

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

_____)	
In the Matter of)	
)	Docket No. 9315
EVANSTON NORTHWESTERN)	
HEALTHCARE CORPORATION,)	
a corporation, and)	
)	
ENH MEDICAL GROUP, INC.,)	
a corporation.)	
_____)	

**UNITED HEALTHCARE OF ILLINOIS, INC.’S SECOND SUPPLEMENTAL
MOTION FOR *IN CAMERA* TREATMENT OF CONFIDENTIAL AND
COMPETITIVELY SENSITIVE INFORMATION**

Nonparty United HealthCare of Illinois, Inc. (“United”) hereby moves pursuant to Rule 3.45 of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. §3.45(b), for an order granting *in camera* treatment of certain additional documents produced by United, by reason of the extremely late designation by the Federal Trade Commission (“FTC”) of certain United documents that the FTC intends to use as exhibits (CX 00021, CX 00163, CX 06277, CX02381) at trial. United also seeks *in camera* treatment for certain additional documents recently requested by Evanston Northwestern Healthcare Corporation and ENH Medical Group (“Respondents”) which consist of a “final version,” a “better copy,” and a “missing attachment” of documents already produced by United and already designated by the Respondents for intended use at trial (RX 1321, RX 0736, and RX1679, respectively). Copies of the documents for which this motion seeks *in camera* treatment are attached as Exhibits A-G to the confidential

Second Supplemental Declaration of Jillian Foucré (“Second Supp. Foucré Decl.”), sworn to on February 9, 2005, attached hereto as Ex. 1.

Additional Exhibits Designated by the FTC

On February 4, 2005, external legal counsel for United received a letter from the FTC dated February 3, 2005 advising of the FTC’s intention to designate three United documents as exhibits CX 00021, CX 00163, and CX 06277. See Second Affidavit of Elizabeth Margaret Avery, sworn to on February 9, 2005, attached hereto as Ex. 2 (“Second Avery Aff.”).

These contents of these documents may be described as follows:

1. CX 00021 contains a report entitled “Federal Trade Commission Requested Information Compliance Confidential Report”, a copy of which is attached to the Second Supp. Foucré Decl. as Exhibit A;
2. CX 00163 contains correspondence on contract negotiations, a copy of which is attached to the Second Supp. Foucré Decl. as Exhibit B; and
3. CX 06277 contains a presentation entitled “Kraft,” a copy of which is attached to the Second Supp. Foucré Decl. as Exhibit C.

On February 9, 2005, external legal counsel for United received an email from the FTC advising of the FTC’s intention to designate a further United document as exhibit CX 02381, the first page of which is entitled “Operating Margin Contribution,” a copy of which is attached to the Second Supp. Foucré Decl. as Exhibit D. See Second Avery Aff.

All of these documents have been designated as “Restricted Confidential, Attorney Eyes’ Only” pursuant to, or within the meaning of, the Protective Order in this action entered on March 24, 2004. See Second Supp. Foucré Decl.

Additional Document Attachments to Documents Previously Designated by Respondents

On January 21, 2005, external legal counsel for United received a facsimile from the Respondents’ counsel. See Second Avery Aff. A copy of the letter is attached as Exhibit B to the Second Avery Aff. This facsimile set forth several documents for which authentication was requested.

Respondents also asked for a “final version,” a “better copy,” and a “missing attachment” of certain documents, and has produced those but requests this Court to grant in camera treatment of the documents as follows:

1. Respondents’ Counsel sought a “final version” of a document designated by the Respondents as RX 1321. This document in its originally produced form was granted *in camera* treatment previously by this tribunal. See Order on Non-Parties’ Motions for In Camera Treatment pp.13-4. Accordingly, United seeks *in camera* treatment of the “final version” of the same document. United has produced the “final version” of this document with the designation “Restricted Confidential, Attorney Eyes’ Only,” pursuant to the Protective Order in this action entered on March 24, 2004. A copy of this “final version” of the document designated by Respondents as RX 1321 is attached to the Second Supp. Foucré Decl. as Exhibit E.
2. Respondents’ Counsel sought a “better copy” of a document designated by the Respondents as RX 736. This document in its originally produced form was also granted *in camera* treatment previously by this tribunal. See Order on Non-Parties’

Motions for In Camera Treatment pp.13-4. Accordingly, United seeks *in camera* treatment of the “better copy” of the same document. United has produced the “better copy” of this document with the designation “Restricted Confidential, Attorney Eyes’ Only,” pursuant to the Protective Order in this action entered on March 24, 2004. A copy of this “better copy” of the document designated by Respondents as RX 1321 is attached to the Second Supp. Foucré Decl. as Exhibit F.

3. Respondents’ Counsel sought a “missing attachment” of a document designated by the Respondents as RX 1679. This document contains competitively sensitive pricing information. Accordingly, United seeks *in camera* treatment of the “missing attachment” to the document designated by Respondents as RX 1679. United has produced the “missing attachment” of this document with the designation “Restricted Confidential, Attorney Eyes Only,” pursuant to the Protective Order in this action entered on March 24, 2004. A copy of this “missing attachment” of the document designated by Respondents as RX 1679 is attached to the Second Supp. Foucré Decl. as Exhibit G.

Necessity of *In Camera* Protection of Information Contained in Additional Documents

All documents identified in United’s Second Supplemental Motion for *In Camera* Treatment contain highly sensitive information relating to contracts, pricing, current hospital or physician provider information, and/or United’s strategic planning.

The public disclosure of any of these materials would: (a) allow United’s competitors to gain a commercial advantage as they build and maintain their own provider networks and other business operations; (b) give Respondents and other providers a tactical advantage in future negotiations with United; and (c) enable providers

to peg their prices to the prices of their competitors, with the effect of reducing provider price competition. Thus, disclosure would be highly detrimental to United's business operations and, at the very least, result in the loss of a business advantage.

Accordingly, disclosure of this information will likely result in a clearly defined, serious injury to United, thus justifying *in camera* treatment under the standard articulated by the FTC in In re Kaiser Aluminum & Chem. Corp., 103 F.T.C. 500 (1984), General Foods Corp., 95 F.T.C. 352 (1980), Bristol-Myers Co., 90 F.T.C. 455 (1977) and H.P. Hood & Sons, Inc., 58 F.T.C. 1184 (1961). See United's Motion for In Camera Treatment filed January 4, 2005 (discussing at length the standard for seeking *in camera* protection of data).

Conclusion

For these reasons, United respectfully requests a Second Supplemental Order, in the form as attached as Ex. 3, granting United's motion for *in camera* protection.

Dated: February 22, 2005

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Anant Raut, hereby certify that on February 22, 2005, I caused true and correct copies of the public version of United HealthCare of Illinois, Inc.'s Second Supplemental Motion for *In Camera* Treatment of Confidential and Competitively Sensitive Information to be served on the following persons:

By Hand Delivery:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Hon. Stephen McGuire
Chief Administrative Law Judge
Federal Trade Commission
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Room H-112
Washington, D.C. 20580

By Federal Express:

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Counsel for the Federal Trade Commission

/s/
Anant Raut

CERTIFICATE OF ELECTRONIC SUBMISSION

I, Anant Raut, hereby certify on February 22, 2005, that this electronic version of the public version of United HealthCare of Illinois, Inc.'s Second Supplemental Motion for *In Camera* Treatment of Confidential and Competitively Sensitive Information, is a true and correct copy of the paper original, and that a paper copy with an original signature is being filed with the Secretary of the Commission on the same day by other means.

_____/s/_____
Anant Raut