

demonstrate how Dr. Baker exceeded the standards he used to assess Respondent's services

Nevertheless, these segments of Dr. Baker's two expert reports are properly admissible into evidence. First, these materials have probative value, in that they demonstrate that Dr. Baker's [redacted] analysis is wrong. Second, at the very least, these materials impeach the testimony that

Dr. Baker decided to offer the Court. Under these circumstances, Respondent's motion to

that were significantly higher than the prices that the control group had charged those same two managed care organizations.⁵

for two distinct reasons. First, these excerpts are statements that can be attributed to Respondent and therefore, are properly admitted as a party admission. Second, even if the excerpts of D-

Committee Notes. Here, Dr. Baker's reports are statements by an agent of Respondent concerning matters within the scope of Dr. Baker's agency and made during the existence of the agency relationship.

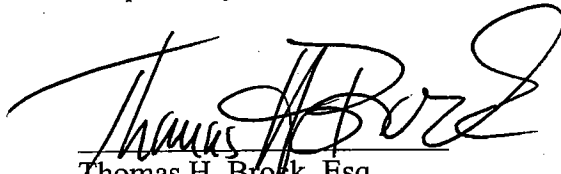
The leading case on this issue is *Glendale Fed. Bank v. United States*, 39 Fed. Cl. 422, 1007 U.S. Claims L. 266 (Ct. Fed. Cl. 1997). *Id.* 422-423.

into evidence the prior statements of the defendant's agents regarding the defendant's

CONCLUSION

For the foregoing reasons, the excerpts of the expert reports of Jonathan Baker, RX-2038, RX-2039, RX-2040, and RX-2041, are admissible into evidence as admissions of a party-opponent under Federal Rule of Evidence 801(d)(2)(D).

Respectfully submitted,



Thomas H. Broek, Esq.
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

Dated: March 29, 2005

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

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

Docket No. 9315

ORDER

~~Upon motion of Complainant G~~

it is hereby,

ORDERED, that the excerpts of the expert reports of Jonathan Baker, RX-2038, RX-2039, RX-2040, and RX-2041, are admitted into evidence

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:

Michael Sibarium, Esquire
WINSTON & STRAWN

1400 I. Street, N.W.

Washington, D.C. 20005

Duane Kellev, Esquire

35 West Wacker Drive
Chicago, IL 60601-9703

and delivery of two copies to:

The Honorable Stephen J. McGuire

Federal Trade Commission