

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
Office of Administrative Law Judges**

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

**MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF  
ON MOTION FOR RECONSIDERATION**

By this motion Complaint Counsel respectfully ask the Court for leave to file a supplemental brief on the motion for reconsideration dated December 3, 2004.

The underlying motion relates to the refusal of Respondents to produce what are known as “processed data files.” These processed data files are central to certain issues in this case, because these files are necessary for the parties and their experts – and the Court – to evaluate the prices that Respondents charged for their services both before and after the merger. Respondents have taken the position, repeatedly, that they were not obligated to produce these processed data files because, “To be clear, Complaint Counsel has had for some time now all necessary data and instructions to obtain the information it requests.” Respondents’ Opposition to Complaint Counsel’s Motion to Compel Discovery and for Extension of Time to File Econometric Rebuttal Report dated November 29, 2004, at 2.

This morning, Complaint Counsel has preliminarily determined that the “data and instructions” that Respondents produced with their expert reports – specifically, the computer

programs – contained defects that made it impossible for Complaint Counsel to replicate Respondents’ processed data files and, thus, “to obtain the information it requests.” These defects are so serious that Complaint Counsel has tentatively concluded that Respondents inadvertently failed to produce to Complaint Counsel the computer programs that Respondents’ experts actually used in developing the processed data files for their reports. Complaint Counsel suggest that they must fully examine these issues – and, if possible, immediately resolve any outstanding problems with Respondents on a voluntary basis – before they can provide the Court with a firm assessment of the outstanding issues and what additional relief if any, Complaint Counsel must seek from the Court.

Complaint Counsel will advise the Court of the status of this matter by filing a supplemental brief no later than December 20, 2004.

Respectfully submitted,

Dated:

12/15/04



Thomas H. Brock, Esq.  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Room H-360  
Washington, D.C. 20580  
(202) 326-2813  
Fax: (202) 326-2884  
Email: [tbrock@ftc.gov](mailto:tbrock@ftc.gov)

Philip M. Eisenstat, Esq.  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Room NJ-5235  
Washington, D.C. 20580  
(202) 326-2769  
Fax: (202) 326-2286  
Email: [peisenstat@ftc.gov](mailto:peisenstat@ftc.gov)

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing documents were served on counsel for the respondents by electronic mail and first class mail delivery:


Michael L. Sibarium  
Charles B. Klein  
WINSTON & STRAWN, LLP  
1400 L Street, NW  
Washington, DC 20005

Duane M. Kelley  
WINSTON & STRAWN, LLP  
35 West Wacker Drive  
Chicago, IL 60601-9703

and delivery of two copies to:

The Honorable Stephen J. McGuire  
Federal Trade Commission  
600 Pennsylvania Avenue  
Room 113  
Washington, DC 20580

12/15/04  
Date

  
\_\_\_\_\_  
Thomas H. Brock  
Complaint Counsel