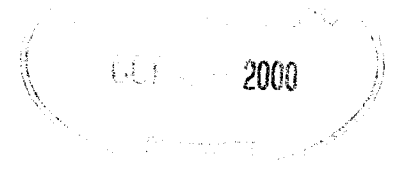


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



In the Matter of

HOECHST MARION ROUSSEL, INC.,
A corporation,

CARDERM CAPITAL L.P.,
A limited partnership

and

ANDRX CORPORATION,
a corporation

Docket No. 9293

**PFIZER INC.'S APPLICATION FOR IN CAMERA TREATMENT
OF CERTAIN CONFIDENTIAL DOCUMENTS**

Pfizer Inc. ("Pfizer"), a non-party to this action, hereby requests that certain competitively sensitive and highly confidential Pfizer documents included in Respondent Aventis' Notification of Use of Confidential Discovery Materials dated September 25, 2000 be granted *in camera* status pursuant to Rule 3.45 and paragraph 13 of the Second Amended Protective Order Governing Discovery Material.

Pfizer is not a party to the above action, but instead was required to produce documents to both Complaint Counsel and Respondents pursuant to subpoenas issued by the parties and/or this Court. The documents required to be produced include some of the most competitively sensitive documents related to Pfizer's Calcium Channel Blocker ("CCB") business, such as business and strategic plans and agreements with managed care companies containing highly confidential terms governing such things as formulary status for Pfizer products. Unless compelled, as was the case here, Pfizer would never

voluntarily share these documents or the information contained therein with competitors. In fact, Pfizer takes measures to protect many of these documents, including limiting distribution to senior management and/or those people who assist in preparing the documents or need the documents to carry out their job function.

In order to protect this confidential and competitively sensitive information, Pfizer designated such documents as Confidential or Restricted Confidential, Attorney Eyes Only. On September 25, 2000, Pfizer received notice that Respondent Aventis expects to reference and attach as exhibits some of these confidential and competitively sensitive documents in its expert reports. Pfizer also was notified that it would need to file this motion requesting *in camera* treatment in order to protect the confidentiality of such documents.

With respect to the strategic, operating and business plans, Pfizer is seeking *in camera* treatment for the following documents (or portions of documents as indicated), all of which contain highly confidential and competitively sensitive information related to Pfizer's CCB business:

<u>Document</u>	<u>Pages for <i>In Camera</i> Treatment</u>
Exhibit I (7 pages – 000371-377)	All Seven Pages
Exhibit II (000385-443)	404, 406, 413-443;
Exhibit III (001034-061)	All Pages
Exhibit IV (5 pages – 001080-084)	All Five Pages

These documents contain key information related to the manner in which Pfizer intends to build and market its CCBs as well as Pfizer's views of the marketplace and ways in which it plans to compete against other anti-hypertensive drugs. Such issues and plans often carry over from one year's plans to the next and are not readily apparent to competitors. For example, Exhibit II addressed strategies that Pfizer intended to use and analyzed

perceptions in the marketplace. Many of these strategies and perceptions are still valid today. Exhibit I, a recent document, contains plans still being followed and carried out today. Disclosure of the prior, overall CCB plans and strategies, which are neither widely known in the marketplace nor within Pfizer, may well allow Pfizer's competitors to undermine that strategy.

Similarly, Exhibits III and IV address issues related to the way in which Pfizer can or should position Norvasc (Pfizer's largest anti-hypertensive drug). These documents contain proprietary information collected at significant expense (in time and money) by Pfizer that may influence and guide its marketing strategies for years to come. If not provided protection, competitors will readily free ride on Pfizer's efforts and use this confidential information in order to gain an unfair advantage in the way they market their products against Norvasc. Accordingly, with respect to the portions of the documents listed above, Pfizer requests *in camera* treatment until the earlier of ten years from the end of the year in which the business or operating plan was in effect or until the anticipated expiration of Norvasc's last patent in March, 2007.

The second category of documents for which Pfizer respectfully requests *in camera* treatment are certain contracts with managed care companies related to formulary status. These documents have been designated on Aventis' list as August 2000 Documents PFE 1-31 (Exhibit V), 32-58 (Exhibit VI), 59-75 (Exhibit VII), 76-96 (Exhibit VIII), and 203-221 (Exhibit IX). These agreements contain heavily negotiated, proprietary terms between Pfizer and managed care companies that are considered extremely competitively sensitive. Pfizer works hard to negotiate the best contract that it can and does not share such information with any of its competitors or, of equal concern, other managed care companies. The sensitivity and importance of these agreements, which

cover a number of Pfizer products in addition to its CCBs, is reflected in the inclusion of a confidentiality provision in each agreement and the limited distribution of these agreements within Pfizer to the marketing teams whose products are covered by the contract, Pfizer's National Healthcare Group, which deals with the companies, and those involved in negotiating the contracts.

Moreover, expiration of the above contracts, which often (although not always) operate on 3 year terms, does not obviate the need for *in camera* treatment as disclosure of a prior agreement likely will reveal important information relevant to a current contract. Accordingly, Pfizer respectfully requests that the following pages of the August 2000 documents receive *in camera* treatment for a period of 6 years from expiration of the agreement: Exhibit V -- PFE 2-25, 27-28 and 30-31; Exhibit VI -- PFE 32-54 and 57-58; Exhibit VII -- PFE 59-63 and 65-75; Exhibit VIII -- PFE 76-82 and 84-96; and Exhibit IX -- PFE 000203-209 and 211-221. Pfizer believes that a 6-year period is appropriate, as it will maintain the confidentiality of these agreements through two renewal periods.

Respectfully Submitted,

PFIZER INC.

BY COUNSEL:



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235 East 42nd Street
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Telephone (212) 733-5029
Facsimile (212) 573-1445

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Docket No. 9293

**ORDER GRANTING NON-PARTY PFIZER INC.'S
APPLICATION FOR *IN CAMERA* TREATMENT OF CERTAIN
CONFIDENTIAL DOCUMENTS**

On October 4, 2000, Pfizer Inc. filed an application for *in camera* treatment of certain confidential documents. Pfizer Inc.'s motion is GRANTED.

ORDERED:

D. Michael Chappell
Administrative Law Judge

Date: October __, 2000

**AFFIDAVIT OF PATRICK HOLMES IN SUPPORT OF PFIZER'S
MOTION FOR *IN CAMERA* TREATMENT OF DOCUMENTS**

STATE OF NEW YORK)
) ss
COUNTY OF NEW YORK)

BEFORE ME, the undersigned authority, personally appeared Patrick Holmes, who after being duly sworn, deposes and says:

1) I am and have been Director/Team Leader of Pfizer's CCB team since May, 1996. Prior to that, I was Assistant Product Manager. I make this affidavit in support of Pfizer's Motion for *In Camera* Treatment of Documents.

2) The 1999 Strategic Plan (000371-377), the 1996 Business Plan (000385-443), and the 1997 Norvasc Positioning Study (001034-061; 001080-084) each contain information that is extremely competitively sensitive, the release of which could provide Pfizer's competitors with a significant competitive advantage in the marketplace and cause injury to Pfizer. None of these documents are of the type that Pfizer ever would share with competitors as they lay out Pfizer's view of the hypertension marketplace and address its plans to market its products. With this knowledge, competitors will be able to better counter, and even undercut, Pfizer's marketing plans and strategies as they will know the areas on which Pfizer is focusing and details about the message that it is trying to send.

3) The fact that the documents do not contain the most recent version of Pfizer's plans or marketplace analysis does not make the information any less sensitive as

issues and strategies often remain similar from year to year. In addition, subsequent plans often are built upon prior strategies and analyses.

4) Moreover, the information contained in these documents is based upon significant expenditures of time, money and effort that are not easily duplicated by others. While competitors may be able to gather bits and pieces of this information or observe what Pfizer is doing in the marketplace, I do not believe that it would be possible for them to have a complete understanding of Pfizer's overall business plans and strategies, or even of Pfizer's unique analysis of the marketplace.

5) Pfizer works to ensure the confidentiality of these documents by limiting distribution of these materials within the company. Much of the information contained in these documents generally is not known outside of the members of Pfizer's CCB team, senior management and other Pfizer personnel who need the information to perform their job function.



Patrick Holmes

Sworn to and subscribed before me, this 29th day of September, 2000.



Notary Public

MARC BROTMAN
Notary Public, State of New York
No. 31-5021172
Qualified in New York County
Commission Expires December 6, 2001

**AFFIDAVIT OF MICHAEL TARNOK IN SUPPORT OF PFIZER'S
MOTION FOR *IN CAMERA* TREATMENT OF DOCUMENTS**

STATE OF NEW YORK)
) ss
COUNTY OF NEW YORK)

BEFORE ME, the undersigned authority, personally appeared Michael Tarnok, who after being duly sworn, deposes and says:

- 1) I am Senior Vice President, U.S. Pharmaceutical Division of Pfizer Inc. I am responsible for contracts. I make this affidavit in support of Pfizer's Motion for *In Camera* Treatment of Documents.

- 2) The agreements between Pfizer and managed care companies referred to in Aventis' notice each contain information that is extremely competitively sensitive, the release of which could cause injury to Pfizer. These agreements cover a number of Pfizer's products in addition to CCBs, and thus are broader than what I understand to be the subject matter of the action before this Court.

- 3) Pfizer negotiates the terms of each agreement individually. Accordingly, it would never share these documents with any other party unless compelled because release of the negotiated and confidential terms could put Pfizer at a significant competitive disadvantage both versus competitors and in negotiations with other managed care companies. Each agreement is deemed highly confidential and is protected by confidentiality provisions preventing disclosure to third parties unless compelled. While many other pharmaceutical companies have their own contracts with managed care companies, they would not have access to the terms of Pfizer's agreements. Similarly,

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CERTIFICATE OF SERVICE

I, Marc Brotman, hereby certify that on October 3, 2000, a copy of Pfizer Inc.'s Application for *In Camera* Treatment of Certain Confidential Documents was served upon the following persons by facsimile, hand delivery and/or Federal Express as follows:

Office of the Secretary [By FedEx]
Federal Trade Commission
Room 159
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Markus Meier [By FedEx]
Federal Trade Commission
Room 3017
601 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Louis M. Solomon [By FedEx]
Solomon, Zauderer, Ellenhorn, Frischer & Sharp
45 Rockefeller Plaza
New York, NY 10111

Peter O. Safir [By FedEx]
Kleinfeld, Kaplan and Becker
1140 19th Street, N.W.
Washington, D.C. 20036



Marc Brotman