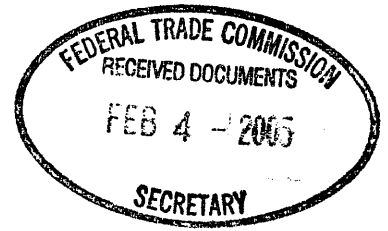


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



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

Docket No. 9315

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

Document to the Federal Trade Commission's Bureau of Competition, Case No. 9315

Proceedings, 16 C.F.R. § 3.22(c), Respondent Evanston Northwestern Healthcare Corporation ("ENH"), by counsel, hereby opposes Complaint Counsel's Motion To Strike Expert Report as Exhibit to Respondent's Pretrial Brief ("Motion").

INTRODUCTION

reference to prevent confusion as to whether that report was admitted into evidence. This concern is plainly unwarranted because the Court and the parties will no doubt be fully aware of whether expert reports are admitted into evidence. Moreover, Complaint Counsel itself has

provided the Court with copies of several other reports submitted in this case.

motions.

In the end, however, ENH 11-1-0-001, Complaint Counsel's motion to admit

In any event, Complaint Counsel's position conflicts with its own actions in this litigation. Complaint Counsel's pretrial brief includes an *unverifiable* discussion of pertinent background facts concerning the managed care industry. Complaint Counsel's verification objection also overlooks that it deposed Dr. Noether about her report on January 21, 2005, before the pretrial brief was filed. And, of course, Complaint Counsel will have an opportunity to cross-examine Dr. Noether at trial. Given ENH's unambiguous statement in its pretrial brief that it "[was] not proffering [Dr. Noether's] expert report into evidence at th[at] time."⁶ Complaint

Counsel currently has no need to cross-examine Dr. Noether about any aspect of her report that is not addressed in her trial testimony.⁷

Second, Complaint Counsel's assertion that Dr. Noether's report should be stricken as an exhibit because the parties might "mistakenly consider [that] report as record evidence in preparing their submissions to the Commission" is more than a "stretch." Well in

convenience along with ENH's pretrial brief."⁹ ENH did as promised, clearly explaining that it was providing Dr. Noether's report to the Court as a background reference -- not in an effort to

CONCLUSION

Complaint Counsel's Motion To Strike Expert Report as Exhibit to Respondent's Pretrial Brief.

CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2005, a copy of the foregoing *Respondents' Opposition to Complaint Counsel's Motion To Strike Expert Report as Exhibit to*

Respondent's Brief was served by email and first class mail, postage prepaid, on:

The Honorable Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave. NW (H-106)
Washington, DC 20580
(two courtesy copies delivered by messenger only)

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

_____)
In the matter of _____)
_____)
Evanston Northwestern Healthcare _____)
_____)
Corporation, _____)
a corporation _____)
_____)
_____)

Docket No. 9315

ORDER

_____ and _____ and the Court before