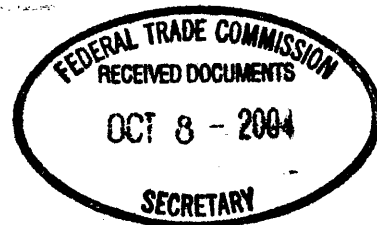


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the matter of)
)
)

Evanston Northwestern Healthcare Corporation,)

a corporation, and)

ENH Medical Group, Inc.,)
a corporation.)
_____)

Docket No. 9315
Public

JOINT MOTION TO ENTER THIRD REVISED SCHEDULING ORDER

Pursuant to the Federal Trade Commission's Rules of Practice ("Rules"), 16 C.F.R. §§ 3.21(c)(2) and 3.51(a), as well as Additional Provision 1 as incorporated by reference into the Second Revised Scheduling Order dated June 15, 2004 ("Scheduling Order"), Complaint Counsel and Respondents¹ (collectively, the "Parties") hereby move to modify the Scheduling Order by extending the remaining deadlines and hearing date by approximately one month. Attached is a proposed Third Revised Scheduling Order that, if entered by the Court, would set a new hearing date of February 10, 2004.²

Rule 3.21(c)(2) authorizes the Court to grant a motion to extend any deadline or time specified in the Scheduling Order upon a showing of "good cause." As demonstrated

¹ Respondents are Evanston Northwestern Healthcare Corporation ("ENH") and ENH Medical Group, Inc. ("ENH Medical Group").

² The hearing date in this action initially was going to be scheduled for September 14, 2004, but that date was continued until September 29, 2004. On June 2, 2004, the hearing date was further continued to January 13, 2004. The proposed Third Revised Scheduling Order comports with the conditions on motions for, and notices concerning, *in camera* treatment, motions *in limine* and motions for summary decision set forth in the letter dated March 9, 2004, to undersigned counsel from Ms. Victoria Arthaud, Attorney Advisor.

below, the Parties jointly submit that there are two good causes for the requested modest extension of the existing scheduling order deadlines and the hearing.

First, it has come to the parties' attention that it will be extremely difficult, if not impossible, to obtain hotel rooms in or around the District for the trial days preceding the presidential inauguration on January 20, 2004. Several members of the trial team representing Respondents, as well as virtually all of the witnesses for all Parties, reside out-of-town. It thus would be impracticable to start the hearing on January 13, 2004, as contemplated in the Scheduling Order. We also understand that the Federal Trade Commission itself will be closed on January 17, 2004, for the Martin Luther King holiday, and the federal building in the District is expected to be closed for security reasons at least on January 20, 2004, for the inaugural consistent with prior inaugurations.

Second, the Parties request that the hearing be continued until February 10, 2004, to ensure that their respective experts have adequate time to analyze pertinent data. On September 21, 2004, Complaint Counsel provided five expert reports to Respondents. Two of Complaint Counsel's experts used a "grouper" software program sold by 3M Company ("3M"). Respondents do not currently have access to this copyrighted software program, and, due to licensing restrictions, it could not be provided by Complaint Counsel along with the expert reports. Respondents assert that they need access to this program to evaluate fully all of the expert reports provided by Complaint Counsel. The Parties have been working with 3M to allow Respondents to obtain access to this program under a limited license and anticipate that this program will be provided to Respondents by October 12, 2004. Respondents anticipate needing

three weeks to work with the 3M software, but the current deadline for Respondents' expert reports is October 19, 2004.³ Accordingly, there exists "good cause" to extend this deadline.

A limited extension of expert discovery is also warranted because the Parties anticipate receiving by October 12, 2004, supplemental productions of third party data from Blue Cross and Blue Shield of Illinois and United Healthcare Illinois. Such data from these private payors may be pertinent to the opinions proffered by the Parties' respective experts. In addition, pursuant to the Court's order dated September 28, 2004, the depositions of representatives of Towers Perrin and Abbott Laboratories are scheduled for October 18 and 20, 2004, respectively.

The proposed Third Revised Scheduling Order, if entered, would require Respondents to provide their expert reports to Complaint Counsel on November 2, 2004, instead of the current deadline of October 19, 2004, thus giving Respondents three weeks to use the 3M Company software if it is produced, as expected, by October 12, 2004. Under this new schedule, Complaint Counsel's rebuttal expert reports would be due on November 23, 2004, except for those rebuttal reports that address econometric analyses proffered by Respondents' experts, which would be due on November 30, 2004. Also under the proposed Third Revised Scheduling Order, deposition discovery pertaining to experts (to date, ten experts have been identified) would be conducted during the period December 6, 2004, through January 14, 2004. Respondents agree to this proposed schedule conditioned on their receipt of the 3M software and third-party data by October 12, 2004, as contemplated by the parties. In the event that such productions are not timely made, the Parties or either of them may need to apply to the Court for such further relief as appropriate.

³ Respondents would have had four weeks under the Scheduling Order to use this program if they had access to the program on September 21, 2004, when Complaint Counsel submitted its expert reports.

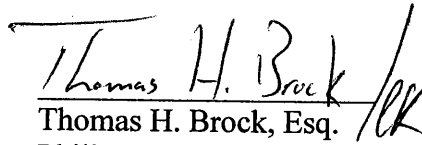
Under this proposed revised schedule, the Parties will have less than one month from the close of expert discovery: (1) to finalize joint stipulations of law, facts and authenticity; (2) to file pretrial briefs; and (3) to prepare for a hearing on February 10, 2004. This tight schedule is consistent with the Commission's policy of conducting a hearing as soon as practicable.

The Parties request immediate relief concerning this motion in light of the existing Scheduling Order deadlines. For example, Respondents' expert witness reports are currently due on October 13, 2004, and the disposition of this motion may materially affect how Respondents' experts will analyze pertinent information and prepare their reports.

CONCLUSION

For the foregoing reasons, the Parties request that this Court grant their Joint Motion to Enter Third Revised Scheduling Order.

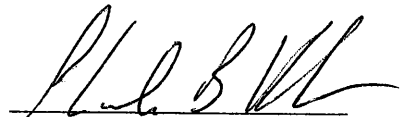
Respectfully Submitted,



Thomas H. Brock, Esq.
Philip M. Eisenstat, Esq.

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Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2004, a copy of the foregoing Joint Motion to Enter Third Revised Scheduling Order was served (unless otherwise indicated) by email and first class mail, postage prepaid, on:

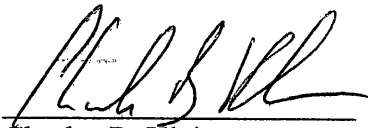
The Honorable Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave. NW (H-106)
Washington, DC 20580
(two courtesy copies delivered by messenger only)

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Charles B. Klein

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

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

ORDER

Upon consideration of the Joint Motion to Enter Third Revised Scheduling Order (“Motion”) and the Court being fully informed, it is this _____ day of _____, 2004 hereby

ORDERED, that the Motion is GRANTED; and it is further

ORDERED, that the following deadlines set in the Court’s Second Revised Scheduling Order dated June 15, 2004, are hereby modified as in the Third Revised Scheduling Order entered contemporaneously with this Order; and it is further

ORDERED, that the parties may move for appropriate relief, including but not limited to a further extension, if there is a material delay in the anticipated production of the 3M Company software and/or third party data discussed in the Motion.

The Honorable Stephen J. McGuire
CHIEF ADMINISTRATIVE LAW JUDGE
Federal Trade Commission

Date: October __, 2004

**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
Public

THIRD REVISED SCHEDULING ORDER

- November 1, 2004 - Deadline for filing motions for summary decision.
- November 2, 2004 - Respondents' Counsel provides expert witness reports.
- November 22, 2004 - Deadline for filing responses to motions for summary decision.
- November 23, 2004 - Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondents' expert reports. If material outside the scope of fair rebuttal is presented, Respondents will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit sur-rebuttal expert reports on behalf of Respondents).
- November 30, 2004 - Complaint Counsel to provide rebuttal expert report(s) to the extent that those reports address econometric analyses proffered by Respondents' experts. Any such reports are to be limited to rebuttal of matters set forth in Respondents' expert reports. If material outside the scope of fair rebuttal is presented, Respondents will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit sur-rebuttal expert reports on behalf of Respondents).
- December 1, 2004 - Complaint Counsel provides to Respondents' Counsel its final proposed witness and exhibit lists, including designated testimony to be presented by deposition, copies of all exhibits (except for

demonstrative, illustrative, or summary exhibits), and a brief summary of the testimony of each witness.

Complaint Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists and a brief summary of the testimony of each witness.

- December 8, 2004 - Respondents' Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including designated testimony to be presented by deposition, copies of all exhibits (except for demonstrative, illustrative, or summary exhibits), and a brief summary of the testimony of each witness.
- Respondents' Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists and a brief summary of the testimony of each witness.
- December 14, 2004 - Parties that intend to offer into evidence at the hearing confidential materials of an opposing party or non-party must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b).
- December 17, 2004 - Deadline for filing motions *in limine* and motions to strike.
- December 22, 2004 - Exchange proposed stipulations of law, facts, and authenticity.
- January 4, 2004 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- January 7, 2004 - Deadline for filing responses to motions *in limine* and motions to strike.
- January 14, 2004 - File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be filed as agreed by the parties.
- January 18, 2004 - Deadline for filing responses to motions *in camera* treatment of proposed trial exhibits.
- January 19, 2004 - Parties file pretrial briefs.
- February 8, 2005 - Final prehearing conference. The parties are to meet and confer prior to the conference regarding trial logistics; proposed stipulations of law, facts, and authenticity; and admissibility of any designated deposition testimony. Counsel may present any objections to the final proposed witness lists and exhibits, including the designated testimony to be presented by deposition.

Trial exhibits will be admitted or excluded at this conference, to the extent practicable.

February 10, 2005 - Commencement of Hearing, to begin at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, N.W., Washington, D.C.

The "Additional Provisions" set forth in the Scheduling Order entered on March 24, 2004, and modified in the Second Revised Scheduling Order entered on June 15, 2004, remain unchanged except for paragraph 11, which is amended to read in pertinent part that, "unless otherwise agreed to by the parties, it shall be the responsibility of a party designating an expert witness to ensure that the expert witness is reasonably available for deposition from December 6, 2004, through January 14, 2005."

ORDERED:

Stephen J. McGuire
Chief Administrative Law Judge

Date: October _____, 2004

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