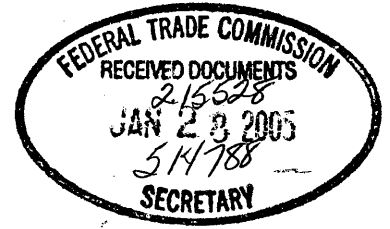


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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
Office of Administrative Law Judges



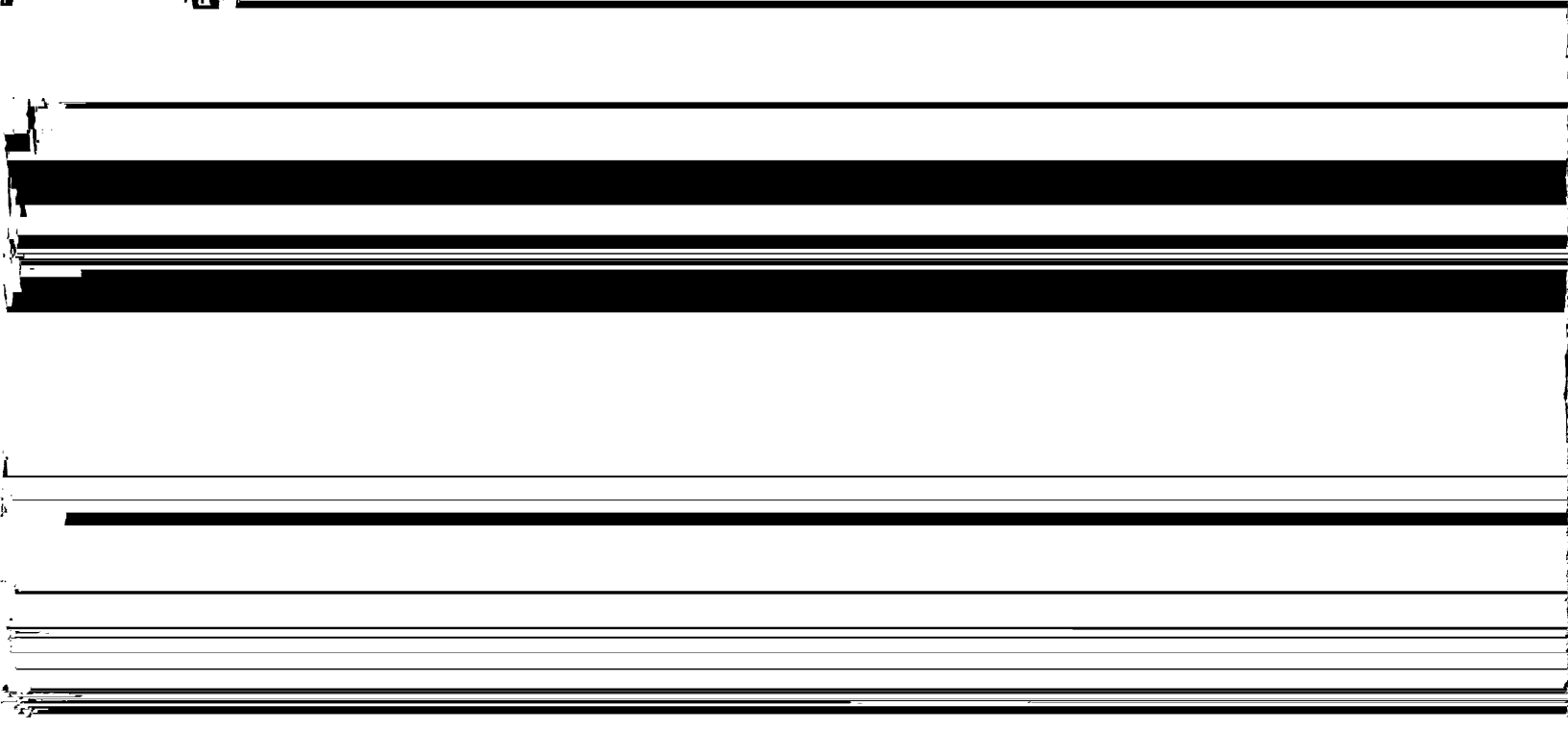
In the Matter of)
)
)

**Evanston Northwestern Healthcare
Corporation,**)
a corporation.)
_____)

Docket No. 9315

**COMPLAINT COUNSEL'S MOTION TO STRIKE EXPERT REPORT
AS EXHIBIT TO RESPONDENT'S PRETRIAL BRIEF**

In a clever tactical move, Respondent has submitted to the Court the expert report of Dr. Monica Noether, one of Respondent's experts who may testify at trial. This report consists of 125 pages of Dr. Noether's out-of-court statements, together with another 49 pages of additional hearsay exhibits. Respondent assures the Court and Complaint Counsel that it "is not proffering this expert report into evidence at this time but, instead, is merely providing it to the Court as



then "evidence" ~~if that distinction can be made~~ is highly prejudicial and therefore the report

should be stricken.

First, the submission of Dr. Noether's hearsay report as a "reference" is unduly prejudicial in the instant proceedings. Neither the Court nor Complaint Counsel has any basis for ~~accepting the merit of the 174 pages of hearsay that Respondent has put before the Court as a~~

"reference." More to the point, if this report is accepted as a "reference," Complaint Counsel

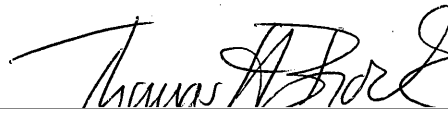
opinion as expressed in his later report and his trial testimony.”) Respondent does not change this conclusion by calling Dr. Noether’s report a “reference.”

CONCLUSION

For the foregoing reasons, the expert report of Respondent’s expert, Dr. Monica Noether, should be stricken from the record.

Respectfully submitted,

Dated: 1/28/05



Kristina Van Horn, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room H-360
Washington, D.C. 20580
(202) 326-2813
Fax: (202) 326-2884
Email: tbrock@ftc.gov

OFFICE OF THE FEDERAL TRADE COMMISSION

Office of Administrative Law Judges

In the Matter of)
)
)

**Evanston Northwestern Healthcare
Corporation,**)
)

and)
)
)

Docket No. 9315

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing documents were served on counsel for the
respondents by electronic mail and first class mail delivery

Charles B. Klein
WINSTON & STRAWN, LLP
1400 L Street, NW
Washington, DC 20005

Duane M. Kelley
WINSTON & STRAWN, LLP
35 West Wacker Drive
Chicago, IL 60601-9703

and delivery of two copies to:

The Honorable Stephen J. McGuire
Federal Trade Commission
600 Pennsylvania Avenue
Room 112

Washington, DC 20580

1/28/05
Date

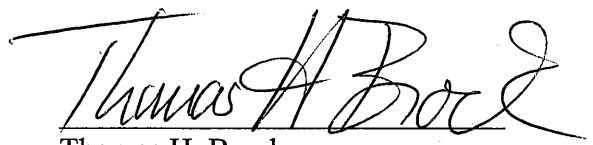

Thomas H. Brock
Complaint Counsel

Exhibit A

Brock, Thomas H.

From: Klein, Charles [CKlein@winston.com]
Sent: Monday, January 24, 2005 9:08 PM
To: Brock, Thomas H.
O'Leary, Michael

Tom,

To follow up on our earlier conversations regarding the expert briefs we at Winston & Stroup believe that the parties

[REDACTED]

should be candid with one another as to whether they intend to provide the Court with copies of expert reports with their

Exhibit D

1997 U.S. App. LEXIS 5355, *

1 of 2 DOCUMENTS

CAROLE POTTS; JAMES POTTS, Plaintiff - Appellant, v. SAM'S WHOLESALE CLUB, doing business as Sam's Wholesale Club, Wal-Mart Stores, Inc., Defendant - Appellee.

No. 95-5253

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

1997 U.S. App. LEXIS 5355

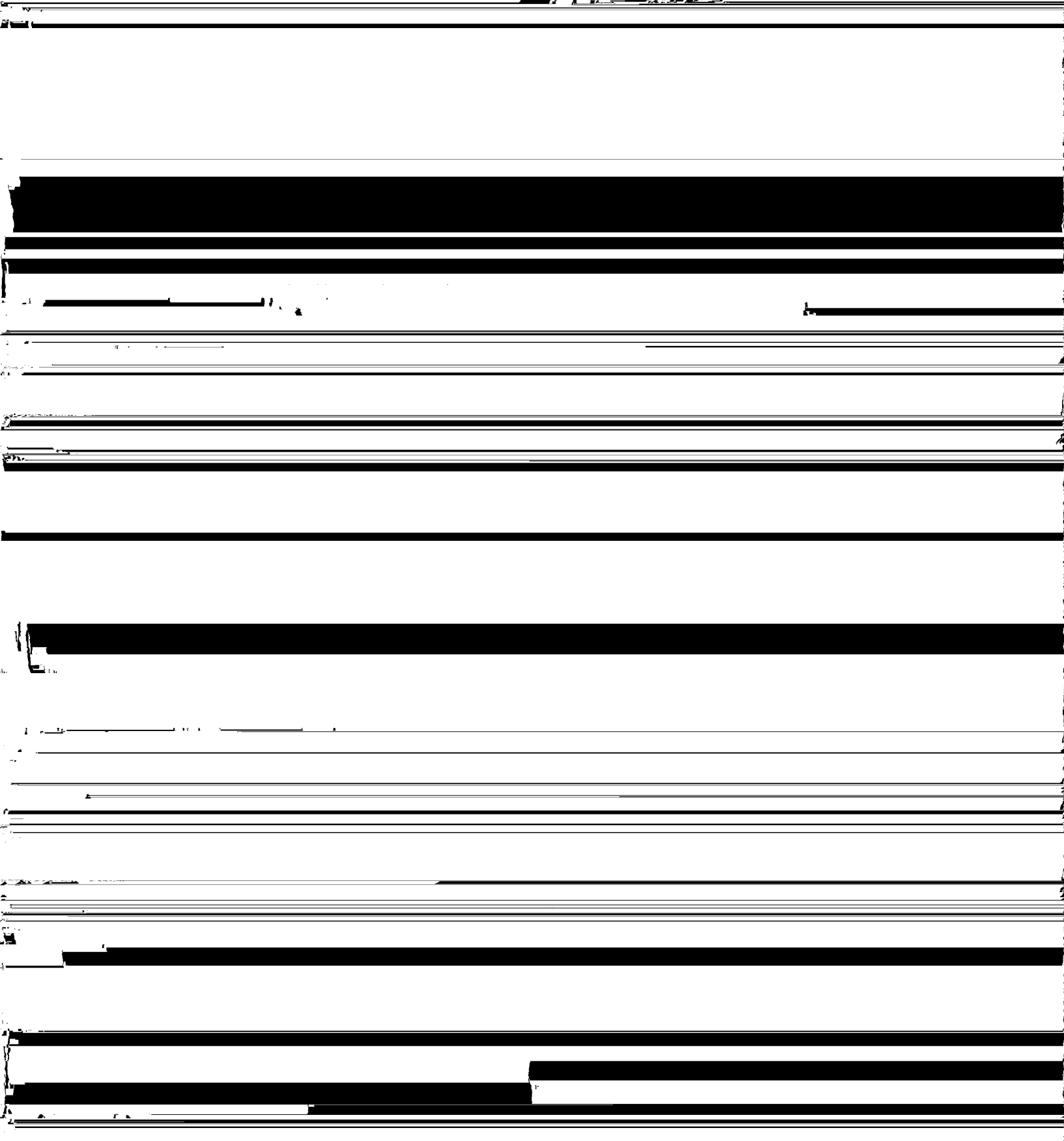
March 21, 1997, Filed

NOTICE: [*1] RULES OF THE TENTH CIRCUIT
COURT OF APPEALS MAY LIMIT CITATION TO
UNPUBLISHED OPINIONS. PLEASE REFER TO

defendant.

Plaintiffs' first claimed error involves Jury

recent case of *Hardy v. Southwestern Bell Telephone Co.*, 910 P.2d 1024 (Okla. 1996). Hardy, however;



...in available but exceptional circumstances exist ... judgment on exceeded the bounds of reasonable choice

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]