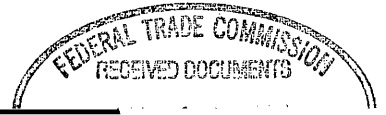


UNITED STATES OF AMERICA



In the Matter of)
)
)

Evanston Northwestern Healthcare)
Corporation, and)
)

ENH Medical Group, Inc.)
)
)
)


Docket No. 9315

Public

ARGUMENT

I. Introduction

BCBSI received notice from Complaint Counsel on December 13 and 30, 2004 and from Respondent counsel on December 15, 2004 of their intent to offer into evidence at trial highly confidential and business-sensitive documents and data files that Non-Party BCBSI produced in



third-party requests for *in camera* treatment “special solicitude,” recognizing “as a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests.” *Kaiser*, 103 F.T.C. at 500.

In considering both secrecy and materiality, the court should weigh the following factors:

- (1) the extent to which the information is known outside the applicant’s business;
- (2) the extent to which the information is known by employees and others involved in the applicant’s business;
- (3) the extent of measures taken by the applicant to guard the secrecy of the information;
- (4) the value of the information to the applicant and its competitors;

expended by the applicant in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *Id.* In applying these factors, courts have “generally attempted to protect confidential business information from unnecessary airing.” *Hood*, 58 F.T.C. at 1188, and recognized the potential loss of a business

correspondence relating to contract negotiations between BCBSI and hospitals detailing the terms in dispute and, in some cases, possible resolutions; (3) internal pricing analysis and ; and (4) computer files containing claim and reimbursement data on a patient and hospital basis from 1998-2003. As set out below, the documents and computer files within these categories are precisely the type of information for which its coverage treatment was sought. (b) (7) (C)

BCBSI has taken meaningful steps to protect the confidential nature of these documents. Internal distribution of these agreements is limited to the individuals who deal with the specific providers in implementing the contract terms and to those directly involved in negotiations. BCBSI does not publicly comment on its rates or contract terms, nor does it share this information with third-party hospitals or payor-competitors. In fact, under almost all

All of the agreements for which *in camera* treatment is requested are still in effect. The amendments at issue contain rate changes and additions to covered services to the underlying

by BCBSI,¹ and five letters between BCBSI and Advocate detailing agreed upon and proposed

contract terms. These documents include 1.1. BCBSI's

Disclosure of these documents would cause BCBSI serious competitive injury. These letters reflect the terms upon which agreements were reached as well as proposed terms under

consideration. Like the final agreements and amendments discussed above, the information

C. Internal Analysis and Strategy Documents

five documents containing internal pricing analysis, contract negotiation analysis, and/or management strategy. These five documents are included as Exhibit 3. The three documents containing BCBSI's pricing and contract negotiation analysis not only reflects BCBSI's determinations about what prices to charge in general, but also certain pricing methodologies and contracting terms that are still in effect. BCBSI's two internal email communications concerning

the Company's conflict with one of its customers describes BCBSI's management strategies in

D. Computer Data Files

Finally, BCBSI requests *in camera* treatment for data files produced to the FTC in response to its Civil Investigative Demand. A list of the data files at issue is attached as Exhibit

and cost information ... the release of which might enable [the applicant's] competitors to construct an accurate financial model of [the company's] business to its detriment"). Both BCBSI covered patients and BCBSI will suffer serious injury if these data files are made public.

Nothing will be gained from publication of the data files. The data contained on these tapes is of such great volume that it cannot be read or understood without using the processing

capabilities of a mainframe or similarly powerful computer. Disclosure of these analyses and data

[REDACTED]

EXHIBIT 1

[REDACTED]

EXHIBIT 2

[REDACTED]

EXHIBIT 3

[REDACTED]

EXHIBIT 4

REDACTED





Exhibit	Production Bates Numbers
4	BCBSI 25149 BCBSI 25150 BCBSI 25151

I hereby certify that on January 10, 2005, a copy of the foregoing Third-Party Blue Cross Blue Shield's Public Motion For *In Camera* Treatment of Proposed Trial Exhibits was served via email and by first class mail, postage prepaid, on:

The Honorable Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
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Federal Trade Commission