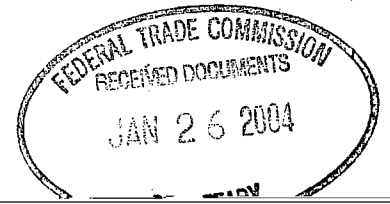


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



) Docket No. 9312

Respondent)

BLUE CROSS OF NORTH TEXAS' MOTION FOR LEAVE
TO REPLY TO NORTH TEXAS SPECIALTY PHYSICIANS'
RESPONSE TO BLUE CROSS BLUE SHIELD OF TEXAS' MOTION
TO QUASH AND/OR LIMIT SUBPOENA DUCES TECUM

TO THE HONORABLE JUDGE OF SAID COURT:

Blue Cross, Blue Shield of Texas ("BCBSTX"), a non-party in the above-entitled and

Respectfully submitted,

HULL HENRICKS & MACRAE LLP


Bank One Tower

731 W 6th Street, Suite 2000

(512) 472-4554

(512) 494-0022 Fax

By: _____


MICHAEL S. HULL

State Bar No. 10253400

ANDREW F. MacRAE

State Bar No. 00784510

ATTORNEYS FOR BLUE CROSS
BLUE SHIELD OF TEXAS

I hereby certify that the foregoing document has been sent to the following counsel of record via overnight delivery on this 22nd day of January 2004.

Honorable D. Michael Chappell


Administrative Law Judge
Federal Trade Commission

600 Pennsylvania Avenue, NW
Washington, DC 20580

Michael Bloom
Senior Counsel to the Northeast Region
Federal Trade Commission
~~One Bowling Green, Suite 218~~

New York, NY 10004

~~Cassidy D. Binn~~
Thompson & Knight LLP
1700 Pacific Ave., Suite 3300
Dallas, TX 75201


Michael S. Hull / Andrew F. MacRae

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)
)
)

North Texas Specialty Physicians,)
Respondent)
)

Docket No. 9312

**BLUE CROSS BLUE SHIELD OF TEXAS' REPLY TO NORTH TEXAS
SPECIALTY PHYSICIANS' RESPONSE TO BLUE CROSS BLUE SHIELD OF
TEXAS' MOTION TO QUASH AND/OR LIMIT SUBPOENA DUCES TECUM**

TO THE HONORABLE JUDGE OF SAID COURT:

~~Blue Cross Blue Shield of Texas ("BCBSTX")~~

and numbered matter, files this Reply to North Texas Specialty Physicians' Response to

~~Blue Cross Blue Shield of Texas' Motion to Quash and/or Limit Subpoena DUCES TECUM~~

This action was filed on September 17, 2003, and a scheduling order entered on

October 16, 2003, setting a deadline of January 30, 2004 for the parties to complete discovery. Yet the subpoena in question was not issued until November 24, 2003, and NTSP set on it until December 18, 2003.

overnight or having it hand-delivered to an address that MapQuest reveals is just 11.9 miles from the offices of NTSP's counsel, NTSP chose to deliver the subpoena by certified mail, which took another five days. These are not the actions of a prudent party for which discovery is a high priority, and it should not be up to BCRSTX to pick up

plainly refuse to enforce an administrative subpoena which is not within the bounds of reasonableness).

Further, assuming for the sake of argument that NTSP's broad requests do in fact

seek relevant documents, BCBSTX has met its burden to establish that its

requests are burdensome and that the information sought is confidential. (See Affidavit of Rick Haddock², establishing both that particular documents sought are confidential, and that the cost to respond to Requests Nos. 2 and 3 would be \$684,000.)

C. Responses to Specific Arguments

With respect to NTSP's arguments relating to specific requests, BCBSTX makes the following concise observations:

Request No. 1. NTSP established in its Response why BCBSTX need not respond to this part of the subpoena: "Complaint Counsel has all information previously provided by BCBSTX available for use." (NTSP Response at 42-43; NTSP 1-11)

III.
CONCLUSION

As set forth above, NTSP has not demonstrated the documents it seeks are relevant. Furthermore, many of the documents requested by the Subpoena contain sensitive and confidential financial information, and the cost to BCBSTX to respond to the subpoena would be prohibitive. The subpoena should be quashed in its entirety.


WHEREFORE, PREMISES CONSIDERED, BCBSTX respectfully requests the Subpoena Duces Tecum be quashed and/or limited, and that it be awarded its reasonable attorney's fees and costs, as well as such other relief, both legal and equitable, to which it may show itself justly entitled.

Respectfully submitted,

HULL HENRICKS & MacRAE LLP
Bank One Tower

Austin, Texas 78701
(512) 472-4554
(512) 494-0022 (Facsimile)

By: _____


MICHAEL S. HULL
State Bar No. 10253400
ANDREW F. MacRAE
State Bar No. 00784510

CERTIFICATE OF CONFERENCE

Andrew MacRae, counsel for non-party Movant BCBSTX, spoke with Gregory

Diana, counsel for NTSB, on December 20, 2003, January 5, 2004, and January 12, 2004.

12, 2004, in an attempt to resolve any disputes concerning the Subpoena that is the subject of the foregoing motion. As of the time this motion is filed, the issues in dispute have not been resolved.



Michael S. Hull / Andrew F. MacRae

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been sent to the following counsel of record via overnight delivery on this 22nd day of January 2004.

Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission

