



underlying facts necessary to prove price fixing: (1) some of its affiliated physicians are in competition with one another;³ (2) the physicians in its PPO network agreed to fees at or above specified rates;⁴ and (3) Brown & Toland negotiated contracts with health plans on behalf of its physicians.⁵ Because these facts are not in dispute, discovery on this issue is largely unnecessary. Additionally, Brown and Toland and its affiliated physicians control virtually all the evidence related to whether Brown and Toland has a legally cognizable and economically plausible justification for its conduct. As such, the existing discovery deadline has provided

time for the parties to gather information relating to the claim of price fixing by competing Brown and Toland physicians and any justifications for that conduct. Moreover, further delay

judge shall file the decision no later than one year after the issuance of the complaint. Rather respondent's motion only cites to the language of section 3.21 of the FTC rules, which generally uses the "good cause" standard for granting extensions of time. Even section 3.21, however, reinforces the importance of the overall purpose of the Rules as being to conclude the proceedings in one year. Under section 3.21(c)(2), the administrative law judge "shall consider ... the need to conclude the evidentiary hearing and render an initial decision in a timely manner"

hearing. A seven-week extension, for completion of discovery and the subsequent deadline changes, would cause the hearing in this matter to begin in San Francisco on or about April 20,

Brown and Toland's proposed seven-week extension for discovery thus could also compromise the Court's ability to render its decision in *Aspen Tech* within one year.

II. Brown and Toland's Motion for Summary Judgment and Request for Judgment as a Matter of Course

Brown and Toland would accept the third parties' production to complaint counsel as adequate.⁶

Moreover, Toland should not be allowed to assert that the production to counsel is adequate.

depose third-party witnesses effectively before December 8. Moreover, while Brown and Toland

administrative litigation, as required by the interplay between Rules 3.21 and 3.51. Accordingly, we respectfully request that the Court deny Brown and Toland's motion for a seven-week extension of the discovery period and the consequent delay of the hearing date.

Gwen L. Fanger / BFB
Gwen L. Fanger
Complaint Counsel
Federal Trade Commission, Western Region

San Francisco, CA 94103
415.848.5100

CERTIFICATE OF SERVICE

I, Brian P. Beall hereby certify that on 14 November 2003, I caused a copy of Complaint Counsel's Opposition to Respondent's Motion to Extend Discovery and Hearing Date to be served upon the following:

Office of the Secretary

Room H-159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Hon. Stephen J. McGuire

Federal Trade Commission
Room H-112
600 Pennsylvania Avenue, N.W.

Washington, D.C. 20580