a particularly popular hospital. So there was an
16 impact.
17 However, that was only one factor
18 that was moving at the time. Other factors were
19 favorable for AHN. If you look at the overall share
20 in the Pittsburgh area of AHN among commercial
21 enrollees, those are the ones who were affected by
22 the new contract, it actually is higher in 2023 than
23 it was in 2018 and 2019 leading into the agreement.
24 So the net effect is that AHN is doing better in the
25 most recent year of data, 2023, than it was before

1 that agreement. So there was an impact, but it was
2 not the materially adverse in its totality.
3 Second, Highmark Health, the parent
4 entity, does have the ability and incentive to
5 sustain AHN. Mr. Holmberg spoke to the ability,
6 which is that Highmark Health is financially sound,
7 so I'll skip over that and get to the incentive
8 portion. AHN in Western Pennsylvania is the closest
9 competitor to the much larger UPMC. If it didn't
10 exist, the dependence of health insurers on UPMC
11 would be even greater. That would create a
12 bargaining leverage on the part of UPMC.
13 Economic logic and research shows
14 that as a hospital system like that faces less and
15 less competitors, it's able to negotiate higher
16 prices. Avoiding that outcome of greater dependence
17 one provider system and creating a stronger
18 competitive alternative gives insurers, including,
19 but not limited to, Highmark, the strategic benefit
20 of improving their bargaining leverage and allowing
21 them to negotiate lower prices. That's good for
22 insurers, that's good for Highmark Health, it's good
23 for Highmark, the insurance entity, and ultimately,
24 by keeping prices down, it's good for consumers and
25 employers in Western Pennsylvania.

1 So when you look at the incentive of
2 Highmark Health to sustain AHN, you have to count
3 both the operating gain or loss that it realizes in
4 any given year, plus the strategic benefit that it
5 gains from having a viable competitor to UPMC and
6 the other Western Pennsylvania hospitals.
7 Last point I want to make is that
8 increased competition benefits consumers. We have
9 two effective integrated delivery systems in Western
10 Pennsylvania. We have other freestanding
11 independent insurers, as well as independent
12 hospital systems, and they're all competing. Among
13 all of those, only one is subject to the 2013
14 conditions.
15 Competition is good. It makes firms
16 work hard to grow their sales, find new and better
17 mousetraps deployed on the market, leaders want to -
18 sorry, firms that are not the leading firms want to
19 copy the leaders and try to catch up. The leader
20 wants to innovate and move forward to try to protect
21 its lead. This is sort of a competitive race, and
22 that's what benefits consumers over time. In that
23 competitive race, if you slow one of the racers to
24 maybe overstretch the analogy, then you're going to
25 diminish competition.

1 As I alluded to at the outset, that
2 can be warranted if there's a good, sound policy
3 basis for doing so based on specific concerns. The
4 two specific concerns at issue in the 2013 Order
5 were lack of insurance competition, and that is
6 greatly reduced. And then second concern over AHN's
7 condition - or sorry, the concern over West Penn's
8 condition and with the success of the AHN system,
9 that is also now eliminated.
10 So the overall landscape today is
11 greatly different and the concerns that motivated
12 the conditions in the Order are now alleviated if
13 not gone. Thank you.
14 COMMISSIONER HUMPHREYS: Thank you.
15 You talked - I'm interested in you talking a little
16 bit more about the antitrust settlement and the
17 second Blue bid, because as I recall, the second
18 Blue bid, and you mentioned how other companies like
19 Elevance could come in, but I think the second blue
20 bid is really limited in the number of employers
21 that it applies to nationally and within
22 Pennsylvania, certainly within Western Pennsylvania.
23 So I'm curious, just your scope of
24 reference when you talk about the second Blue bid
25 and bringing in a lot of competition, because

1 there's a limited number of employers to compete
2 over in that case.
3 DR. CAPPS: Sure. Excuse me. So
4 that's correct. It's the largest employer though,
5 so it's a limited number of employers, but it's a
6 large number of enrollees. So PNC would be an
7 example of a large employer in the Pittsburgh area,
8 and while it's only one employer, it's thousands and
9 thousands of employees. So because the second Blue
10 bid applies to the large self-funded employers, it's
11 impacting a large portion of the commercial
12 business, even if it's not a majority of the
13 specific individual employers.
14 COMMISSIONER HUMPHREYS: How many are
15 in Western Pennsylvania that are on the list?
16 DR. CAPPS: How many Blue entities,
17 or how many large employers?
18 COMMISSIONER HUMPHREYS: How many of
19 the large employers -?
20 DR. CAPPS: I don't know.
21 COMMISSIONER HUMPHREYS: You talked
22 about the sustainability of AHN and, at first, it
23 sounded like you were going down one path, but I
24 think financially sustainable means reliance on
25 Highmark, kind of all things staying the same.

1 DR. CAPPS: Well, -.
2 COMMISSIONER HUMPHREYS: Is that you
3 meant in terms of -?
4 DR. CAPPS: In 2018 and 2019, it was
5 - it had an operating profit. So it may or may not
6 become -- had an operating gain in any given year.
7 I'm not able at all to disentangle COVID from other
8 factors over the last couple of years when the
9 operating losses have been larger, but it may be
10 able to become profitable, but I was referring to
11 the overall system, yes.
12 COMMISSIONER HUMPHREYS: The
13 continued contributions of 200-plus -?
14 DR. CAPPS: Yes.
15 COMMISSIONER HUMPHREYS: Have you
16 done analysis of whether the removal of the
17 conditions would maintain or improve competition?
18 DR. CAPPS: Only the logical point
19 that if they have an impact and they're restraining
20 one of the competitors in Western Pennsylvania, then
21 they're having effect of diminishing competition -.
22 COMMISSIONER HUMPHREYS: But not
23 specific to this case?
24 DR. CAPPS: Correct.
25 COMMISSIONER HUMPHREYS: Okay.

1 So is it your opinion that currently
2 Western Pennsylvania's insurance and provider
3 markets are highly concentrated?
4 DR. CAPPS: They are - insurance is
5 above the threshold for the definition of a highly
6 concentrated market in the merger guidelines. And I
7 believe Medicare Advantage may not be, and it also
8 depends. There's new thresholds as of December
9 2023. So it may depend on the old versus new
10 thresholds.
11 In that respect, though, it's not
12 unique; pretty much the entire country, really, the
13 hospital side or the insurer side is going to have
14 three to six large firms and I'm very much
15 generalizing here. So that's just the degree of -
16 in both hospital systems and insurance tends to lead
17 to a moderate number of large firms that then
18 exceeds the thresholds for the definition of a
19 concentrated market.
20 COMMISSIONER HUMPHREYS: And that's
21 the, just to be clear, the Department of Justice and
22 FTC 2023 Guidelines, the merger guidelines that you
23 were talking about -?
24 DR. CAPPS: Exactly.
25 COMMISSIONER HUMPHREYS: Which I

1 think they moved up to 1,800. Do you know what it
2 is in Western PA now for either the insurance or the
3 provider market?
4 DR. CAPPS: I think not with an exact
5 number. The HHI is computed as the sum of squared
6 market shares. So if you have a couple of firms at
7 25 percent as you - 25 to 30 percent as you would in
8 Medicare Advantage, then you're going to get about
9 three times 625. So it's going to be in the 2,000
10 range, which is over the new threshold of 1,800
11 below the old threshold, 2,500. And commercial
12 insurance, I think is higher.
13 COMMISSIONER HUMPHREYS: And I think
14 same question as Mr. Holmberg. You mentioned
15 Medicare Advantage. You mentioned the growth of
16 companies that were already there. I'm talking
17 about companies that want to come in, and when they
18 say they look for rate, they say the rates are
19 unrealistically high from providers, that they can't
20 come in and get contracts in Western Pennsylvania to
21 begin to compete. I would be curious your thoughts
22 on that response.
23 DR. CAPPS: So, I mean, United was
24 almost entirely out by 2013 and 2014, so they may be
25 a counterexample. So you can see in the written

1 comments that their enrollment share was near zero
2 at that time. Now they have about 50,000 Medicare
3 Advantage enrollees in Western Pennsylvania. So
4 that may be a counterexample. Aetna was already
5 here, and then they've just grown substantially over
6 the ensuing years. I don't have specific knowledge
7 of someone - Medicare Advantage insurer who tried to
8 enter and was unable to, and I don't know whether
9 they were - which providers - or whether it was all
10 of them that was difficult for them to contract
11 with.
12 COMMISSIONER HUMPHREYS: Any
13 questions? Any other questions? No?
14 Thank you very much.
15 DR. CAPPS: Thank you.
16 COMMISSIONER HUMPHREYS: Next up we
17 have Susan Manning and Margaret Guerin-Calvert with
18 Compass Lexecon.
19 DR. MANNING: Good morning. My name
20 is Dr. Susan Manning. I am testifying today, along
21 with my colleague Margaret Guerin-Calvert, as the
22 principal authors of the Competitive Assessment of
23 the Western Pennsylvania Insurance and Healthcare
24 Markets Report prepared for the Pennsylvania
25 Insurance Department, which was issued in May 2023

1 and reissued in January 2024. That Report, which
2 I'll refer to as the 2023 Report and early reports
3 and this testimony, reflect the professional
4 opinions and assessments of the authors and not
5 necessarily of Compass Lexecon or FTI Consulting as
6 a firm or individual professionals.
7 The Department requested that Compass
8 Lexecon conduct a ten-year reexamination and updated
9 development in the Western Pennsylvania healthcare
10 insurance markets and healthcare delivery markets
11 under the Department's approving Determination and
12 Order dated April 29, 2023, as amended. In this
13 testimony, I'll refer to that Order as the 2023
14 Order and the conditions under the 2023 Order as the
15 conditions.
16 As you may know, the Department
17 published on its website the 2023 report and our two
18 earlier reports issued in 2013 and 2017. Also
19 included in the Department's website is our letter
20 in response to the issues related to Highmark
21 Health's Request for Modification, submitted in
22 March 2024. Given the time permitted, I will
23 summarize certain of our conclusions from these
24 reports and other observations. We encourage anyone
25 who has not already had the opportunity to review

1 these materials to do so. Briefly, we'll summarize
2 our three primary conclusions, which are based on
3 our extensive review of the healthcare insurance and
4 provider markets in Western Pennsylvania.
5 First, it is our conclusion that the
6 2023 order's competitive and public interest
7 conditions appear to achieve their purposes of
8 preserving and protecting competitive dynamics while
9 not placing Highmark or AHN at a competitive
10 disadvantage. We have not identified any economic
11 evidence in the data and information provided to us
12 or through public sources as that these conditions
13 have impaired Highmark's in Allegheny Network's
14 ability to respond to material changes in
15 competitive conditions.
16 Highmark's Health's ability to
17 request waivers to these conditions when necessary
18 provides a safeguard for Highmark to respond to
19 changing competitive conditions. Highmark has made
20 waiver requests and waivers have been granted by the
21 Department. The potential for anticompetitive harm
22 that we found in 2023 remains.
23 Market factors that pose potential
24 competitive risk include the concentrated healthcare
25 insurance and healthcare provider space in Western

1 Pennsylvania and the predominance of Highmark and
2 UPMC and their increasingly similar vertical
3 structures. These vertical structures can lead
4 either to diminished competition when they
5 accommodate each other's strategies or intense
6 competition.
7 Other factors that exacerbate
8 potential competitive risk include the circumstances
9 arising from the removal of restrictions via the
10 Blue Cross Blue Shield Association Antitrust
11 Settlement and the Highmark UPMC insurer provider
12 contract. The competitive conditions were designed
13 to mitigate potential adverse effects on
14 competition, and these factors can create the
15 potential for anticompetitive harm and the
16 likelihood an incentive for anticompetitive conduct.
17 Second, as we expressed in our 2017
18 report, we conclude that the 2000 (sic) Order,
19 including its competition and public interest
20 conditions, have had no adverse effect on healthcare
21 insurance, healthcare delivery, or the quality of
22 care and variety of healthcare plans available to
23 Highmark members or other health care consumers in
24 Western Pennsylvania.
25 Third, we conclude that competition

1 within the Western Pennsylvania healthcare insurance
2 marketplace has strengthened since 2017 and
3 healthcare delivery services competition in Western
4 Pennsylvania, that is, inpatient-outpatient
5 physician services, is strong as compared with the
6 level of competition present before the 2013 Order
7 and under the conditions as set forth in the Order.
8 Highmark has lost membership from 2013 to 2021, as
9 we described in the 2023 Report, but most recently,
10 Highmark has been regaining membership as it
11 continues to develop new and innovative network
12 products to use in competing for members.
13 UPMC is a formidable competitor of
14 Highmark in the overall insurance sector. Although
15 the two competitors tend to focus on different
16 health plan products. In Western Pennsylvania and
17 Commonwealth, there remains a national insurer
18 presence which includes United Healthcare, Aetna,
19 Cigna, among others. On the healthcare delivery
20 side, Allegheny Health Network provides a viable
21 competitive alternative to UPMC for Highmark members
22 and other Western Pennsylvania patients.
23 That said, Allegheny Health Network's
24 patient operations are unprofitable with net
25 operating losses incurred in 2020 through 2023, and

1 Highmark Health continues to infuse Allegheny Health
2 Network with significant capital.
3 Our concerns with modifying the 2013
4 Order is competition and public interest conditions
5 as requested by Highmark Health take into account
6 the foregoing and focus on the potential vertical
7 effects from the 2013 transaction in terms of the
8 ability to foreclose, or diminish competition or
9 raise rival's cost in competing in Western
10 Pennsylvania healthcare insurance and provider
11 markets.
12 With respect to these vertical
13 competitive conditions, specifically conditions one
14 and two, restricting exclusive contracting and
15 conditions five and six, prohibiting most favored
16 nation or as they're commonly referred to MFN
17 provisions, Highmark Health claims in previous
18 notification to the Department that it has no
19 intention to engage in these insured provider
20 contracting practices. It also claims that it faces
21 independent oversight for such conduct under the
22 antitrust laws and Pennsylvania and federal laws
23 governing charitable organizations.
24 Such contracting practices have been
25 successfully challenged in courts and are prohibited

1 in some states. However, we are not aware of any
2 general prohibition on such practices in
3 Pennsylvania and under federal law governing
4 charitable organizations.
5 If Highmark Health and its affiliated
6 entities intend not to engage in such contracting
7 practices, it would seem that Highmark Health and
8 its affiliated entities would not be competitively
9 impacted, or harmed or disadvantaged by the
10 existence of these conditions within the Order.
11 This is especially true if, as Highmark Health
12 asserts, its rival's face similar constraints under
13 other laws or regulations.
14 Maintaining the 2013 Order's
15 Conditions against exclusive contracting and the use
16 of MFNs will assure the Department and Commonwealth
17 residents that these commitments are kept.
18 Moreover, these conditions are used to protect
19 against potential vertical concerns about
20 foreclosure of competition or raising rival's costs,
21 particularly as new rivals attempt to enter the
22 healthcare markets in Western Pennsylvania.
23 In advocating for the modification or
24 elimination of condition three, the five-year limit
25 on insurer-provider contracts, Highmark Health has

1 claimed that it is reluctant to invest innovative
2 pro consumer arrangements with providers because it
3 cannot obtain an appropriate return on investment.
4 According to Highmark Health, this condition poses
5 particular competitive disadvantages for Highmark
6 because other payors may enter into these long term
7 contracts necessary for risk or value based
8 arrangements, while Highmark must request a waiver
9 in advance from the Department, which can cause
10 significant delays in negotiations.
11 Highmark has not provided information
12 to substantiate this claim of being competitively
13 disadvantaged by this condition to the Department as
14 we are aware. That said, studies have shown that
15 long term insurer provider contracts which do not
16 allow contracts to adjust to changing market
17 conditions can have anticompetitive effects. This
18 was a key concern articulated by the Department of
19 Justice in its review of the Highmark West Penn
20 Allegheny Health system transaction in 2013 and
21 evaluate in this Departments review of the
22 transaction.
23 We acknowledge that seeking waivers
24 and condition three can take time. Should the
25 Department decide to make a change, it may wish to

1 consider some modifications to the 2013 Order's
2 Condition Three to address the waiver delay, but
3 with the proviso that ensure provider contracts
4 exceeding five years, should incorporate a market
5 adjustment mechanism to ensure that neither the
6 insurer nor provider become competitively or
7 financially disadvantaged over time.
8 With respect to firewall provisions
9 of conditions seven, eight and nine, we strongly
10 disagree with Highmark Health's position that the
11 federal price transparency rules have equivalent
12 effect of the 2013 Orders' firewall provisions, thus
13 mooting the need for these conditions. The federal
14 price transparency rules require group health plans
15 and insurers to publish provider specific
16 reimbursement rates. These rules do not prohibit
17 the transfer of rival's competitively sensitive
18 information along the vertical chain, that is, from
19 Allegheny Health Network, the provider to Highmark,
20 the insurer, or vice versa.
21 Such information transfers have the
22 potential to diminish competition among rivals and
23 raise rival's costs with adverse effects on
24 consumers. The firewall conditions as effectuated
25 in Highmark's published firewall policy and

1 enforcement provisions are useful to protect against
2 potential adverse vertical effects, such as
3 foreclosure or raising rise of costs as new rivals
4 enter the market.
5 We understand that Highmark Health
6 agrees that the 2013 Order's Condition 20, which
7 prohibits anti-tiering, anti-steering, is pro-
8 consumer and pro-competitive, and it prevents
9 artificial and unnecessary inflation of healthcare
10 costs. We understand that Highmark Health and its
11 affiliated entities have not included and Highmark
12 Health claims that none of these entities will
13 include anti-tiering or anti-steering provisions in
14 its insurer-provider contracts. As such, we do not
15 see how Condition 20 would cause Highmark to be
16 competitively disadvantaged. Maintaining Condition
17 20 will assure the Department and healthcare
18 consumers that these commitments are capped.
19 With respect to Condition 21 relating
20 to Highmark member's admissions at other community
21 hospitals, the condition addresses concerns
22 expressed that Highmark's affiliation with Allegheny
23 Health Network could potentially result in Highmark
24 steering its members to Allegheny Health Network and
25 away from community hospitals.

1 Such steering would cause considerable financial
2 harm and volume losses to these hospitals.
3 This Condition requires Highmark to
4 report on the impact of the integrated delivery
5 network strategy with respect to these community
6 hospitals. We understand Highmark health considers
7 this condition to be unnecessary because other
8 payors also have significant membership volume at
9 community hospitals. Highmark Health views the
10 reporting and monitoring standard of this condition
11 to be a burden that constrains it from designing and
12 offering products that would be in the best interest
13 of policyholders and subscribers.
14 We are aware that similar and
15 independent - smaller and independent hospitals in
16 Western Pennsylvania and across the Commonwealth
17 face significant financial viability and other
18 challenges today. Many community hospitals have
19 either closed, continue to struggle, or have sought
20 affiliation with or buyouts by larger healthcare
21 systems.
22 Given this challenging environment,
23 this condition provides the Department with
24 additional transparency with respect to the area's
25 largest insurer's patient volumes at community

1 hospitals, which ultimately compete with Highmark's
2 own hospitals. We have not identified any evidence
3 that this reporting or monitoring has had an adverse
4 competitive or financial effect on Highmark, and
5 therefore, we do not see an economic justification
6 for eliminating this condition.
7 Community health reinvestment,
8 Condition 23, requires Highmark to continue its
9 commitment to nonprofit health activities for the
10 betterment of overall community healthcare. Under
11 the order, Highmark must dedicate 1.25 percent of
12 its aggregated direct written premiums towards CHR
13 activity and report such funding to the Department.
14 With the Modification Request, Highmark Health
15 recognizes it has a commitment to the community and
16 a statutory obligation to report CHR activities.
17 However, it states that no other Pennsylvania payors
18 are required to pay a specific dollar amount for
19 community health reinvestment.
20 We note that other regulators across
21 the country have required five year or longer
22 financial investments in community benefit programs
23 in similar transactions where there have been
24 competitive concerns about insurer and provider
25 market concentration. Our analysis of the

1 competitive conditions in Western Pennsylvania do
2 not indicate that either Highmark members or
3 competition in the area have been adversely affected
4 by Condition 23.
5 With respect to Highmark Health's
6 position that the Consent Orders with similar
7 conditions expire after five to ten years, which
8 position appears to be primarily based upon consent
9 orders cited in our 2023 report. In our review, we
10 have determined that there is no hard and fast rule
11 for how long such orders stay in effect. Rather,
12 the issue is context dependent and the context in
13 which both providers and insurer markets are
14 concentrated with two large vertically integrated
15 firms, existing and potential vertical competition
16 concerns weigh in favor of continuing the 2013
17 Order.
18 Highmark Health also maintains in its
19 modification request that it is the only insurer
20 entity subject to these competitive and public
21 interest requirements. At the time of Highmark
22 Health's request, it may have been true, but since
23 then we understand the Department has imposed
24 similar competitive and public interest conditions
25 on Kaiser Permanente transaction with Geisinger

1 Health, citing competition, the public interest and
2 the fact that the conditions are pro-competitive and
3 consumer welfare enhancing to the residents of
4 Pennsylvania.
5 To summarize our competitive concerns
6 with Highmark's request to modify the 2023 Order, it
7 is our overall conclusion that the competitive and
8 public interest conditions remain necessary to
9 strengthen and maintain competition in both the
10 health insurer and health provider market sectors.
11 But for the 2013 order, there may exist an increased
12 risk of potential anti-competitive behavior in the
13 concentrated healthcare insurance and provider
14 sectors and with the exacerbation by long term
15 contract between UPMC and Highmark and these rivals
16 increasingly symmetric vertical structures.
17 Specifically, as we stated in our '23
18 Report, with two large and more symmetrically,
19 vertically integrated healthcare delivery and
20 financing networks competing against one another in
21 Western Pennsylvania, competition can take one of
22 two forms, intense competition or tacit collusion or
23 more specifically, diminished competition.
24 It is also important to emphasize
25 that we have not conducted analysis, nor have we

1 ever stated or concluded that if the 2013 Order's
2 competitive and consumer conditions were terminated,
3 competition in Western Pennsylvania would remain
4 robust to the benefit of Highmark members or health
5 care consumers.
6 To the contrary, it is our opinion
7 that the available evidence indicates the 2013 Order
8 and is competitive and public interest conditions
9 continue to serve to mitigate potential adverse
10 competitive effects. Thank you.
11 COMMISSIONER HUMPHREYS: Thank you.
12 Reasonable people can disagree, reasonable
13 economists can disagree. Your reports and Dr.
14 Capps, there's actually a great deal of similarity
15 in certain areas on competition, competitive
16 dynamics, but you reach very different conclusions.
17 Interested in your thoughts on why?
18 MS. GUERIN-CALVERT: Let me start
19 with maybe the areas of agreement to emphasize. I
20 think there are two or three that are really
21 important, which is starting from the period prior
22 to the 2013 Order today, there is an agreement that
23 the market has moved in a stronger competitive
24 position. Particularly AHN, as compared to where it
25 was prior to the order, has certainly strengthened

1 after the transaction and grown in a significant
2 way. And that there also is a situation where it is
3 a stronger competitive rival with UPMC as well as
4 with others. So, agreement there.
5 There's also agreement that there has
6 been in the insurance provider section, the
7 insurance sector, an expansion on the part of
8 rivals, and also in terms of UPMC. So overall, a
9 strengthening of the competition between that and
10 that and that those are two things. There's an
11 agreement which I think we heard emphasized today,
12 that the market structure, however, has remained
13 concentrated, as measured by HHIs or other standard
14 measures of concentration in both the insurance
15 sector and the provider sector, the hospital sector,
16 for example, and both of those factors, in terms of
17 that market concentration remaining, are significant
18 ones that were a concern back in 2013, remain a
19 concern in 2023.
20 What has also evolved, though, is
21 where, again, there is an agreement that there is a
22 significantly larger - two large vertically
23 integrated entities, UPMC and Highmark AHN, which
24 are the predominant players in each of the insurance
25 and the provider sectors, with large shares in each.

1 So there's agreement about that. And there's also
2 an agreement that, with the status quo, with the
3 conditions in place, that there are significant
4 constraints on the kinds of contracting practices
5 that can be used and there are, as a result,
6 dynamics that continue to benefit and have benefited
7 consumers in the area.
8 Where we disagree, and I think to go
9 directly to answer your question as to why we reach
10 such different conclusions, is, I think again, three
11 areas. One is, in looking at those structures, we
12 also took into consideration on this issue as to the
13 incentives for the two main vertically integrated
14 systems to compete with each other as opposed to
15 more tacit coordination. We do note that there's
16 the long term UPMC contract with Highmark Health,
17 which could align incentives is one aspect.
18 But we also did a comprehensive
19 review of each of the conditions and how it is that
20 they serve to benefit competition. So that's one
21 area. I think the biggest areas of difference going
22 back to that vertically integrated structure, the
23 continued market concentration structure, is we
24 looked at and considered that there are significant
25 potential antitrust risk from that were the

1 conditions not to be present.
2 As Susan said, we did not look in
3 detail at the but-for world, but we did evaluate
4 what would the risks be and the impact on incentives
5 and likelihood of anti-competitive conduct. And
6 there we note that conditions such as the firewall,
7 one, which limit the ability to share information
8 about rivals, is one that really has been a
9 significant constraint. So we do look at what
10 happens where there is an increased incentive.
11 The potential entry from Blue Cross
12 Blue Shield or other kinds of entities is an
13 additional factor or pressure. So those are the
14 significant areas of difference where our assessment
15 is that the conditions, without the conditions and
16 with this current structure and conditions, there's
17 a potential risk for anticompetitive conduct with
18 the types of contracting practices or other elements
19 that are prohibited.
20 COMMISSIONER HUMPHREYS: Interested
21 also in your thoughts on the potential impact of the
22 Blue settlement and what that -?
23 DR. MANNING: I apologize, -?
24 COMMISSIONER HUMPHREYS: The Blue
25 settlement, interested in your thoughts on the

1 antitrust settlement?
2 DR. MANNING: I'd say they're - the
3 most -. This is an area of agreement that it has
4 the prospect that additional entrants will be
5 actively considering Western Pennsylvania and
6 expansion and other parts of the Commonwealth. The
7 impact for the issues with regard to the conditions
8 is that our concern is that without the conditions,
9 there is the prospect that of - that either of the
10 major rivals could consider actions that would limit
11 that entry or foreclose that entry, so that there
12 might be some incentives and likelihood that could
13 make - could, in the prospect of that potential for
14 more significant entry, could encourage anti-
15 competitive conduct that might - that if it were to
16 occur, would be to the detriment of consumer welfare
17 and the Commonwealth.
18 COMMISSIONER HUMPHREYS: So
19 effectively, you could use a most Favored Nation
20 clause and anti-tiering, anti-steering provisions to
21 almost box out someone like Elevance from being able
22 to come in and develop an adequate network to
23 compete?
24 MS. GUERIN-CALVERT: The concern
25 about the use of those provisions generally, Most

1 Favored Nation, exclusivity, yes, is that-that could
2 be something that could either partially or more
3 completely affect or alternatively raise their costs
4 of entry. Either one of those are one impact that
5 is there of MFNs or exclusivity.
6 COMMISSIONER HUMPHREYS: Would that
7 be -? I mean, that seems like one of the reasons
8 behind the antitrust settlement in the first place.
9 If they were to come back in and effectively box out
10 other Blues, is that consistent with the spirit of
11 the settlement?
12 MS. GUERIN-CALVERT: I might have
13 misinterpreted -. So as a general matter, if the
14 purpose of the settlement is to enable open
15 competition, then something that would have the
16 effect of significantly undermining the ability for
17 that to occur is the kind of thing that would be, I
18 think from our perspective in this context, a
19 competitive concern.
20 COMMISSIONER HUMPHREYS: And
21 potentially removing those conditions would open up
22 that scenario, theoretically
23 DR. MANNING: Theoretically, yes.
24 MS. GUERIN-CALVERT: Theoretically it
25 raises that. There's also, like, with regard to the

1 firewall, there's a concern that by being able to
2 transmit information across entity, you could get
3 access to information.
4 COMMISSIONER HUMPHREYS: Sure. And I
5 mean, you'd see firewall requirements for groups
6 like Aetna, and you see it in Cigna, and ESI and you
7 see it obviously here to limit the opportunity to
8 share competitive information -. That makes sense.
9 Your thoughts on Medicare Advantage
10 market specifically? Obviously, it's growing. We
11 get a number of applications in different - for
12 different areas statewide and number of groups
13 almost on annual basis. Well, on annual basis, we
14 get handfuls that all try to come in before April 15
15 or whatever the federal deadline is. But I've heard
16 from a number of companies that would like to expand
17 across the state and/or come into Pennsylvania for
18 the first time. That again, Western Pennsylvania is
19 hard to get into; it's hard to develop contracts
20 because you have the two integrated systems and
21 their prices are higher than what a new entrant
22 could participate in if they don't have the heft of
23 the UHC potentially behind them. I think we all
24 know UHC is one of the largest health insurers in
25 the country.

1 So that's a little bit different than
2 kind of another company that maybe wants to come in.
3 Just curious, your thoughts on the Medicare
4 Advantage market in particular?
5 MS. GUERIN-CALVERT: I'd say as a
6 general matter, there is uncertainty in several
7 markets about Medicare Advantage in terms of
8 reimbursements and so on. I think in the context of
9 what we're looking at here, don't have any specific
10 comments on the - some of those challenges that are
11 being reached, the specific challenges for specific
12 entrants as they're facing.
13 I would say, as an overall matter,
14 having the kinds of protections that are there with
15 regard to, say, firewalls. The other contracting
16 practices are ones that inure to the benefit of
17 potential entrance in that-that is not something
18 that could further change their costs of entry in a
19 negative way or impact the likelihood of their entry
20 in a negative way.
21 COMMISSIONER HUMPHREYS: Yeah. And I
22 mean, I think very philosophically, but
23 structurally, I want to talk about AHN for a minute.
24 You heard the questioning of the prior panelists on
25 whether it could be independently sustainable. I

1 think when you have an integrated system, there are
2 - there are different ways that money moves between
3 different parts of an integrated system. And, I
4 mean, almost like a balloon at times. You push in
5 one side, it can come out the other, you can push in
6 the other side. Curious your thoughts on the
7 substantial contributions that Highmark makes
8 towards AHN, its reliance, AHN's on those
9 contributions and what that means for the
10 competitive nature in the overall scheme of - as we
11 look at the order.
12 So I would say overall, it is an
13 aspect that we've seen in other integrated systems.
14 I think it, you know, overall, from a competition
15 perspective, I'll leave some of the financials to
16 others. I think from a competition perspective, it
17 makes it - it shows the issue as to how much
18 competition in this marketplace right now in Western
19 Pennsylvania relies on the vertically-integrated
20 Highmark AHN and the vertically-integrated UPMC with
21 its insurance plans and also its providers, and the
22 importance of rivals who contract with them at the
23 insurance level and also at the provider level, to
24 be able to negotiate new deals, offer new innovative
25 products, and not to have conditions be changed such

1 that it would make that more complicated.
2 So it's a long way of saying to
3 really ensure that this vertical entity has the
4 strongest pressure put on it, not just from UPMC as
5 another vertical entrant, but from the other
6 insurance providers to really continue to keep it
7 competitive. That will put as much pressure on
8 putting appropriate rates, but also being able to
9 have competitive rates offered to rivals in the
10 insurance particular sector.
11 DR. MANNING: The one thing I would
12 add to that is I think that Highmark Health, with
13 these investments, have made AHN an incredibly
14 viable alternative to UPMC, and they should be
15 applauded for those investments. Those investments
16 are necessary because the cost of healthcare
17 delivery in the United States is an expensive
18 proposition, but at the same time, there's
19 advantages to having a vertically-integrated firm
20 where those types of transfers of funds can occur
21 from one to other. And it can, in fact, raise the
22 barriers to entry for other insurers or other
23 healthcare providers to enter the market, given the
24 ability to make those transfers, but I will say
25 Highmark should definitely be applauded for what

1 they have done to AHN as far as increasing
2 competition in the healthcare delivery market in
3 Western Pennsylvania.
4 COMMISSIONER HUMPHREYS: Thank you.
5 Other questions? No?
6 Thank you very much. Now, I think
7 we'll move into the public comment period. The one
8 that I have registered is Jonathan Greer with the
9 Insurance Federation of Pennsylvania. Jonathan, if
10 you could limit it to around five minutes.
11 MR. GREER: Good morning. My name is
12 Jonathan Greer and I am the President and CEO of the
13 Insurance Federation of Pennsylvania, a multiline
14 state trade association that includes commercial
15 health insurers as its members.
16 At the outset, we thank the Insurance
17 Department for today's hearing on Highmark's Request
18 for Modification of the 2013 Order that placed
19 conditions on its acquisition of the West Penn
20 Allegheny Health system that has since been
21 rebranded as Allegheny Health Network. We advocated
22 for this hearing as part of our February 9
23 submission opposing the Request for Modification and
24 are pleased with matters getting the public
25 attention it deserves.

1 The comment letters Highmark
2 solicited in support of its position characterize
3 the Request for Modification as a form of
4 deregulation of conditions that are no longer
5 needed. As the Department knows well, the Insurance
6 Federation does not seek regulation just for the
7 sake of regulation.
8 That said, we continue to share the
9 sentiments expressed in the 2013 Order that its
10 accompanying conditions are necessary, quote, to
11 preserve and promote competition insurance in
12 Commonwealth of Pennsylvania, to protect the public
13 interest and to protect the financial stability of
14 Highmark insurance companies, unquote.
15 The Department also concluded the
16 imposition of these conditions ensured the
17 transaction did not violate Section 1402 of the
18 Insurance Company Holding Companies Act, a position
19 we also continue to share. In support of this
20 assertion, these conditions have outlived their
21 purpose. Highmark also argues the 2013 Order should
22 be dissolved since its conditions now impose what it
23 refers to as a, quote, unique burden, unquote.
24 This raises a question for the
25 Department, is the 2013 Order unique, and is it

1 imposing a burden on Highmark? Based on the
2 evidence, the answer to both is no. First, as
3 recently as March 27th, the Insurance Department
4 granted additional approval to the acquisition of
5 Geisinger Health by Risant Health and Kaiser
6 Foundation Hospitals that in utilizing the same
7 standard of review that was applied in 2013,
8 witnessed the imposition of more than 20 conditions,
9 many of which mirror those in the 2013 Highmark AHN
10 Order, and despite Highmark's assertion that orders
11 of this nature typically terminate after ten years,
12 many of these conditions are not time limited and
13 those that are last for 15 years.
14 Second, with respect to Highmark's
15 burden argument, we refer you to the findings of the
16 Department's retained consultant, Compass Lexecon,
17 which is part of its 2023 analysis found the
18 conditions contained within the 2013 Order as quote,
19 necessary to promote competition and the public
20 interest going forward in Western Pennsylvania,
21 unquote.
22 Compass Lexecon goes on to find,
23 quote, no indication that the 2013 Order has had an
24 adverse effect on health insurance healthcare
25 delivery or the quality of care and variety of plans

1 available to Highmark members or other consumers in
2 Western Pennsylvania, unquote. Further, Compass
3 Lexecon also notes the Order's conclusion of the
4 waiver process that it refers to as a safeguard for
5 Highmark that it has successfully pursued in the
6 past.
7 We take these conclusions as
8 demonstrable proof the Order's conditions have
9 worked well for the affected parties and continue to
10 achieve their intended purpose. We would be remiss
11 if we fail to mention the March 4, 2024 comments
12 issued by Compass Lexecon in response to Highmark's
13 use of its findings in the Request for the
14 Modification. Consistent with our February 9th
15 comments, which raise concerns as to what might
16 occur in the absence of the Order's conditions,
17 Compass Lexecon reiterates its position that,
18 contrary to Highmark's mischaracterization of the
19 findings, the conditions contained within the 2013
20 order should remain in place in order to, quote,
21 preserve competition and the public interest.
22 For all these reasons, and in the
23 absence of any evidence to the contrary, we continue
24 to see no objective basis to grant Highmark's
25 request. Thank you for the opportunity to speak

1 before you today.

2 COMMISSIONER HUMPHREYS: Thank you,

3 Mr. Greer, same question as I've asked each panelist

4 so far, curious on your thoughts and whether you've

5 heard from any members on entering the West

6 Pennsylvania market and any particular unique

7 challenges they faced in trying to do that,

8 particular to the Medicare Advantage.

9 MR. GREER: Yeah, when I heard your

10 question, I suspected some of the concerns that you

11 are expressing come from some of our members and the

12 challenges are real. I would echo the comments in

13 response to this question that whatever concerns and

14 challenges that are there today, I suspect that they

15 will intensify and they will spread if these

16 conditions are alleviated. It will spread into the

17 commercial market.

18 COMMISSIONER HUMPHREYS: I don't have

19 any other questions for you.

20 MR. GREER: Okay.

21 COMMISSIONER HUMPHREYS: You can get

22 off the hot seat.

23 MR. GREER: Thank you.

24 COMMISSIONER HUMPHREYS: Thank you,

25 Mr. Greer. Do we have any other -? Kathy, do we

1 have any other public comments?
2 ATTORNEY SPEAKS: No.
3 COMMISSIONER HUMPHREYS: Did anyone
4 register? No?
5 No additional comments. So is there
6 anyone else now who wants to present comments
7 regarding the Request for Modification?
8 Since no one else wishes to speak,
9 I'll make a few concluding remarks. I very much
10 appreciate everyone being here, particularly those
11 that have had to travel to be here today with us.
12 So we really appreciate you coming in town. The
13 Department will compile a list of the questions we
14 asked today and ask that Highmark health submit its
15 responses to the questions by Friday, May 17.
16 Those responses will be published on
17 our website as you reflect on today's public
18 information hearing. And this is for both here and
19 those who may be listening on the web stream,
20 additional comments may occur,. that may the
21 Department will keep the record open until at least
22 May 31st, the end of this month in order to give the
23 opportunity to submit additional comments. You can
24 visit our website for information on how to do so.
25 Again, that was Insurance.Pa.gov.

1 With that, and not seeing any more
2 comments, then we will go ahead and close the
3 hearing and we will call it adjourned. So thank you
4 all and appreciate your time this morning.
5 * * * * * * * *
6 HEARING CONCLUDED AT 11:28 A.M.
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1 CERTIFICATE

2 I hereby certify that the foregoing proceedings,
3 held before Pennsylvania Insurance Department
4 Commissioner Humphreys, was reported by me on May 1,
5 2024, and that I, Jessica Ashman, read this
6 transcript and that I attest that this transcript is
7 a true and accurate record of the proceeding.
8 Dated the 14th day of May, 2024.
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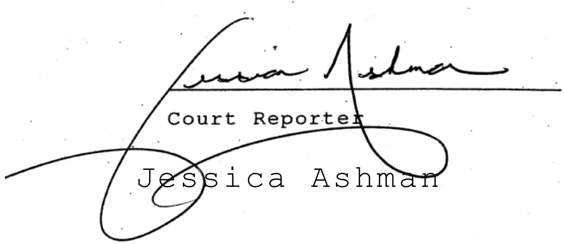

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