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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)

Inova Health System Foundation,)
a corporation, and)

Prince William Health System, Inc.)
a corporation.)

Docket No. 9326

PUBLIC

RESPONDENTS' MOTION TO STAY DISCOVERY
AND ALL OTHER ASPECTS OF THIS PROCEEDING
PENDING RESOLUTION OF PRELIMINARY INJUNCTION ACTION

Respondents Inova Health System Foundation and Prince William Health System, Inc.

~~(together the "Hospitals") move to stay discovery in this action and all other aspects of this~~

[REDACTED]

The FTC Rules of Practice recognize that, in cases where the Commission chooses to seek a preliminary injunction in federal court, a stay of the administrative action is appropriate.

Indeed, Rule 3.51(a) expressly states that such federal proceedings toll the deadline for

This has been the regular practice followed by the Commission in other similar cases where it has sought a preliminary injunction in federal court. In these cases, recognizing the principles discussed above, the Commission has typically delayed even filing the administrative complaint until the preliminary injunction is granted.

even filed an administrative complaint)² or, in the few cases where it did file an administrative complaint, has either failed to oppose or affirmatively sought an administrative stay.³ Indeed, in

It is plainly correct that the FTC's federal court action for a preliminary injunction must take priority over any administrative action. The FTC's preliminary injunction action seeks emergency relief and an expedited process. Within the constraints of these time exigencies, the federal court is to assess the facts and the law based on an evidentiary record that the parties must develop. The legislative history of Section 13(b) of the Federal Trade Commission Act,

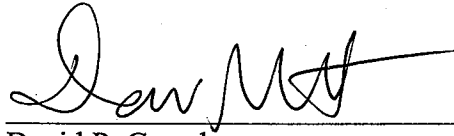
decade, make clear that the federal court must be afforded the opportunity to make its own independent judgment, based on as much discovery as is practicable, without interference from the administrative proceeding adjudicating the merits of the case.⁵

Commission conduct, is to stay discovery in this action until the federal court has resolved the preliminary injunction motion. After the federal court has ruled on the emergency action that the FTC initiated there, the Commission must consider whether to continue with the administrative proceeding. If it decides to do so, then the Hospital will have the option to elect first trial.

treatment in the administrative proceeding, and the parties and the presiding ALJ can determine what discovery is appropriate in the administrative proceeding in light of the evidentiary record the parties have developed in the federal court action.

II. In All Events, The FTC's Discovery Here Is Premature

Respectfully submitted,



David P. Gersch
David B. Bergman
David S. Eggert
David M. Menichetti

Dated: May 23, 2008

ARNOLD & PORTER LLP
555 Twelfth Street, N.W.
Washington, D.C. 20004
Telephone: (202) 942-5000
Facsimile: (202) 942-5999
Email: David.Gersch@aporter.com

*Counsel for Respondents Inova Health
System Foundation and Prince William
Health System, Inc.*

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ORDER

Upon consideration of Respondents' Motion To Stay Discovery And All Other Aspects Of This Proceeding Pending Resolution Of Preliminary Injunction Action, and all related briefing and authorities cited therein, it is hereby ordered that:

1. Respondents' Motion is GRANTED; and
2. Discovery in this action, and all other aspects of this administrative proceeding, are immediately STAYED pending resolution of the preliminary injunction action brought by the Commission and the Commonwealth of Virginia in the United States District Court for the Eastern District of Virginia, Case No. 1:08CV460-CMH/JFA.

ISSUED: May __, 2008

The Honorable J. Thomas Rosch
Administrative Law Judge
Federal Trade Commission

I HEREBY CERTIFY that on May 23, 2008, I served the attached Respondents' Motion to Stay Discovery and all other Aspects of This Proceeding Pending Resolution of Preliminary