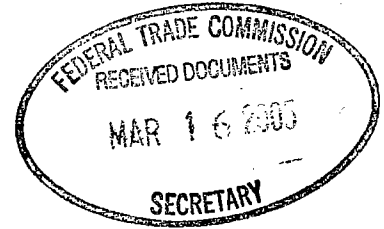


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



_____)
In the Matter of)
)
EVANSTON NORTHWESTERN HEALTHCARE)
CORPORATION,)
)
and)
)
ENH MEDICAL GROUP, INC.,)
Respondents.)
_____)

Docket No. 9315

**THIRD ORDER ON NON-PARTIES' MOTIONS FOR *IN CAMERA*
TREATMENT OF DOCUMENTS LISTED ON PARTIES' EXHIBIT LISTS**

I.

Pursuant to Commission Rule 3.45(b) and the Scheduling Order entered in this litigation, several non-parties have filed motions for *in camera* treatment of documents that the parties have listed on their exhibit lists as documents that might be introduced at trial in this matter.

In Commission proceedings, requests for *in camera* treatment must show that the public disclosure of the documentary evidence will result in a clearly defined, serious injury to the person or corporation whose records are involved. *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984); *In re H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). That showing can be made by establishing that the documentary evidence is "sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury," and then balancing that factor against the importance of the information in explaining the rationale of Commission decisions. *Kaiser*, 103 F.T.C. at 500; *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *In re Bristol Myers Co.*, 90 F.T.C. 455, 456 (1977).

Indefinite *in camera* treatment is granted only in those "unusual" cases where the competitive sensitivity or the proprietary value of the information will not diminish with the passage of time. *In re Coca-Cola Co.*, 1990 FTC LEXIS 364, at *6-7 (Oct. 17, 1990). Examples of documents meriting indefinite *in camera* treatment are trade secrets, such as secret formulas, processes, and other secret technical information, and information that is privileged. *See Hood*, 58 F.T.C. at 1189; *In re R.R. Donnelley & Sons Co.*, 1993 FTC LEXIS 32, at *3 (Feb. 18, 1993); *In re Textron, Inc.*, 1991 FTC LEXIS 135, at *1 (Apr. 26, 1991). Where *in camera* treatment is granted for ordinary business records, such as business plans, marketing plans, or sales

documents, it is typically extended for two to five years. *E.g.*, *In re E.I. Dupont de Nemours & Co.*, 97 F.T.C. 116, 118 (1981); *In re Int'l Ass. of Conf. Interpreters*, 1996 FTC LEXIS 298, *13-14 (June 26, 1996).

The Federal Trade Commission strongly favors making available to the public the full record of its adjudicative proceedings to permit public evaluation of the fairness of the Commission's work and to provide guidance to persons affected by its actions. *In re Crown Cork & Seal Co., Inc.*, 71 F.T.C. 1714, 1714-15 (1967); *Hood*, 58 F.T.C. at 1186 (“[T]here is a substantial public interest in holding all aspects of adjudicative proceedings, including the evidence adduced therein, open to all interested persons.”). A heavy burden of showing good cause for withholding documents from the public record rests with the party requesting that documents be placed *in camera*. *Hood*, 58 F.T.C. at 1188. Further, requests for indefinite *in camera* treatment must include evidence to justify why the document should be withheld from the public's purview in perpetuity and why the requestor believes the information is likely to remain sensitive or become more sensitive with the passage of time. *See DuPont*, 97 F.T.C. at 117. Thus, in order to sustain the heavy burden for withholding documents from the public record, an affidavit or declaration demonstrating that a document is sufficiently secret and material to the applicant's business that disclosure would result in serious competitive injury is required. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 109, at *2-3 (Apr. 23, 2004). The parties and non-parties have been advised of these requirements. Scheduling Order, Additional Provisions, ¶ 16; Protective Order, ¶ 12.

II.

Non-party Humana, Inc. (“Humana”), on February 2, 2005, filed a motion seeking *in camera* treatment for seventy-eight documents. Humana seeks *in camera* treatment for a period of ten years. The parties do not oppose the motion for *in camera* treatment.

Humana's motion provides a declaration of John Paul Maxwell, Vice President of Network Management (“Maxwell Declaration”). As described in detail by the Maxwell Declaration, the information for which *in camera* treatment is sought includes contracts and amendments; correspondence and internal memoranda regarding provider agreements; internal information regarding business strategies and products; sensitive business information; and claims data files. As described by the Maxwell Declaration, this information is sensitive and material to Humana's business, competitiveness, and profitability and disclosure of the information would result in serious harm to Humana.

A review of the declaration in support of the motion and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, Humana's motion is **GRANTED**. *In camera* treatment, for a period of ten years, to expire on February 1, 2015, is granted to:

RX-0066	H 416035 - 56	CX05028	H-016300 - 01
RX-0082	H 412475 - 76	CX05027	H-016302 - 05
RX-0102	H 416029 - 34	CX05026	H-016306 - 07
RX-0162	H 417013 - 15	CX05025	H-016308 - 10
RX-0224	H 016808 - 11	CX05024	H-016311 - 12
RX-0226	H 019539 - 42	CX05023	H-016313 - 14
RX-0238	H 017752 - 55	CX05021	H-016317 - 19
RX-0244	H 020661 - 62	CX05022	H-016320 - 21
RX-0376	H 155112 - 19 H 451561 - 70	CX05020	H-016322 - 38
RX-0407	H 020581	CX05771	H-016344
RX-0445	H 017411 - 13	CX05770	H-016349 - 50
RX-0583	H 417000 - 03	CX05768	H-016356 - 57
RX-0606	H 228091 - 93	CX05769	H-016362
RX-0858	H 340873	CX05766	H-016365 - 79
RX-0872	H 068045 - 46	CX05765	H-016380 - 93
RX-0898	H 141505	CX05764	H-016408
RX-0902	H 228094 - 95	CX05763	H-016409 - 10
RX-0908	H 018997 - 98	CX05762	H-016434 - 46
RX-0945	H 067937 - 38	CX05759	H-016448 - 60
RX-1022	H 271606 - 08	CX05760	H-016461 - 62
RX-1043	H 271610 - 12	CX05758	H-016463 - 71
RX-1044	H 271657 - 69	CX05757	H-016514 - 23
RX-1070	H 271303 - 04	CX05756	H-016527 - 35
RX-1087, RX-1105	H 412440 - 41	CX05019	H-016621 - 25
RX-1120	H 026973	CX03018	
RX-1175	H 336406		
RX-1185	H 416013 - 14		
RX-1191	H 337224 - 27		
RX-1196	H 018959		
RX-1254	H 341300.44		
RX-1294	H 011898		
RX-1318	H 341300.30 H 451571 - 82		
RX-1509, RX-1625	H 412419 - 23		
RX-1833	H 336652 - 53		

III.

Non-party United HealthCare of Illinois, Inc. ("United"), on February 14, 2005, filed a motion seeking *in camera* treatment for seven documents. Three of these documents have previously been granted *in camera* status for a period of five years, however, United seeks confirmation that a final version, better copy, and missing attachment are entitled to *in camera* treatment. United does not indicate the period for which it seeks *in camera* treatment. The parties do not oppose the motion for *in camera* treatment.


United's motion provides a declaration of Jillian Foucré, Regional Vice President for United Health Networks for the Central Region ("Foucré Declaration"). As described by the Foucré Declaration, the information for which *in camera* treatment is sought includes highly sensitive information related to contracts, pricing, current hospital or physician provider information, and United's strategic planning, disclosure of which would result in loss of business advantage.

A review of the declaration in support of the motion and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, United's motion is **GRANTED**. *In camera* treatment, for a period of five years, to expire on February 1, 2010, is granted to: CX 21, CX 163, CX 6277, CX 2381, RX 1321, RX 736, and RX 1679.

IV.

Each non-party that has documents or information that have been granted *in camera* treatment by this Order shall inform its testifying current or former employees that *in camera* treatment has been extended to the material described in this Order. At the time that any documents that have been granted *in camera* treatment are offered into evidence or before any of the information contained therein is referred to in court, the parties shall identify such documents and the subject matter therein as *in camera*, inform the court reporter of the trial exhibit number(s) of such documents, and request that the hearing go into an *in camera* session. *In camera* status will be granted to the trial testimony of witnesses who provide live testimony regarding the information that has been granted *in camera* status in this Order.

ORDERED:


Stephen J. McGuire
Chief Administrative Law Judge

Date: March 16, 2005