

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
)	
UNION OIL COMPANY OF CALIFORNIA,)	Docket No. 9305
)	
a corporation.)	
)	

**NON-PARTY SHELL’S MOTION FOR *IN CAMERA* TREATMENT OF HEARING
EXHIBITS DESIGNATED BY UNION OIL COMPANY OF CALIFORNIA**

Non-parties Shell Oil Company, Equilon Enterprises LLC d/b/a/ Shell Oil Products (US) and Motiva Enterprises LLC (collectively “Shell”) move for an order directing *in camera* treatment of three documents that Union Oil Company of California (“Unocal”) has designated for possible introduction at the hearing scheduled to begin on November 13, 2003. Shell produced nearly 7,000 pages of discovery material in response to Unocal’s discovery demands in this matter. Unocal notified Shell on September 26, 2003 that it intended to introduce into evidence approximately 103 exhibits from Shell’s subpoena production in this matter, along with several other sources of discovery material provided by Shell and its predecessors. From Unocal’s comprehensive exhibit list, Shell has identified twenty-four (24) items for *in camera* protection, although several of the items overlap or are similar versions of the same basic document. Public disclosure of one or more of these documents is likely to cause direct, serious harm to Shell’s competitive position. Therefore, pursuant to 16 C.F.R. § 3.45(g), Shell respectfully moves for *in camera* treatment of its confidential business documents identified in the Declaration in support of this Motion, and attached thereto as Exhibits A-X.

**SHELL'S CONFIDENTIAL DOCUMENTS DESERVE *IN CAMERA*
TREATMENT UNDER THE FEDERAL TRADE COMMISSION'S RULES OF
PRACTICE**

Shell is not a party to this proceeding. The information in Exhibits A-X is fundamental to Shell's current gasoline production operations at its three California refineries. Shell has guarded the confidentiality of these documents closely. Public disclosure of these materials would result in serious competitive injury to Shell, while adding very little incremental value to the public's understanding of the issues in this proceeding. Accordingly, Exhibits A-X merit *in camera* treatment. *See In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999).

A. Shell Has Preserved The Confidentiality Of Its Documents

Shell has taken significant steps to protect the confidential nature of each document for which it seeks protection. These Exhibits were provided to Unocal only under compulsory process in this matter. Shell designated each Exhibit as "Confidential" under the Protective Order pursuant to an agreement between Shell and several other non-party refiners on the one hand and Complaint Counsel and Unocal on the other for the purpose of expediting discovery while ensuring that materials produced would receive sufficient protection from disclosure to competitors. That agreement permits the non-party refiners to invoke the higher level of protection under the Protective Order in the event the FTC or Unocal should decide that it wants to show the document to a witness who is an employee of a competitor of the producing party. Finally, Shell has followed procedures to preserve the confidentiality of information shared with its business partners, as described more fully in the attached Declaration and as demonstrated by its treatment of Exhibit W. These efforts show that Shell has preserved the confidentiality of each Exhibit.

B. Disclosure Of The Information In Exhibits A-X Could Result In Serious Competitive Injury To Shell

The information for which Shell seeks *in camera* treatment has direct and tangible impact on its day-to-day refining activities and its overall competitive position. As explained in the attached Declaration, Exhibit A is a confidential business planning document relating to research, development and deployment of on-line certification technology at the Los Angeles Refinery. The information contained in this document was developed with significant investment of Shell's business and technical resources. If this information were disclosed to a competitor, that competitor could harm Shell in the marketplace by exploiting limitations in blending techniques and production capacities for CARB Phase 3 gasoline at the Los Angeles Refinery. (CARB Phase 3 refers to the gasoline specifications that are used currently at some refineries, and which are mandated for 2004). That competitor could also employ similar technology at lower incremental cost. As described in detail in the Declaration, Exhibits B-I contain information about the impact of proposed and actual CARB Phase 3 requirements on Shell's production capabilities, supply needs, specific blending constraints, etc., the disclosure of which could cause serious economic harm to Shell. Exhibits J-N reflect the details of Shell's blending methods and requirements. A rival with inside knowledge of Shell's blending processes could exploit that information to the significant business disadvantage of Shell. Exhibits O-T discuss Shell's recent refinery modifications and investments in particular process equipment at its Los Angeles refinery. The information in each of these Exhibits is highly material to that facility's current operations. Likewise, the detailed compliance plans in Exhibits U and V, which are labeled "Confidential and Proprietary: Trade Secret Information" contain commercially sensitive information about Shell's planned production volumes and other

operating strategies. Exhibit W is a draft agreement between Shell and another large refiner that permits both parties to employ each other's technologies for clean fuels without fear of injunctions or oppressive royalty payments. As described in the Declaration, disclosure of this document could damage Shell's ability to negotiate other such mutually beneficial agreements. Finally, the deposition transcript portions found at Exhibit X discuss confidential blending practices and investment strategies at Shell's Los Angeles Refinery. A competitor with knowledge of this information could seriously undermine this facility's competitive position.

C. The Public Interest In Disclosure Of Exhibits A-X Is Outweighed By The Likelihood Of Serious Competitive Harm To Shell

Shell deserves "special solicitude" as a non-party requesting *in camera* treatment for its confidential business information. See *Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500 (order directing *in camera* treatment for sales statistics over five years old). Reasonable extensions of *in camera* treatment encourage non-parties to cooperate with future discovery requests in adjudicative proceedings. *Id.* Shell has cooperated with the discovery demands in this case, and as mentioned above, has even taken steps to facilitate the access of the parties to highly sensitive non-party documents. Conversely, disclosing the documents discussed in Section B. above will not promote the resolution of this matter. Nor will these documents uniquely enhance public understanding of these proceedings. The balance of interests clearly favors *in camera* protection for Exhibits A-X. See *In re Bristol-Myers*, 90 F.T.C. 455, 456 (1977) (describing six-factor test for determining secrecy and materiality).

D. Protection For Exhibits A-X Should Extend For Five Years

Given the commercial importance of Exhibits A-X to Shell's current operations and competitive position, Shell respectfully requests that these documents be afforded *in camera* protection for a period of five years.

CONCLUSION

Exhibits A-X satisfy the standard for *in camera* protection under the Commission's Rules of Practice and relevant FTC rulings. Accordingly, this Court should extend *in camera* protection to these confidential documents of Shell. We have exchanged correspondence with counsel for Unocal about this Motion and the specific documents for which *in camera* protection is sought, and they have indicated that they do not oppose this Motion.

DATED: October 17, 2003

Respectfully submitted,

Donald B. Craven
AKIN GUMP STRAUSS HAUER &
FELD, LLP
1333 New Hampshire Ave., NW
Washington, DC 20036

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[PROPOSED] ORDER

Upon consideration of Non-Party Shell’s Unopposed Motion For *In Camera* Treatment Of Hearing Exhibits Designated By Union Oil Company Of California, **IT IS HEREBY ORDERED** that the following documents are to be provided *in camera* treatment:

EXHIBIT	RX	PRODUCTION BATES NUMBERS
A	1033	SHUNO-0006021 to 6030
B	220	SHUNO-0002591 to 2592
C	585	SHUNO-0004675 to 4676
D	578	SHUNO-0003328 to 3340
E	1015	SHUNO-0004705 to 4723
F	587	SHUNO-0004317 to 4335
G	576	SHUNO-0002593 to 2611
H	205	SHUNO-0001473 to 1488
I	584	SHUNO-0004496 to 4497
J	353	SHUNO-0001537 to 1538
K	1028	SHUNO-0006039 to 6040
L	1029	SHUNO-0006037 to 6038
M	1030	SHUNO-0006032
N	1016	SHUNO-0004703 to 4704
O	217	SHUNO-0000056 to 57
P	218	SHUNO-0001040 to 1098
Q	352	SHUNO-0001040 to 1098
R	534	SHUNO-0002239 to 2240
S	535	SHUNO-0001793 to 1795

T	1027	SHUNO-0006042 to 6043
U	205A	SHUNO-0001669 to 1673
V	206A	SHUNO-0001647 to 1663
W	429	SHUNO-0004409 to 4419
X	Millar Deposition Transcript	Page 28, line 22 through Page 33, line 12 Page 52, line 25 through Page 55, line 21

The Honorable D. Michael Chappell
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that on October 17, 2003, I caused an original and two copies of Non-Party Shell's Unopposed Motion For In Camera Treatment Of Hearing Exhibits Designated By Union Oil Company Of California to be filed by hand and one electronic copy of that motion to be filed by electronic mail with:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Rm. H-159
Washington, DC 20580

I also certify that on October 17, 2003, I caused two copies of the foregoing motion to be served by U.S. mail upon:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

I also certify that on October 17, 2003, I caused one copy of the foregoing motion to be served by hand delivery upon each person listed below:

J. Robert Robertson, Esq.
Senior Litigation Counsel
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Richard B. Dagen, Esq.
(through service upon)
Chong S. Park, Esq.
Bureau of Competition
Federal Trade Commission
601 New Jersey Avenue, NW, Rm. NJ-6213
Washington, DC 20001

I also certify that on October 17, 2003, I also caused one copy of the foregoing motion to be served by U.S. mail upon:

David W. Beehler, Esq.
Robins, Kaplan, Miller & Ciresi, LLP
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015

C. Fairley Spillman
AKIN GUMP STRAUSS HAUER
& FELD LLP
1333 New Hampshire Avenue NW
Washington, DC 20036

COPY CERTIFICATION

_____ I certify that the electronic version of NON-PARTY SHELL'S MOTION FOR *IN CAMERA* TREATMENT OF HEARING EXHIBITS DESIGNATED BY UNION OIL COMPANY OF CALIFORNIA filed by electronic mail with the Secretary of the Commission is a true and accurate copy of the paper original and that a paper copy with original signature has been filed with the Secretary of the Commission on this day.

Dated October 17, 2003

By:

C. Fairley Spillman
AKIN GUMP STRAUSS HAUER
& FELD LLP
1333 New Hampshire Avenue NW
Washington, DC 20036