

camera protection for these eleven documents, the remaining eighty-eight documents represent the most sensitive of SimSci's current and future business plans, and/or contain highly sensitive market share data or specific information about SimSci's customers. Public disclosure of these documents would seriously harm SimSci's ability to compete in the coming years. SimSci respectfully moves pursuant to 16 C.F.R. § 3.45(b) for *in camera* treatment of the eighty-eight exhibits identified in Attachment A, as well as any SimSci software to be entered into evidence.

**DISCLOSURE OF THE EXHIBITS IDENTIFIED IN ATTACHMENT A WOULD
NEEDLESSLY CAUSE NON-PARTY SIMSCI COMPETITIVE HARM**

Public disclosure of any of the eighty-eight exhibits for which SimSci continues to seek *in camera* treatment has the potential to inflict significant competitive harm upon non-party SimSci. As the Brown Declaration² establishes, these eighty-eight exhibits contain sensitive information which is central to SimSci's current and future competitive position. Despite the fact that Aspen is SimSci's chief competitor, SimSci has gone out of its way to be cooperative and facilitate discovery in this case. SimSci has produced thousands of pages of documents to both Complaint counsel and Aspen. *In camera* treatment requests by non-parties "deserve special solicitude. As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving non-party bystanders encourage cooperation with future adjudicative discovery requests." *Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500 (1984). This policy is all the more appropriate in this situation, given SimSci's high degree of cooperation throughout the discovery process.

continues to seek *in camera* treatment please see attachment A. Additionally for the Court's convenience a copy of Kenneth H. Brown's Declaration has been included as attachment B.

² Please See Attachment B for a copy of the Kenneth H. Brown Declaration.

Another factor militating toward the granting of *in camera* protection in this situation is that the public is likely to realize little or no benefit by the disclosure of SimSci's sensitive confidential competitive information. Whether these exhibits discuss the timing of customer contracts, confidential internal market share analysis, or SimSci's business strategies and competitive positioning both now and in the future, disclosing these exhibits will not enhance the public's understanding of this case, nor bring this matter to a speedy resolution. While the public's understanding will not be enhanced by disclosure of SimSci's confidential competitive information, such disclosure would represent a windfall for SimSci's competitors. SimSci respectfully asks this Court to protect SimSci's competitive position in the marketplace by granting the *in camera* treatment it seeks.

**PUBLIC DISCLOSURE OF SIMSCI'S SOFTWARE COULD CAUSE SIMSCI
IRREPARABLE COMPETITIVE HARM.**

This Court's May 6, 2004 Order did not make any mention of whether this Court would grant *in camera* protection to SimSci's software. SimSci produced working copies of all its relevant software to Aspen and Complaint Counsel subject to an agreement that expressly precludes copying or distributing the software in any way. The software was also designated as "Restricted Confidential" discovery material.

Aspen has placed all of SimSci's software on its exhibit list. SimSci does not know Aspen's intentions with respect to the use of this software at trial. SimSci objects strongly to the placing of any of its software in the public record in a manner that would make it available for copying and/or decompiling. SimSci would consider this to be a serious breach of the terms on which the software was produced. If any of SimSci's software is to be introduced as a trial exhibit, SimSci urges the Court in the strongest possible terms to grant it indefinite ongoing *in camera* protection. The software in question is absolutely proprietary, and is only made

available to customers pursuant to license agreements that impose strict limits on its use. While this software may be upgraded from time to time, its essential proprietary value will remain intact and will not diminish over time. This is precisely the type of proprietary material that should be granted indefinite *in camera* protection. *See, e.g., In re Coca Cola Co.*, 1990 FTC LEXIS 364 (Oct. 17, 1990).

CONCLUSION

For the reasons set forth herein, in the Affidavit of Kenneth Brown, and in SimSci's previous motion, SimSci respectfully requests that this Court grant *in camera* treatment for a period of five years to the documents identified in Exhibit A, and indefinite *in camera* treatment to any of SimSci's software that may be introduced into evidence.

DATED: May 12, 2004

Respectfully submitted

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CERTIFICATE OF SERVICE

It is hereby certified that copies of the foregoing NON-PARTY SIMSCI-ESSCOR'S RENEWED MOTION FOR IN CAMERA TREATMENT OF DOCUMENTS AND SOFTWARE were served May 12, 2004 on the following by hand:

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

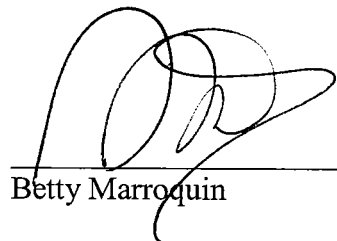
Peter Richman, Dennis F. Johnson
Lesli C. Esposito, Mary N. Lehrer
Federal Trade Commission
Room NJ-7172-A
601 New Jersey Avenue, NW
Washington, DC 20001

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

Jerome A. Swindell
Federal Trade Commission
Room H-374
600 Pennsylvania Avenue, NW
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Betty Marroquin

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
Before the Honorable Stephen J. McGuire
Administrative Law Judge

_____)
In the Matter of)
))
ASPEN TECHNOLOGY, INC.,)
))
a corporation)
_____)

Docket No. 9310

ORDER

Upon consideration of NON-PARTY SIMSCI-ESSCOR'S RENEWED MOTION FOR IN CAMERA TREATMENT OF DOCUMENTS AND SOFTWARE, **IT IS HEREBY ORDERED** that the following materials are to be provided *in camera* treatment for a period of five years:

EXHIBIT	CX	PRODUCTION BATES NUMBERS
2	CX 1341-001	ASP-SIM-0001669 to 1670
3	CX 1343-001	ASP-SIM-0002052 to 2054
4	CX 1351-001	ASP-SIM-0004712 to 4714
5	CX 1352-001	ASP-SIM-0004832 to 4833
6	CX 1353-001	ASP-SIM-0004834 to 4846
8	CX 1358-001	FTC-Sim-0317
9	CX 1360-001	FTC-Sim-0352
10	CX 1364-001	FTC-Sim-0648 to 0669
11	CX 1371-001	FTC-Sim-0746 to 0752
12	CX 1374-001	FTC-Sim-0784 to 0794
13	CX 1375-001	FTC-Sim-0812 to 0816
14	CX 1378-001	SIMSCI 003418 to 3437
15	CX 1379-001	SIMSCI 004261 to 4267
16	CX 1380-001	SIMSCI 004276 to 4303
17	CX 1381-001	SIMSCI 004636 to 4637
19	CX 1383-001	SIMSCI 005724 to 5727

EXHIBIT	RX	PRODUCTION BATES NUMBERS
22	RX-1008	SIMSCI 001947 to 1997
24	RX-1015	SIMSCI 004276 to 4303

EXHIBIT	RX	PRODUCTION BATES NUMBERS
25	RX-1016	ASP-SIM-0000907 to 909
26	RX-1017	ASP-SIM-0000863 to 865
27	RX-1018	ASP-SIM-0004786 to 4788
28	RX-1019	ASP-SIM-0000187 to 207
29	RX-1020	ASP-SIM-0002750 to 2753
30	RX-1021	SIMSCI 004261 to 4267
31	RX-1023	ASP-SIM-0004831
32	RX-1024	ASP-SIM-0001676 to 1683
33	RX-1025	ASP-SIM-0000080 to 105
36	RX-1030	ASP-SIM-0003263 to 3264
37	RX-1032	SIMSCI 000950 to 988
38	RX-1033	SIMSCI 002132 to 2180
39	RX-1034	ASP-SIM-0000754 to 802
40	RX-1036	SIMSCI 004254 to 4260
41	RX-1038	SIMSCI 003418 to 3437
42	RX-1039	SIMSCI 001369 to 1381
43	RX-1040	SIMSCI 003254 to 3293
44	RX-1041	ASP-SIM-0004638 to 4642
45	RX-1042	ASP-SIM-0005089 to 5100
46	RX-1044	ASP-SIM-0004280 to 4286
47	RX-1045	SIMSCI 000815 to 827
48	RX-1046	ASP-SIM-0000823 to 824
49	RX-1048	ASP-SIM-0002767 to 2769
50	RX-1049	ASP-SIM-0004624
52	RX-1052	SIMSCI 6589 to 6591
53	RX-1053	SIMSCI 6587 to 6588
54	RX-1054	SIMSCI 6586
55	RX-1057	ASP-SIM-0000912 to 956
56	RX-1060	ASP-SIM-0003924 to 3925
58	RX-1068	ASP-SIM-0000276 to 308
60	RX-1071	SIMSCI 005779 to 5780
61	RX-1072	ASP-SIM-0001784
62	RX-1075	ASP-SIM-0002052 to 2054
63	RX-1077	SIMSCI 004453 to 4472
64	RX-1078	SIMSCI 004473 to 4503
65	RX-1079	ASP-SIM-0003769 to 3774
66	RX-1081	ASP-SIM-0003072 to 3087
67	RX-1083	ASP-SIM-0001740 to 1757
68	RX-1084	ASP-SIM-0003184 to 3186
69	RX-1094	ASP-SIM-0004994 to 4996
70	RX-1095	ASP-SIM-0000496 to 502
71	RX-1096	ASP-SIM-0000896 to 899
72	RX-1098	SIMSCI 005444 to 5447

EXHIBIT	RX	PRODUCTION BATES NUMBERS
73	RX-1106	ASP-SIM-0002496 to 2500
74	RX-1107	ASP-SIM-0000175 to 181
75	RX-1109	ASP-SIM-0000733 to 746
76	RX-1113	ASP-SIM-0001886 to 1947
77	RX-1114	ASP-SIM-0001513 to 1519
78	RX-1115	ASP-SIM-0000967 to 983
79	RX-1117	ASP-SIM-0001671 to 1672
80	RX-1119	ASP-SIM-0000472 to 474
81	RX-1120	ASP-SIM-0004516 to 4518
82	RX-1123	ASP-SIM-0000993 to 1018
83	RX-1124	ASP-SIM-0000600 to 610
84	RX-1125	SIMSCI 003356 to 3380
85	RX-1126	SIMSCI 7684 to 7686
86	RX-1127	ASP-SIM-0001786 to 1800
87	RX-1128	ASP-SIM-0001673 to 1674
88	RX-1129	SIMSCI 6808 to 6809
89	RX-1130	ASP-SIM-0003954 to 3957
90	RX-1131	ASP-SIM-0003054 to 3055
91	RX-1132	SIMSCI 6764 to 6790
92	RX-1133	ASP-SIM-0001526 to 1529
93	RX-1148	SIMSCI 008311 to 8709
94	RX-1149	SimSci Sales Figures 2001 (native)
95	RX-1150	SimSci Sales Figures 2002 Q1 (native)
96	RX-1151	SimSci Sales Figures FY 2003 (native)
97	RX-1152	SimSci Sales Figures FY 2004 (native)
98	RX-1153	SimSci Pricing Spreadsheet, July 1, 2003 (native)
99	RX-1154	SimSci Spreadsheet, November 1, 2003 (native)

In view of the critical competitive importance of protecting SimSci's software products, any SimSci software introduced into evidence is granted indefinite *in camera* treatment.

Dated _____

The Honorable Stephen J. McGuire
Administrative Law Judge