

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

In the Matter of)	
)	Public Version
UNION OIL COMPANY OF CALIFORNIA,)	
a corporation.)	Docket No. 9305
)	

**NON-PARTY SHELL’S SECOND MOTION FOR *IN CAMERA* TREATMENT OF
HEARING EXHIBITS DESIGNATED BY COMPLAINT COUNSEL
AND UNION OIL COMPANY OF CALIFORNIA**

Non-parties Shell Oil Company, Equilon Enterprises LLC d/b/a/ Shell Oil Products (US) and Motiva Enterprises LLC (collectively “Shell”) move for an order directing *in camera* treatment of ten exhibits. One of these is a supplemental exhibit that Union Oil Company of California (“Unocal”) has designated; the other nine include six documents and three sets of deposition excerpts that Complaint Counsel has designated for possible introduction at the hearing scheduled to begin on December 16, 2003.

On September 24, 2003, Complaint Counsel notified Shell of 136 exhibits on the FTC’s exhibit list that may contain sensitive Shell information. On October 14, 2003, Unocal supplemented its earlier notification with one exhibit from Shell’s subpoena production in this matter.¹ On October 23, 2003, Complaint Counsel added two Shell items to its exhibit list that have yet to receive exhibit numbers (CX designations). Shell has identified ten exhibits from these lists for *in camera* protection. Public disclosure of any of these exhibits is likely to cause direct, serious harm to Shell’s competitive position. Therefore, pursuant to 16 C.F.R. § 3.45(g),

¹ By motion filed on October 20, 2003, Shell sought *in camera* protection for certain documents identified by Unocal in its first notice letter, dated September 26, 2003.

Shell respectfully moves for *in camera* treatment of its confidential business information identified in the Declaration in support of this Motion, and attached thereto as Exhibits A-J.

**SHELL'S CONFIDENTIAL INFORMATION DESERVES *IN CAMERA* TREATMENT
UNDER THE FEDERAL TRADE COMMISSION'S
RULES OF PRACTICE**

Shell is not a party to this proceeding. The information in Exhibits A-J is fundamental to Shell's current and future operations at its three California refineries. Shell has guarded the confidentiality of these materials carefully. Public disclosure of these exhibits could result in serious competitive injury to Shell, while adding little, if any, incremental value to the public's understanding of the issues in this proceeding. Accordingly, Exhibits A-J merit *in camera* treatment. *See In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999).

A. Shell Has Preserved The Confidentiality Of Its Information

Shell has taken significant steps to protect the confidential nature of each Exhibit for which it seeks protection. Most of the materials for which Shell seeks protection were provided under compulsory process in this matter. Others were produced in prior litigation or during the investigatory phase of this matter pursuant to claims of confidentiality. Shell designated its materials "Confidential" or "Restricted Confidential – Attorney Eyes Only" under the Protective Order and pursuant to an agreement between Shell and several other non-party refiners on the one hand and Complaint Counsel and Unocal on the other. That agreement was designed to expedite discovery while ensuring that materials produced by the non-party refiners would receive sufficient protection from disclosure to competitors. It permits a refiner to invoke the higher level of protection ("Restricted Confidential – Attorney Eyes Only") under the Protective Order in the event the FTC or Unocal should decide that it wants to show that refiner's

information to a witness who is an employee of a competitor. These efforts show that Shell has preserved the confidentiality of its sensitive materials.

B. Disclosure Of The Information In Exhibits A-J Could Result In Serious Competitive Injury To Shell

The information for which Shell seeks *in camera* treatment has direct and tangible impact on its day-to-day refining activities and its future competitive position. As explained in the attached Declaration, Exhibit A contains confidential correspondence with the California Air Resources Board (“CARB”) concerning Shell’s methods for testing and measuring gasoline properties at its California refineries. Disclosure of these internal business practices could harm Shell’s economic interests. Exhibits B-D contain batch data for CARB summertime gasoline. Shell designated these documents “Restricted Confidential – Attorney Eyes Only” because they specify the properties, characteristics and volumes for its refineries. Public access to this batch data would expose Shell to asymmetrical business relations with its customers, suppliers and competitors – all of whom could use this information to harm Shell in any number of ways. Exhibits E-G represent Shell’s capital investment strategies, production plans and blending processes at its Bakersfield, Los Angeles and Martinez Refineries, respectively, to optimize their operations for CARB Phase 3 requirements. (CARB Phase 3 refers to the gasoline specifications that are used currently at some refineries, and which are mandated for 2004). Similarly, the deposition excerpts in Exhibits H-J discuss specific operational changes or process unit improvements made or considered by Shell’s California refineries. Some of the testimony also discusses confidential gasoline blending practices and analyses. Shell developed the information in Exhibits E-J through many hours of work, study and substantial investment. Disclosing the current and future operating strategies, blending processes and investment plans of Shell could

seriously injure its ability to compete equally against other refiners in the marketplace under the CARB Phase 3 regulations.

C. The Public Interest In Disclosure Of Exhibits A-J Is Outweighed By The Likelihood Of Serious Competitive Harm To Shell

Shell deserves “special solicitude” as a non-party requesting *in camera* treatment for its confidential business information. See *Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500 (order directing *in camera* treatment for sales statistics over five years old). Reasonable extensions of *in camera* treatment encourage non-parties to cooperate with future discovery requests in adjudicative proceedings. *Id.* Shell has cooperated with the discovery demands in this case, and as mentioned above, has even taken steps to facilitate the access of the parties to highly sensitive non-party documents. Conversely, publicizing Shell’s strategic plans for producing gasoline profitably in the CARB Phase 3 environment, revealing its refineries’ detailed output characteristics and volumes, and disclosing its internal business methods will not promote the resolution of this matter. Nor will these materials uniquely enhance public understanding of these proceedings. The balance of interests clearly favors *in camera* protection for Exhibits A-J. See *In re Bristol-Myers*, 90 F.T.C. 455, 456 (1977) (describing six-factor test for determining secrecy and materiality).

D. Protection For Exhibits A-J Should Extend For Five Years

The value of the testing and measurement methods discussed in Exhibit A to Shell’s business warrants lasting protection. Similarly, the batch data in Exhibits B and D should remain confidential for a substantial amount of time to prevent Shell’s competitors from learning exactly what it produces at any given time, as well as year-to-year. Finally, the forward-looking operational strategies, blending methods and investment analyses reflected in Exhibits E-J call for strong protection to ensure that Shell can compete on equal terms with other refiners under

the coming CARB Phase 3 regime. Accordingly, Shell respectfully requests that all of these materials be afforded *in camera* protection for a period of five years.

CONCLUSION

Exhibits A-J satisfy the standard for *in camera* protection under the Commission's Rules of Practice and relevant FTC rulings. Accordingly, this Court should extend *in camera* protection to the confidential materials of Shell. We have conferred with Complaint Counsel and counsel for Unocal about this Motion and the specific information for which *in camera* protection is sought, and both Parties have indicated that they do not oppose this Motion.

DATED: October 24, 2003

Respectfully submitted,

Donald B. Craven
AKIN GUMP STRAUSS HAUER &
FELD, LLP
1333 New Hampshire Ave., NW
Washington, DC 20036

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[PROPOSED] ORDER

Upon consideration of Non-Party Shell’s Unopposed Second Motion For *In Camera* Treatment Of Hearing Exhibits Designated By Complaint Counsel And Union Oil Company Of California, **IT IS HEREBY ORDERED** that the following materials are to be provided *in camera* treatment:

Exhibit	RX	Production Bates Numbers
A	1055	SHUNO-0006773 to 6774

and:

Exhibit	CX	Production Bates Numbers
B	2169	SHUNOBD-0000001 to 16
C	[TBD]	SHUNOBD-0000017 to 30
D	[TBD]	SHUNOBD-0000031 to 40
E	1131	AG-SHELL-0000390 to 398
F	1132	AG-SHELL-0000399 to 415
G	1133	AG-SHELL-0000416 to 427
H	Banducci Deposition Transcript (8/7/03)	Page 46, line 2 through page 47 line 12.

I	Hancock Deposition Transcript (9/5/03)	Page 193, line 22 through page 197, line 6. Page 216, line 16 through page 222, line 17.
J	Jacober Deposition Transcript (8/20/03)	Page 33, line 8 through page 34, line 3. Page 45, line 21 through page 46, line 20.

The Honorable D. Michael Chappell
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that on October 24, 2003, I caused an original and two copies of Non-Party Shell's Unopposed Second Motion For In Camera Treatment Of Hearing Exhibits Designated By Complaint Counsel And Union Oil Company Of California to be filed by hand and one electronic copy of that motion to be filed by electronic mail with:

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

I also certify that on October 24, 2003, I caused two copies of the foregoing motion to be served by U.S. mail upon:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

I also certify that on October 24, 2003, I caused one copy of the foregoing motion to be served by hand delivery upon each person listed below:

J. Robert Robertson, Esq.
Senior Litigation Counsel
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Richard B. Dagen, Esq.
(through service upon)
Chong S. Park, Esq.
Bureau of Competition
Federal Trade Commission
601 New Jersey Avenue, NW, Rm. NJ-6213
Washington, DC 20001

I also certify that on October 24, 2003, I also caused one copy of the foregoing motion to be served by U.S. mail upon:

David W. Beehler, Esq.
Robins, Kaplan, Miller & Ciresi, LLP
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015

With an additional copy by overnight mail to:

Diane L. Simerson
Robins, Kaplan, Miller & Ciresi, LLP
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015

C. Fairley Spillman
AKIN GUMP STRAUSS HAUER
& FELD LLP
1333 New Hampshire Avenue NW
Washington, DC 20036

COPY CERTIFICATION

I certify that the electronic version of NON-PARTY SHELL'S SECOND MOTION FOR *IN CAMERA* TREATMENT OF HEARING EXHIBITS DESIGNATED BY COMPLAINT COUNSEL AND UNION OIL COMPANY OF CALIFORNIA filed by electronic mail with the Secretary of the Commission is a true and accurate copy of the paper original and that a paper copy with original signature has been filed with the Secretary of the Commission on this day.

Dated October 24, 2003

By:

C. Fairley Spillman
AKIN GUMP STRAUSS HAUER
& FELD LLP
1333 New Hampshire Avenue NW
Washington, DC 20036