

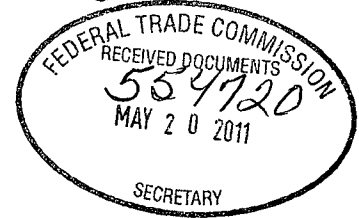
PUBLIC VERSION

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

ORIGINAL

In the Matter of
PROMEDICA HEALTH SYSTEM, INC.,
a corporation.

Docket No. 9346



**NON-PARTY AETNA INC.'S SUPPLEMENTAL MOTION FOR
IN CAMERA TREATMENT OF PROPOSED EVIDENCE**

Aetna Inc. ("Aetna"), which is not a party to the above-captioned matter, respectfully requests that this court grant *in camera* treatment of one additional document that Complaint Counsel has recently designated for introduction into evidence in the administrative trial in this matter. On May 5th, 2011, Aetna filed its first motion for in camera treatment. By email dated May 13, 2011, the Federal Trade Commission notified Aetna that Complaint Counsel intends to introduce PX02531-001-002, an Aetna document, into evidence in this matter. As it did with prior documents, Aetna seeks *in camera* treatment for this document.

The information contained in this document is competitively sensitive and is held in strict confidence by Aetna. Public disclosure of this documents is likely to cause direct, serious harm to Aetna's competitive position. Therefore, pursuant to 16 C.F.R. § 3.45(b), Aetna respectfully moves for *in camera* treatment of the document (Exhibit B) identified in the Declaration of Greg Radziaowski in support of this Motion (attached as Ex. A).

**AETNA'S CONFIDENTIAL DOCUMENT QUALIFIES FOR *IN CAMERA*
TREATMENT UNDER THE FEDERAL TRADE COMMISSION'S RULES OF
PRACTICE**

The document that is described in this motion warrants *in camera* treatment as provided by 16 C.F.R. § 3.45(b). The code section provides for *in camera* treatment of certain business-

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related information and personal information. Relating to business issues, under 16 C.F.R. § 3.45(b), requests for *in camera* treatment will be granted where public disclosure of the document in question “will result in a clearly defined, serious injury to the...corporation requesting in camera treatment.” *Id.* That showing can be made by establishing that the document in question is “sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury.” *In re Dura Lube Corp.*, 1999 F.T.C. LEXIS 255, *6 (Dec. 23, 1999) (quoting *General Foods Corp.*, 95 FTC 352, 355 (1980)). In this context, “the courts have generally attempted to protect confidential business information from unnecessary airing.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

Six factors will be weighed in determining whether the document in question is sufficiently material and sufficiently secret that disclosure would result in serious competitive injury:

(1) the extent to which the information is known outside of the applicant's business; (2) the extent to which the information is known by employees and others involved in the applicant's business; (3) the extent of measures taken by the applicant to guard the secrecy of the information; (4) the value of the information to the applicant and its competitors; (5) the amount of effort or money expended by the applicant in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Dura Lube, 1999 F.T.C. LEXIS 255 at *6-*7 (quoting *Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977)).

I. PUBLIC DISCLOSURE OF BUSINESS DOCUMENT WOULD RESULT IN SERIOUS COMPETITIVE INJURY TO AETNA.

A. Aetna Has Preserved the Confidentiality of the Document and Information in Question.

Aetna has taken substantial measures to guard the information contained in Exhibit B by limiting dissemination of such information and taking every reasonable step to protect its

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confidentiality. (Decl. at ¶ 2). Such information is only disclosed to particular Aetna employees. *Id.* The information is not known outside of Aetna except to the extent necessary to engage in contract negotiations, and it would be extremely difficult for Aetna's competitors or other outside persons to access or duplicate the information contained in the document at issue. *Id.* These efforts demonstrate that Aetna has gone through great lengths to preserve the confidentiality of the information contained in Exhibit B.

B. Disclosure of the Information Contained in the Documents in Question Would Result in Serious Competitive Injury to Aetna.

Exhibit B is an email string regarding Aetna's relationship with a particular business whose employees are Aetna members. (Decl. at ¶ 3). The emails deal with the manner in which Aetna negotiates when a business is potentially going to switch to another insurance provider. *Id.* The emails reveal highly confidential and commercially sensitive information regarding how Aetna negotiates contracts and rates with the providers that are part of its network. *Id.* Their disclosure would reveal valuable information regarding the way that Aetna defines relationships with its providers, a process that Aetna has expended numerous hours and many years to develop. *Id.* Aetna's negotiation efforts have allowed it to gain a competitive advantage in the marketplace and to better service its insureds. *Id.* Disclosure of this information could result in serious damage Aetna's competitive advantage in the marketplace. *Id.*

C. The Public Interest in Disclosure of the Document in Question is Outweighed by the Likelihood of Serious Competitive Harm to Aetna.

As a non-party to this matter, Aetna deserves "special solicitude" in requesting *in camera* treatment for its confidential business information. *In the Matter of Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500, 500 (1984) (order directing *in camera* treatment for five-year-old sales statistics of non-parties). *In camera* treatment of information, for reasonable time

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periods, encourages non-parties to cooperate with future discovery requests in adjudicative proceedings. *Id.* Aetna has cooperated with the discovery demands in this case. Conversely, “public understanding of this proceeding does not depend on access to” Aetna’s highly confidential information. *Id.* The balance of interests clearly favors *in camera* protection for Exhibits B. *See Bristol*, 90 F.T.C. at 456 (describing six-factor test for determining secrecy and materiality).

D. Protection for Exhibits B Should Extend For 5 Years.

The nature of the highly confidential information contained in Exhibit B warrants lasting protection. Information contained in the document, including information regarding how Aetna negotiates contracts and determines rates, is vital to Aetna’s competitive position and business strategy. Accordingly, Aetna respectfully requests that Exhibit B be afforded *in camera* protection for a period of five years.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 19, 2011, the foregoing was served the following in the manner indicated:

VIA FEDERAL EXPRESS – Original, one copy and electronic copy

Donald S. Clark
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, H-135
Washington, DC 20580
dclark@ftc.gov

VIA FEDERAL EXPRESS – One copy and electronic copy

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW, H-106
Washington, DC 20580
oalj@ftc.gov

VIA FEDERAL EXPRESS – Electronic copy

Jeanne Liu
Attorney, Bureau of Competition
U.S. Federal Trade Commission
601 New Jersey Ave, NW
Washington, D.C. 20001
(202) 326-3572 phone
(202) 326-2286 fax
jliu@ftc.gov

VIA FEDERAL EXPRESS – Electronic copy

David Marx, Jr.
McDermott Will & Emery LLP
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Robert J. Fogarty, Esq.
Attorney for Aetna Inc.

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

In the Matter of PROMEDICA HEALTH SYSTEM, INC., a corporation.
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Docket No. 9346

PROPOSED ORDER

On May 20, 2011, Non-Party Aetna Inc. ("Aetna") filed a motion for *in camera* treatment of confidential business information contained in a document that has been identified by Claimant's counsel as a potential exhibit.

IT IS HEREBY ORDERED that Aetna's Motion is GRANTED. The information set forth in Aetna's Exhibit B, numbered PX02531-001-002 will be subject to *in camera* treatment under 16 C.F.R. § 3.45 and will be kept confidential and not placed on the public record of this proceeding for a period of five years.

IT IS FURTHER ORDERED that only authorized Federal Trade Commission personnel, and court personnel concerned with judicial review may have access to the above-referenced information, provided that I, the commission, and reviewing courts may disclose such *in camera* information to the extent necessary for the proper disposition of the proceeding.

ORDERED: _____
D. Michael Chappell
Administrative Law Judge

DATED: _____

Exhibit A

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

In the Matter of

PROMEDICA HEALTH SYSTEM, INC.,

a corporation.

Docket No. 9346

**DECLARATION OF GREG RADZIALOWSKI IN SUPPORT OF
NON-PARTY AETNA INC.'S MOTION FOR
IN CAMERA TREATMENT OF PROPOSED EVIDENCE**

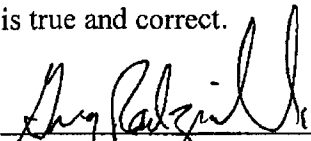
I, Greg Radzialowski, declare as follows:

1. I am currently the Senior Network Manager for Aetna Inc. ("Aetna") in Ohio. In my position, I am responsible for managing our hospital and physician provider network in Northern Ohio, which includes overseeing the group of professionals that negotiate contracts with hospitals and physicians, and being personally involved in those contract negotiations. I have been in this position for seven years. Prior to that, I was Network Manager for Aetna for four years.

2. Aetna has taken substantial measures to guard the information contained in Exhibits B by limiting dissemination of such information and taking every reasonable step to protect its confidentiality. Such information is disclosed only to particular Aetna employees, and is not known outside of Aetna except to the extent necessary to engage in contract negotiations. Information contained in Exhibits B would be extremely difficult for Aetna's competitors or other outside persons to access or duplicate.

3. Exhibit B is an email string regarding Aetna's relationship with a particular business whose employees are Aetna members. The emails deal with the manner in which Aetna negotiates when a business is potentially going to switch to another insurance provider. The emails reveal highly confidential and commercially sensitive information regarding how Aetna negotiates contracts and rates with the providers that are part of its network. Their disclosure would reveal valuable information regarding the way that Aetna defines relationships with its providers, a process that Aetna has expended numerous hours and many years to develop. Aetna's negotiation efforts have allowed it to gain a competitive advantage in the marketplace and to better service its insureds. Disclosure of this information could result in serious damage Aetna's competitive advantage in the marketplace.

I declare under penalty of perjury that the foregoing is true and correct.



Greg Radzialowski

Signed this 11th day of May 2011.

Exhibit B

(Redacted from Public Version)