

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

In the matter of)	
)	
EVANSTON NORTHWESTERN)	PUBLIC VERSION
HEALTHCARE CORPORATION,)	
a corporation)	Docket No. 9315
)	
and)	
)	
ENH MEDICAL GROUP, INC.)	
a corporation)	

**NON-PARTY RESURRECTION HEALTH CARE’S MOTION
FOR *IN CAMERA* TREATMENT OF BUSINESS
DOCUMENTS DESIGNATED AS HEARING EXHIBITS**

Pursuant to Rule 3.45 of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.45(g), non-party Resurrection Health Care (“Resurrection”) respectfully requests that this court issue an order directing *in camera* treatment of two contracts between Resurrection and two health insurers that respondent Evanston Northwestern Healthcare Corporation (“ENH”) has designated as potential evidentiary exhibits in the hearing of this matter scheduled to commence on February 10, 2005. [REDACTED]

If Resurrection’s contracts were to become a part of the public record in this proceeding, Resurrection’s business relationships with the two insurers would be seriously impaired. [REDACTED] If these terms became publicly known, Resurrection would suffer competitive harm in its ability to negotiate on price or other terms with other third party payors. Finally, Resurrection’s ability to compete effectively with other hospitals would be harmed [REDACTED]. The five documents for which Resurrection seeks *in camera* treatment are confidential business documents of Resurrection that have never been released to any third party, other than in response to the subpoenas duces

tecum issued by the parties in this matter.¹ For these reasons, Resurrection respectfully requests that this court afford its confidential business documents *in camera* treatment for a period of five years.

Complaint counsel and counsel for ENH have stated that they do not intend to oppose this motion.

BACKGROUND

Resurrection is a third party witness in this proceeding. Resurrection is a not-for-profit corporation sponsored by the Sisters of the Holy Family of Nazareth and the Sisters of the Resurrection, and is the parent corporation of other not-for-profit corporations that operate nine hospitals in the Chicago area. Resurrection produced documents to the Federal Trade Commission in response to a subpoena issued during the investigative stage of this matter. Resurrection also produced documents to ENH in response to a subpoena issued in this matter on April 8, 2004. The five documents that are the subject of this motion were produced by Resurrection to ENH in response to the subpoena issued on April 8, 2004. Resurrection sought confidential treatment of its documents by designating them “Restricted Confidential, Attorneys’ Eyes Only” according to the terms of the court’s Protective Order Governing Discovery Material dated March 24, 2004 (the “Protective Order”).

¹ ENH notified Resurrection that it intended to introduce 27 exhibits consisting of Resurrection’s documents into evidence in the hearing in this matter. Resurrection requests *in camera* treatment for 5 of those exhibits.

**RESURRECTION'S CONFIDENTIAL DOCUMENTS DESERVE IN CAMERA
TREATMENT UNDER THE FEDERAL TRADE COMMISSION'S
RULES OF PRACTICE**

The contracts for which Resurrection seeks *in camera* treatment are highly competitively sensitive. If Resurrection's contracts were to become publicly available, [REDACTED]. Resurrection would suffer serious and immediate harm to its ability to negotiate with third party payors if this information became publicly known. In addition, Resurrection's competitors would gain an unfair competitive advantage over Resurrection, both in their ability to negotiate with third party payors and compete against Resurrection for patients. Resurrection has taken every possible step to insure the secrecy of its confidential documents. For these reasons, Resurrection's contracts should be afforded *in camera* treatment.

**A. Disclosure of Resurrection's Contracts Could Result In Serious
Competitive Injury to Resurrection**

In camera treatment is warranted if public disclosure will likely result in a clearly defined, serious injury to Resurrection. *In re Dura Lube Corp.*, 1999 F.T.C. Lexis 255, *6. A corporation can demonstrate the risk of a clearly defined, serious injury by showing that "the information in the documents is 'sufficiently secret' and 'sufficiently material' to its business that disclosure would result in serious competitive injury." *In re Rambus*, 2003 WL 21008650 (F.T.C. April 23, 2003); *see also In re Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977); *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). Among the factors the court will consider in evaluating whether the information in Resurrection's documents is "sufficiently secret" and "sufficiently material" to warrant *in camera* treatment are the extent to which the information is known outside of Resurrection's business, the extent of the measures taken by Resurrection to guard the

secrecy of the information, and the value of the information to Resurrection's competitors. See *In re Bristol-Myers Co.*, 90 F.T.C. at 456-57.

The contracts for which Resurrection seeks *in camera* treatment [REDACTED]. If the agreements are made public, Resurrection's business relationships with the two insurers would be seriously impaired. Resurrection's [REDACTED] would be harmed. If Resurrection's [REDACTED] become public, Resurrection would also be harmed in its ability to [REDACTED]. The potential loss of a business advantage has been recognized as a clearly defined, serious injury that warrants *in camera* treatment. *In re Hoechst Marion Roussel*, 2000 F.T.C. Lexis 138, *7.

Resurrection would also face serious harm to its ability to compete against other hospitals if its competitors were to learn [REDACTED]. This court has recently recognized that the disclosure of [REDACTED] contained in agreements between third party payors and health care providers can cause serious competitive harm and warrants *in camera* protection. *In the Matter of North Texas Specialty Physicians*, Docket No. 9312, Order on Non-Parties' Motions for *In Camera* Treatment of Documents Listed on Parties' Exhibit Lists at 4-6, April 23, 2004 (granting *in camera* treatment for a period of five years to confidential documents of several health insurers containing confidential information [REDACTED]).

B. The Public Interest in Disclosure of Resurrection's Documents is Outweighed by the Likelihood of Serious Competitive Harm to Resurrection

Resurrection deserves "special solicitude" as a non-party to this proceeding requesting *in camera* treatment for its confidential business information. See *Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984). None of Resurrection's confidential contract terms would enhance the public's understanding of the issues in this

case if they were made part of the public record. The information contained in Resurrection's documents is also not likely to be necessary to explain the rationale for the court's decision in this matter. Public release of the documents would inflict serious competitive harm on Resurrection. The balance of interests favors *in camera* treatment of Resurrection's confidential documents. See *In re General Foods*, 95 F.T.C. 352, 355 (1980).

C. Resurrection Has Shielded the Confidentiality of Its Documents

Resurrection has taken all possible steps to protect the confidentiality of its documents. All of the documents for which Resurrection seeks *in camera* treatment were produced to ENH only under compulsory process and pursuant to the court's Protective Order. All of the documents were designated "Restricted Confidential – Attorneys Eyes Only" under the terms of the Protective Order. Other than in response to the subpoenas duces tecum issued by the parties in this matter, none of Resurrection's contracts has been seen by any individual other than Resurrection employees and the other party to the agreements. As described more fully in the Declaration, the applicable contracts have been seen by only a small number of people within Resurrection because of the sensitivity of the information contained in the documents and the risk of competitive harm to Resurrection if the contents of the document become known to Resurrection's competitors or other third party payors who are not parties to the agreements. Resurrection has taken all possible steps to shield the confidentiality of these documents.

D. Resurrection's Documents Should Be Afforded *In Camera* Treatment For Five Years

Resurrection respectfully requests that its contracts be afforded *in camera* treatment for five years from the date an order issues. If the terms of its contracts become

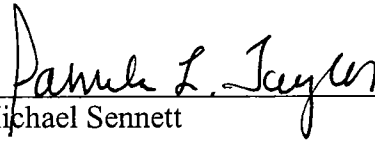
public, Resurrection will be seriously harmed in its ability to [REDACTED]. Affording Resurrection's documents *in camera* protection for a period of five years will minimize the risk that Resurrection will suffer competitive harm from the release of its documents.

CONCLUSION

Resurrection's documents qualify for *in camera* treatment under the standards set forth in the Commission's Rules of Practice and prior FTC cases. Accordingly, this Court should extend *in camera* protection for Resurrection's contracts for a period of five years.

DATED: January 4, 2005

Respectfully submitted,



Michael Sennett
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(312) 372-1121

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BEFORE FEDERAL TRADE COMMISSION
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ENH MEDICAL GROUP, INC. a corporation)	Docket No. 9315
)	

[PROPOSED] ORDER

Upon consideration of Resurrection Health Care’s Motion for *In Camera* Treatment of Business Documents Designated As Hearing Exhibits, **IT IS HEREBY ORDERED** that the following documents are to be provided *in camera* treatment for a period of five years from the date of this order:

EXHIBIT	PRODUCTION BATES NUMBERS
RX-1213	RHC 001024 - RHC 001033
RX-1214	RHC 001034 – RHC 001043
RX-1624	RHC 000980 – RHC 00983
RX-1478	RHC 009405 – RHC 009423
RX-1330	RHC 009484 – RHC 009493

Stephen J. McGuire
Chief Administrative Law Judge

Dated: _____

CERTIFICATE OF SERVICE

I certify that on January 4, 2005, I caused an original, two copies and one electronic copy of the nonpublic version of Resurrection Health Care's Motion For *In Camera* Treatment Of Business Documents Designated As Hearing Exhibits, as well as a verification that the electronic copy is a true and correct copy of the paper original, to be filed by hand delivery with:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue N.W.
Room H-159
Washington, DC 20580

I also certify that on January 4, 2005, I caused an electronic copy of the public version of Resurrection Health Care's Motion for *In Camera* Treatment of Business Documents Designated as Hearing Exhibits to be filed electronically with the Secretary at Secretary@ftc.gov.

I also certify that on January 4, 2005, I caused two copies of the foregoing motion to be filed by hand delivery with:

The Honorable Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
Room H-112
600 Pennsylvania Avenue N.W.
Washington, DC 20580

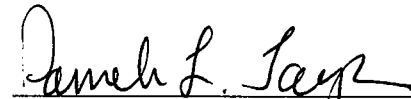
I also certify that on January 4, 2005, I caused one copy of the foregoing motion to be served by hand delivery upon each person listed below:

Phillip Eisenstat, Esq.
Assistant Director
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, DC 20001

Thomas H. Brock, Esq.
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, DC 20001

I also certify that on January 4, 2005, I caused one copy of the foregoing motion to be served by first class mail upon:

Charles B. Klein, Esq.
Winston & Strawn, LLP
1400 L Street, N.W.
Washington, D.C. 20005-3502

A handwritten signature in cursive script, appearing to read "Pamela L. Taylor", written over a horizontal line.

Pamela L. Taylor
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