

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

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\_\_\_\_\_)  
)  
**In the Matter of** )

**OSF Healthcare System,** )  
**a corporation, and** )

**Rockford Health System,** )  
**a corporation** )  
\_\_\_\_\_)

**Docket No. 9349**  
**PUBLIC**

**NON-PARTY THE ALLIANCE'S MOTION FOR IN**  
**CAMERA TREATMENT OF PROPOSED EVIDENCE**

**I. INTRODUCTION**

*Employee Health Care Alliance Complaint* (667) 111-1111

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The Alliance documents designated for introduction into evidence by OSF consist of Exhibits 5 through 10 from Ms. Davit's deposition, a directory produced by The Alliance (Dates

AL00013-000170), and Ms. Davit's deposition transcript. (As described below, some of these

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The secrecy and materiality of the documents in question are evaluated according to the following standards articulated by the Commission in *In re Bristol-Meyers Co.*, 90 F.T.C. 455, 456 (1977):

- (1) the extent to which the information is known outside the applicant's business;
- (2) the extent to which the information is known by employees and

(3) the extent of measures taken by the applicant to guard the secrecy of the information;

(4) the value of the information to the applicant and its competitors;

(5) the amount of effort or money expended by the party in

developing the information; and

(6) the ease of difficulty with which the information could be properly acquired or duplicated by others. [*Id.*].

A non-party requesting in camera treatment deserves "special solicitude" for its

secret formulas, processes, and other secret technical information, and information that is privileged. *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000).

**III. THE ALLIANCE 'S CONFIDENTIAL DOCUMENTS WARRANT  
IN CAMERA TREATMENT UNDER THE FEDERAL TRADE  
COMMISSION'S RULES OF PRACTICE**

**A. Description of Documents for Which Protection Is Sought**

1. FTC's Exhibit PX4268. This document is a composite exhibit consisting of documents The Alliance provided in response to a subpoena from Respondent Counsel in this matter, numbered AL0001 through 188. The contents of the document are as follows:

<u>Pages</u>	<u>Description</u>
1-12	The Alliance's non-public financial statements
13-170	The Alliance provider directory
171-77	Tabulation of eligible lives by county for The Alliance
178-79	Excerpt from consultant's report prepared for the Alliance
180-87	Ranking of area health care providers internally prepared by The Alliance
188	Names and addresses for employees involved in negotiations

The Alliance does not contend that pages 13-170 and 188 of this exhibit are non-public.





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hospitals, the effect would be an erosion of The Alliance's competitiveness in the marketplace. *Id.* This, in turn, would result in an increase in the overall hospital reimbursement payments by The Alliance to participating hospitals and would result in increased premiums to The Alliance's end customers (employees of member employers) as well as increased administrative fees to Th-

Alliance's self-funded customers. *Id.* Disclosure would also interfere with the ability of The Alliance to negotiate and offer quality, affordable health care programs. *Id.*

Likewise, the highly confidential pricing and reimbursement rate information set forth in Davit Deposition Exhibit Nos. 7 through 9, as well as the deposition testimony of Kelly Davits as to The Alliance's ongoing business practices, ongoing contracts, methodologies and strategies for negotiation, and knowledge of the healthcare market in the subject area, is highly material to The Alliance's business. *Id.* at ¶ 10. The Alliance has maintained market competitiveness in its

applicant's] labors" are good candidates for in camera treatment. *In re General Foods*, 1980 FTC LEXIS 99, at \*7-8 (March 10, 1980).

**D. The Public Interest in Disclosure of the Subject Documents Is Outweighed by the Likelihood of Serious Competitive Harm to The Alliance**

As a non-party requesting in camera treatment for its confidential business information, The Alliance justifiably requires and merits receiving "special solicitude." *In the Matter of Kaiser Aluminum*, 1980 FTC LEXIS 103, at \*7-8 (1980).

treatment for sales statistics over five years old). In camera treatment encourages non-parties to cooperate with future discovery requests in adjudicative proceedings. *Id.* The Alliance has cooperated with the discovery demands in this case. Conversely, disclosing documents containing The Alliance's highly confidential information will not materially promote the resolution of this matter, nor will very specific these documents be used to



diminish with the passage of time. Accordingly, The Alliance respectfully requests that the

subject documents be afforded indefinite in camera protection.

**IV. CONCLUSION**

Under the Federal Trade Commission's Rules, C.F.R. 16.101-16.103, the Commission

indefinite in camera treatment of the subject documents is warranted. These documents are both secret and material to The Alliance's business. Accordingly, this tribunal should extend indefinite in camera protection to these confidential documents.

Respectfully submitted this 19th day of March, 2012.

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EXHIBIT A

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**DECLARATION OF KELLY DAVIT**

I, Kelly Davit, declare as follows:

- 1. I am currently the Southern Region Manager for the Employer Health Care

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

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protect its confidentiality. The information is not known outside of The Alliance except and only to the extent necessary to engage in contract negotiations. The information contained in these

documents would be extremely harmful to the Alliance.

to access or duplicate. Moreover, as a matter of both internal policy and its contractual obligation under its agreements with hospitals, The Alliance does not make pricing information or discount information available other than as required by law. Disclosure of these materials would cause serious competitive injury to The Alliance.

outside of the Alliance except and only to the extent necessary to conduct negotiations, and such negotiations result in agreements which are themselves confidential

5. Davit Deposition Exhibit 5 is a duplicate of pages AL000171-177, already discussed above in paragraph 3, and is confidential for the reasons set forth therein.

6. Davit Deposition Exhibit 6 is a duplicate of pages AL000180-187, already discussed above in paragraph 3, and is confidential for the reasons set forth therein.

7. Davit Deposition Exhibits 7 through 9 are The Alliance's current agreements with three healthcare providers in the subject case (Cath. H. ... S. D. ... )

Alliance's providers and analyzing the manner in which The Alliance determines applicable rates.

11. The data compiled in the documents referenced herein is also sufficiently material to The Alliance's business that disclosure would result in serious competitive injury. Making public these documents containing specific financial information, pricing terms, rankings of providers, and private information regarding the subject market would allow The Alliance's competitors to negotiate unfairly with providers or otherwise compete unfairly with The Alliance, which would, in turn, result in serious and significant competitive injury and potential irreparable harm. Should other commercial entities be able to obtain this information, they would be able to use it to their advantage in negotiating with providers and competing with The Alliance.

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**PROPOSED ORDER**

On March 21, 2012, non-party Employer Health Care Alliance Cooperative (“The Alliance”) filed a motion for *in camera* treatment of confidential business information contained in various documents that have been identified by counsel in this matter as potential exhibits.

IT IS HEREBY ORDERED that The Alliance’s motion is GRANTED. The Alliance documents designated by Complaint Counsel as Exhibit Nos. PX4268 and PX4082, the

*Deposition transcript of Kelly D. ...*

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**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that the foregoing instrument was filed with the Federal Trade Commission on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By \_\_\_\_\_

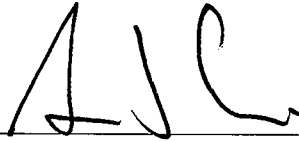


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