

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

)	
In the Matter of)	
Evanston Northwestern Healthcare Corporation,)	
a corporation, and)	
ENH Medical Group, Inc.)	
a corporation.)	

Docket No. 9315

RESPONDENTS' OPPOSITION TO THIRD PARTY FIRST HEALTH'S MOTION FOR EXTENSION OF TIME TO OPPOSE RESPONDENTS' MOTION TO COMPEL

Respondents Evanston Northwestern Healthcare and ENH Medical Group hereby respond in opposition to Third Party First Health's Motion For Extension of Time to Oppose Respondents' Motion to Compel which was filed with this Court on September 9, 2004.

First Health inaccurately asserts that Respondents' Motion to Compel was "suddenly" served after "weeks of productive discussions." *See* First Health Memorandum at 2. As Respondents' have previously stated, Respondents had no option but to file a Motion to Compel after First Health wasted months delaying and stalling its response to Respondents' subpoenas. *See* Respondents Motion to Compel at 6. Respondents filed its Motion to Compel only after over four months of discussions yielded a mere 168 pages of documents - all of which were already in Respondents' possession. *See* Respondents Motion to Compel at 6. On numerous occasions, counsel for Respondents informed in-house counsel for First Health that it would be forced to file a Motion to Compel if First Health failed to comply with the outstanding

subpoenas in advance of the close of discovery in this matter. As a result, Respondents are at a loss as to see how the filing of the Motion to Compel can be described as sudden.

In addition, First Health now attempts to argue the breadth and burden of complying with Respondents' subpoena despite the fact that First Health failed to timely file any objections after it accepted service of the subpoenas. *See* First Health Memorandum at 1-2. Commission Rule § 3.34(c) requires any motion to limit or quash a subpoena setting forth any factual or legal objections to be filed "within the earlier of ten days after service thereof or the time for compliance therewith." 16 C.F.R. § 3.34(c). Any objections based on the burdensomeness of the subpoena are properly raised at the same time a subpoenaed party files a motion to quash with the Court, because such grounds must be predicated upon the "factual and legal objection that the costs of compliance with the subpoena would be unreasonable." *In the Matter of Int'l Tel. & Tel. Corp.*, 97 F.T.C. 202, 202-03 (March 13, 1981) (denying a subpoenaed-party's after-the-fact request for reimbursement of compliance expenses as untimely since it was not included within a motion to quash); *see also F.T.C. v. GlaxoSmithKline*, 202 F.R.D. 8, 9-11 (D.D.C. 2001) (holding that the failure to properly object to an FTC subpoena as part of a Part Two investigation results in a waiver of the objection). As a result of the FTC rules of practice and controlling case law, First Health's attempts to object to the scope of the subpoena at this late hour should be rejected.

Respondents fully acknowledge that in response to Respondents' Motion to Compel, First Health has recently engaged outside counsel who has been very proactive in working toward complying with Respondents' subpoena. Counsel for Respondents and outside counsel for First Health have already engaged in numerous telephone conferences and are working to narrow the scope of the subpoena and the eventual rolling production of responsive

documents. However, as this Court is well aware, discovery in this matter is scheduled to close on Monday, September 13, 2004. While Respondents are hopeful that its renewed discussions with First Health will soon yield positive results, Respondents oppose First Health's request to extend the time period in which to respond to Respondents' Motion to Compel until October 1, 2004. Respondents believe that continuing discussions with First Health may relieve this Court of further involvement on this issue and submit to this Court that it will continue to negotiate in good faith with First Health to resolve all outstanding discovery issues. However, Respondents believe that granting First Health until October 1, 2004 to respond will only continue to delay discovery in this matter.

DATED: September 10, 2004

Respectfully submitted,

Handwritten signature of David Dahlquist in cursive script.

Duane M. Kelley
David E. Dahlquist
WINSTON & STRAWN LLP
35 W. Wacker Drive
Chicago, IL 60601-9703
Phone: (312) 558-5600
Fax: (312) 558-5700
dkelley@winston.com
ddahlquist@winston.com

Michael L. Sibarium
Charles B. Klein
WINSTON & STRAWN LLP
1400 L Street NW
Washington, D.C. 20005
Phone: (202) 371-5700
Fax: (202) 371-5950
msibarium@winston.com
cklein@winston.com

Attorneys for Respondents

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

)	
)	
In the Matter of)	
)	
Evanston Northwestern Healthcare)	
Corporation,)	Docket No. 9315
a corporation, and)	
)	
ENH Medical Group, Inc.)	
a corporation.)	
)	

ORDER

Upon consideration of Third Party First Health's Motion For Extension of Time to Oppose Respondents' Motion to Compel, Respondents' opposition thereto, and the Court being fully informed,

IT IS HERBY ORDERED that First Health's Motion is DENIED.

IT IS FURTHER ORDERED that, First Health is required to file any response to Respondents' Motion to Compel on or before _____, 2004.

Stephen J. McGuire
Administrative Law Judge

Date: _____

CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2004, a copy of the foregoing Respondents' Opposition to Third Party First Health's Motion For Extension of Time to Oppose Respondents' Motion to Compel was served by email and first class mail, postage prepaid, on:

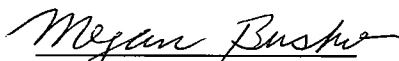
The Honorable Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave. NW (H-106)
Washington, DC 20580
(two courtesy copies delivered by messenger only)

E. Marcellus Williamson
Brian L. Stekloff
Latham & Watkins LLP
555 Eleventh Street, N.W.
Suite 1000
Washington, DC 20004-1304
marc.williamson@lw.com
brian.stekloff@lw.com

Thomas H. Brock, Esq.
Federal Trade Commission
600 Pennsylvania, Ave. NW (H-374)
Washington, DC 20580
tbrock@ftc.gov

Philip M. Eisenstat, Esq.
Federal Trade Commission
601 New Jersey Avenue, N.W.
Room NJ-5235
Washington, DC 20580
peisenstat@ftc.gov

Chul Pak, Esq.
Assistant Director Mergers IV
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, DC 20580
cpak@ftc.gov
(service by email only)


Megan Bushor