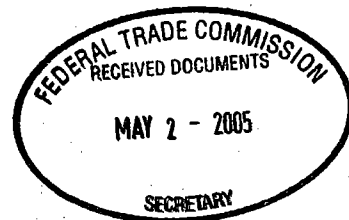


UNITED STATES OF AMERICA
THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



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

Docket No. 9315
PUBLIC VERSION

**COMPLAINT COUNSEL'S RENEWED MOTION FOR THE ADMISSION OF
PORTIONS OF DR. JONATHAN BAKER'S EXPERT REPORTS INTO EVIDENCE**

During the March 22, 2005 cross-examination of Respondent's expert witness Dr.

[REDACTED]

By this motion, Complaint Counsel renews its request that the Court admit the designated portions of Dr. Baker's reports as evidence. These segments of Dr. Baker's two expert reports

demonstrate that the prices that were imposed by Respondent on the program were higher than

the prices that even Respondent can label as "competitive." Further, the report of a party's expert is properly admitted into evidence as a party admission.

BACKGROUND

This evidentiary dispute arises from the two reports that were prepared by Respondent's

By this motion, Complaint Counsel seeks to introduce as evidence these factual findings

and analysis of Dr. Baker.⁴ RX-2038 and RX-2039 are the relevant excerpts from the reports of Dr. Baker. RX-2040 is a set of four tables from Dr. Baker's reports setting forth the data. RX-2041 is a graph from his second report which reflect the corrections in the fourth table in RX-2040. These four excerpts from Dr. Baker's reports constitute strong probative evidence that

Respondent exercised market power after the merger, and they are admissible evidence as a party admission.⁵

⁴ Complaint Counsel notes that, in its Order on March 28, 2005, the Court admitted the designated portions of Dr. Baker's report into evidence for impeachment purposes, Tr. 5113, and that portion of the Court's decision is not at issue here.

ARGUMENT

**The Excerpts of Dr. Baker's Expert Reports are Admissible
for the Truth of the Matter Asserted Therein**

A statement is not hearsay if the statement is offered against a party and is a statement by

the next friend or agent concerning a matter within the scope of the agency or employment

defendant).

admissible under F.R.E. 801(d)(2)(C). Like the expert in *Glendale* and the other cases, Dr.

not classified as hearsay when they are introduced into evidence by Counselor C. 1

For the foregoing reasons, the excerpts of the expert reports of Jonathan Baker, RX-2038,

PX 2020, PX 2040, and PX 2041 are admissible into evidence as an admission of experts.

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

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

Docket No. 9315

ORDER

Upon motion of Complaint Counsel, and in consideration of the issues presented, the

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.

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.

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and delivery of two copies to:

The Honorable Stephen J. McGuire
Federal Trade Commission
600 Pennsylvania Avenue
Room 113
Washington, DC 20580