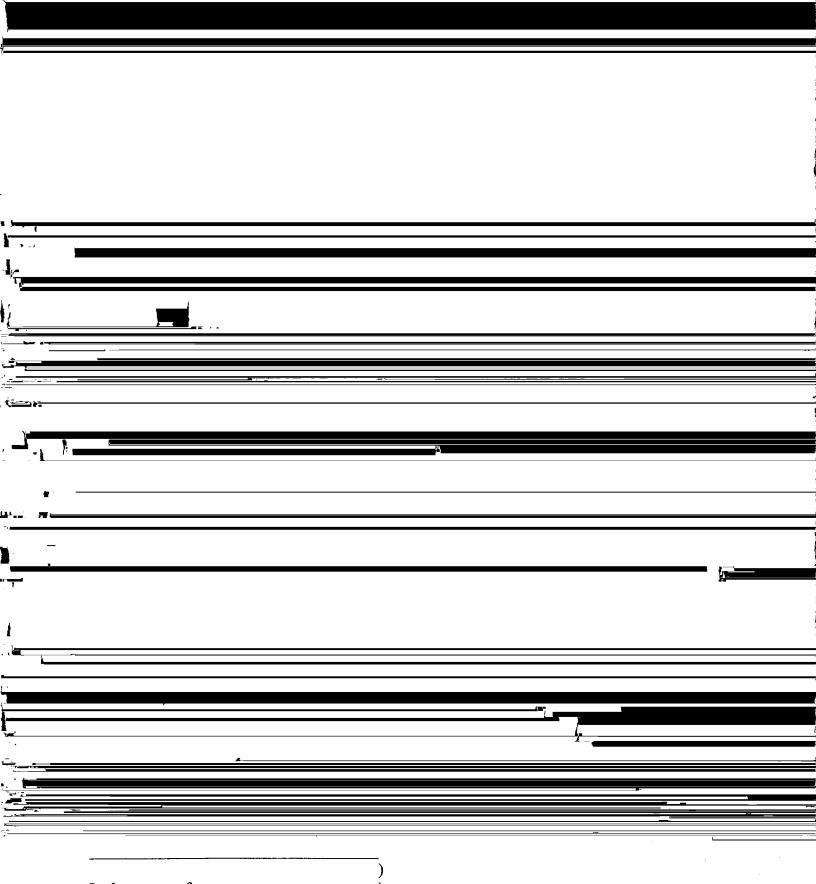


UNITED STATES OF AMERICA



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	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	
	evidence. This, these materials have probative value, in that they demonstrate that DI. Baker's	
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	that were significantly higher than the prices that the control group had charged those same two	
	managed care organizations. ⁵	
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	for two distinct reasons. First, these excerpts are statements that can be attributed to Respondent	
	and therefore. are properly admission - Longed even if the events - f.D.	
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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,

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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-

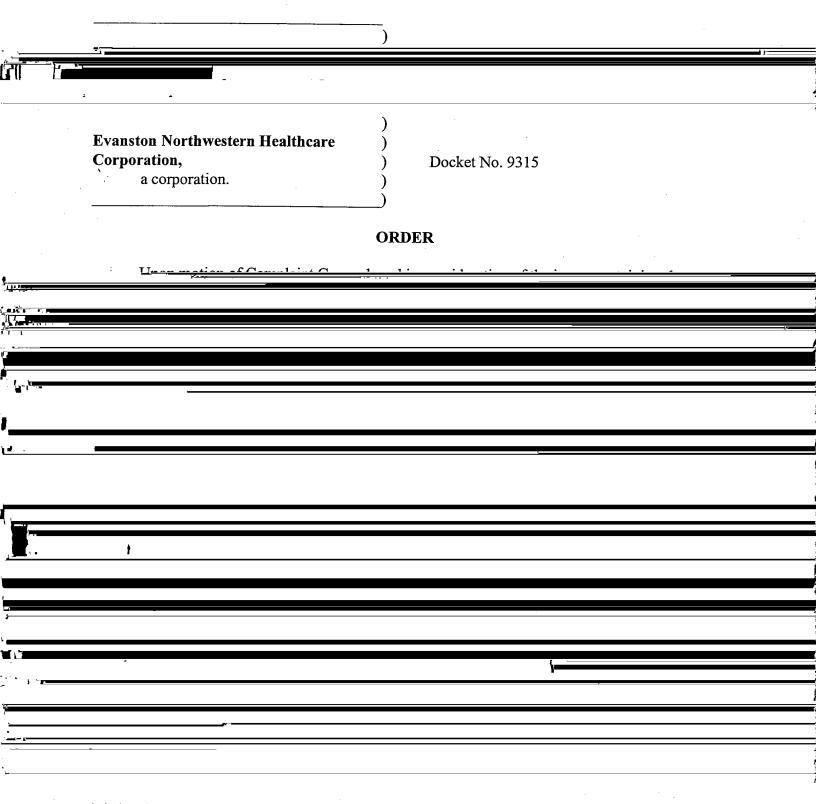
opponent under Federal Rule of Evidence 801(d)(2)(D).

Respectfully submitted,

Thomas H. Brock, 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



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

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and	delivery of two copies	to:
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