

Dated: September 9, 2004

Respectfully Submitted,



Duane M. Kelley
WINSTON & STRAWN LLP
35 West Wacker Dr.
Chicago, IL 60601-9703
(312) 558-5764
Fax: (312) 558-5700
Email: dkelley@winston.com

Michael L. Sibarium
Charles B. Klein
WINSTON & STRAWN LLP
1400 L Street, NW
Washington, DC 20005
(202) 371-5777
Fax: (202) 371-5950
Email: msibarium@winston.com

Counsel for Respondents

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

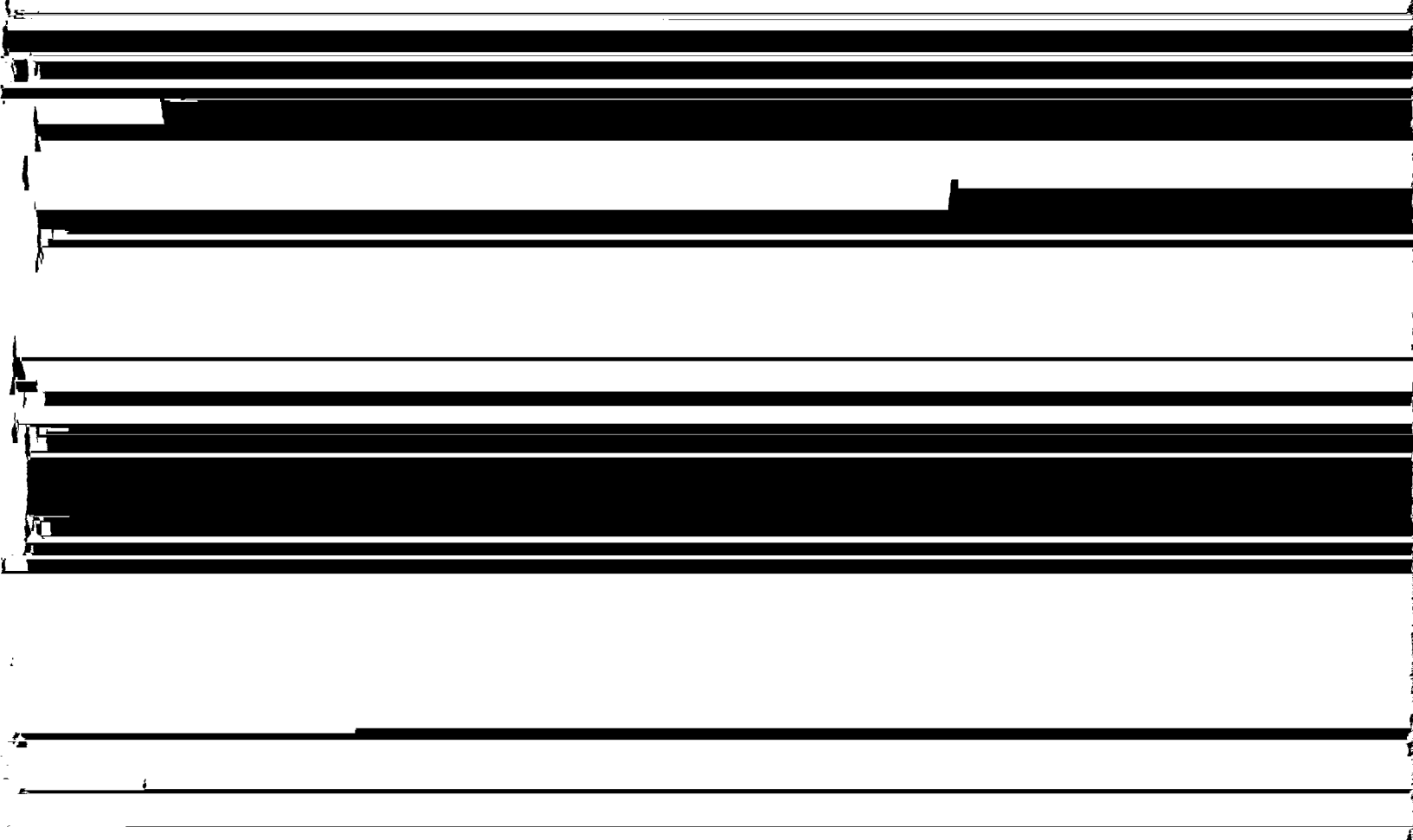
_____)
In the matter of)
)
Evanston Northwestern Healthcare)
Corporation,)
a corporation, and)
)
ENH Medical Group, Inc.,)
a corporation.)
_____)

Docket No. 9315
(Subject to Protective Order)

**MEMORANDUM IN SUPPORT OF RESPONDENTS'
MOTION TO QUASH COMPLAINT COUNSEL'S NOTICE OF DEPOSITIONS**

Under the Federal Trade Commission's Rules of Practice ("FTC Rules"), 16 C.F.R. §§

2.21(d), 2.22(c), Respondents Evanston Northwestern Healthcare Corporation and ENH Medical Group, Inc.



2. Complaint Counsel's failure to give Respondents reasonable notice of Mr. Loveland's deposition is inexcusable, especially considering that Complaint Counsel had every opportunity and reason to provide Respondents with adequate notice. During the underlying Part II investigation, Complaint Counsel deposed Mr. Loveland to discover his relevant knowledge relating to the merger. As early as March 24, 2004, Respondents listed Mr. Loveland in their initial disclosures as an individual likely to have discoverable information. *See* Respondents' Initial Disclosures at 3 (Mar. 24, 2004). On April 13, 2004—almost four months ago—Complaint Counsel listed Mr. Loveland on its preliminary witness lists. *See* Complaint Counsel's Preliminary Witness List at 3 (Apr. 13, 2004). Mr. Loveland also was listed on

Complaint Counsel's Preliminary Witness List at 3 (Apr. 13, 2004).

Although the Commission apparently has not specified a particular period of time

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

depositions after the close of discovery on the ground that Complaint Counsel did not have the

time to prepare for or to take these depositions before the close of discovery." Complaint

Counsel's Mot. for Leave to Take Disc. after Disc. Cut-Off Date and Stay Consideration of Mot. to Compel. ("Mot. for Leave") at 1; *see also* Complaint Counsel's Mem. in Support of Mot. for Leave at 3 ("Further, in the remaining discovery period, Complaint Counsel and Respondents [redacted] had scheduled more than a dozen depositions and, therefore, Complaint Counsel did not

Respectfully Submitted,

Charles B. Klein/dmk
Duane M. Kelley

35 West Wacker Drive

Chicago, IL 60601-9703
(312) 558-5764
Fax: (312) 558-5700
Email: dkelley@winston.com

Michael L. Sibarium
Charles B. Klein
WINSTON & STRAWN LLP
1400 L Street, NW
Washington, DC 20005
(202) 371-5700
Fax: (202) 371-5950
Email: msibarium@winston.com
Email: cklein@winston.com

Counsel for Respondents

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

_____)	
In the matter of)	
)	
)	
Evanston Northwestern Healthcare)	
Corporation,)	
a corporation, and)	Docket No. 9315
)	
ENH Medical Group, Inc.,)	
a corporation.)	
_____)	

ORDER

Upon consideration of Respondents' Motion to Quash Complaint Counsel's Notice of Depositions dated September 8, 2004, Complaint Counsel's response thereto, any hearing

thereon, and the entire record in this action, it is this _____ day of _____, 2004 hereby ORDERED, that the Motion is GRANTED.

The Honorable Stephen J. McGuire
CHIEF ADMINISTRATIVE LAW JUDGE
Federal Trade Commission

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2004, copies of the foregoing *Respondents' Motion to Quash Complaint Counsel's Notice of Depositions* and related papers were served (unless otherwise indicated) by email and messenger service on:

The Honorable Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave. NW (H-106)
Washington, DC 20580

(*no contact service delivered by messenger only*)

Thomas H. Brock, Esq.
Federal Trade Commission
600 Pennsylvania, Ave. NW (H-374)
Washington, DC 20580

tbrock@ftc.gov

Philip M. Eisenstat, Esq.

2004 U.S. Dist. LEXIS 4613, *

GREAT AMERICAN INSURANCE COMPANY VERSUS MCELWEE BROTHERS, INC. ET AL.

CIVIL ACTION NO. 03-2793 SECTION "K" (2)

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

2004 U.S. Dist. LEXIS 4613

March 19, 2004, Decided
March 19, 2004, Filed, Entered

SUBSEQUENT HISTORY:

2004 U.S. Dist. LEXIS 7623 (E.D. La., Apr. 28, 2004)

PRIOR HISTORY: Great Am. Ins. Co. v. McElwee Bros., 94 Fed. Appx. 842, 2004 U.S. App. LEXIS 6738 (Fed. Cir., Mar. 18, 2004)

DISPOSITION: Plaintiff's Second Motion for Leave to Join Additional Party granted. Defendants motions for protective orders granted in part, and Defendants ordered to provide discovery responses.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff insurance company filed a second motion to join an additional party under Fed. R. Civ. P. 19. Defendants, a joint venture and an individual, moved for protective orders. The insurance company sought to sue an attorney, who was the attorney for the joint venture, seeking a declaratory judgment that he had no valid or first ranking attorney's fee lien against any funds that the insurance company might recover.

COUNSEL: [*1] For GREAT AMERICAN INSURANCE COMPANY, plaintiff: Lloyd Noble Shields, Daniel Lund, III, Elizabeth Lapeyre Gordon, Stuart Glen Richeson, Shields Mott Lund, LLP, New Orleans, LA.

For MCELWEE BROTHERS INC & TRI- STATE DESIGN CONSTRUCTION CO, INC., defendant: Thomas Hadden Morrow, William Lee Melancon, Law Offices of William Melancon, Lafayette, LA.

For MCELWEE BROTHERS INC, SYLVIA HURST, defendants: Lori Folsie White, The White Law Firm, LLC, Roederick C. White, Roederick C. White, Attorney at Law, Baton Rouge, LA.

MELVIN M MCELWEE, SR, defendant, Pro se, Independence, LA.

For - TRI-STATE DESIGN CONSTRUCTION CO. INC. defendant: Terrence I. Brennan—Jimmy

Arthur Castex, Jr., Deutsch, Kerrigan & Stiles, New Orleans, LA.

JUDGES: JOSEPH C. WILKINSON, JR., UNITED STATES MAGISTRATE JUDGE.

OPINIONBY: JOSEPH C. WILKINSON, JR.

OPINION: ORDER AND REASONS

Oral argument was conducted on March 17, 2004 concerning (1) Plaintiff's Second Motion for

HN2 A person who is subject to service of process and whose joinder will not

joined as a party in the [*4] action if ... (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (ii) leave any of the persons already

practice subject to a potential risk of incurring double or multiple or otherwise

274518, at *1 (E.D. La. Mar. 20, 2001) (Duval, J.) (quotations omitted) (citing Alexander v. Fulton County, 207 F.3d 1303, 1322-23 (11th Cir. 2000); Porter v. Milliken & Michaels, Inc., 2000 U.S. Dist. LEXIS 11366, No. 99-0199, 2000 WL 1059849, at *1 (E.D. La. Aug. 1, 2000)

(Vance, J.); Little v. Bellsouth Telecommunication, 1995 U.S. Dist. LEXIS 11208, No. 95-1646, 1995 WL 468256, at *1 (E.D. La. Aug. 7, 1995) (Mentz, J.); C.A. Wright. A. Miller & M.K. Kane, Federal Practice & Procedure § 1653 (1986)). ^{HNS} The test for permissive joinder is (1) whether there is a logical relationship between the claims and (2) whether there is any overlapping proof or legal question. *Id.*; Porter, 2000 U.S. Dist. LEXIS 11366, 2000 WL 1059849, at *1.

In determining what constitutes a single transaction or occurrence under the first prong, a number of courts have looked to the interpretation of "transaction" under Rule 13(a)-compulsory counterclaims. Transaction for the purposes of

March 17, 2004. ^{HN8} Six days is not the reasonable notice required by Fed. R. Civ. P. 30(b)(1). Therefore, both notices of deposition are quashed.

In addition, Great American asked that the deponents produce documents pursuant to Fed. R. Civ. P. 30(b)(5). ^{HN9} That rule is clear that requests for production of documents in conjunction with a deposition notice to a party deponent must comply with Fed. R. Civ. P. 34. Under Rule 34(b), parties have 30 days to respond to requests for production of documents unless the court orders responses within some shorter or longer time. The court did not make

such an order in this case before these requests for production were submitted.

Although [*11] Judge Duval required in his "Judgment on Preliminary Injunction Request,"

Insurance Company," he did not impose particular time limits or other special logistical requirements on such requests and responses. In the absence of any special requirements in the preliminary injunction, I will apply the usual time periods and mechanisms for document production provided in the Federal Rules of Civil Procedure. Therefore, no response is due to the requests for production on the dates set out in the notice and the motion for protective