

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



In the Matter of)
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EVANSTON NORTHWESTERN HEALTHCARE)
CORPORATION,)
)

and)

ENH MEDICAL GROUP, INC.,)
Respondents.)

) Docket No. 9315
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ORDER ON POST TRIAL BRIEFS

I. Post trial briefing schedule

As requested by the parties, the deadlines for filing post trial briefs will be as follows:

May 20, 2005 Deadline for filing concurrent post trial briefs,
proposed findings of fact, and conclusions of law

June 24, 2005 Deadline for filing concurrent reply briefs
and replies to proposed findings of fact

The parties shall serve each other with electronic copies of all post trial pleadings immediately after filing such pleadings.

The parties shall serve the Office of Administrative Law Judges (OALJ) with two hard copies of all post trial pleadings and an electronic version on a data diskette, of all post trial pleadings. The electronic version shall be converted into WordPerfect before service upon the OALJ.

II. Requirements for post trial briefs

The following requirements for post trial briefs, proposed findings of fact, conclusions of law, post trial reply briefs, and replies to proposed findings of fact shall be followed:

1. Complaint Counsel shall provide a thoroughly detailed and complete proposed divestiture Order. Respondents have argued that should a violation be found there are alternatives to full divestiture. Respondents shall provide a thoroughly detailed and complete proposed Order, or Orders, for all proposed alternative remedies. In addition, parties shall provide legal argument and legal authority in support of their proposed Orders.
2. In the opening post trial briefs, do not cite for reference to any previously filed briefs. Any issue that you wish to have considered, and any authorities cited therefore, must be set forth fully in the post trial briefs, even if previously included in a pre-trial brief.
3. Reply briefs shall be limited to only refuting issues raised by the opposing side and shall not be used merely to bolster arguments made in the opening post trial briefs. A brief summary of one's position is acceptable if necessary to place the reply in context.
4. Reply briefs shall reply to the opposing party's arguments in the same order as the arguments were presented by the opposing party in its opening brief.
5. Reply findings of fact shall set forth the opposing party's proposed finding of fact in single space and then set forth the reply in double space. Reply findings of fact shall be numbered to correspond to the findings that the reply findings are refuting and shall use the same outline headings as used by the opposing party in its opening proposed findings of fact. If you have no specific response to the opposing party's proposed finding of fact, set forth the opposing party's proposed finding of fact and then state that you have no specific response or do not disagree. An example of the format for reply findings that shall be followed is:

39. Pitt Des-Moines was a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, publicly traded on the American Stock Exchange, with its principal place of business at 1450 Lake Robbins Drive, Suite 400, the Woodlands, Texas, 77380. (CX 328 at CB&I 001253-CHI; CX 21 at PDM-C 1000003; Byers, Tr. 6732).

Response to Finding No. 39:

Respondents have no specific response.

6. Reply findings of fact shall be used only to directly contradict the other side's proposed findings, and shall not be used merely to restate the proposition in language which is more favorable to your position.

7. 16 C.F.R. § 3.45(e) has express requirements for filing briefs that include information that has been granted *in camera* treatment. Parties must clearly indicate material that has been granted *in camera* treatment by use of braces and bold font in the *in camera* versions of their briefs and proposed findings. In addition, parties must indicate that the exhibit or transcript page has *in camera* status. An example follows:

Company A and Company B each submitted budget pricing on the Texas project. Company A's price was **{ \$200,000 }** while Company B's price was **{ \$300,000 }**. (CX 1000 at ABC 200321, *in camera*).

8. 16 C.F.R. § 3.46 has express requirements for proposed findings and conclusions of law. These requirements must be followed.
9. Each proposed finding of fact shall have a valid and correct cite to the record in support of the proposed finding.
10. Testimony which was admitted for a purpose other than for the truth of the matter asserted shall not be cited to for the truth of the matter asserted. If such testimony is cited by a party, then that party must indicate in a footnote in its brief or proposed findings that the testimony was elicited for a purpose other than for the truth of the matter asserted.
11. Documents that are not in evidence, offers of proof, documents that have been withdrawn, or documents that have been rejected shall not be cited as evidentiary support.¹
12. Demonstrative exhibits shall not be cited to as substantive evidence.
13. Where testimony cited to is testimony elicited at trial, the parties shall identify that cite by the declarant's name, the letters "Tr." and the transcript page number. Do not provide line numbers or the word "at" before the transcript page number. Do not use first initials unless there is more than one declarant with the same last name. The cite following the statement of fact shall be in parentheses. An example of the format that shall be used is: (Smith, Tr. 1098). If more than one source is used for the same proposition, the format that shall be used is: (Smith, Tr. 1098; Jones, Tr. 153).
14. Where testimony cited to is from a deposition or an investigational hearing transcript that was admitted in evidence, the parties shall identify that cite by the exhibit number, and then, in parentheses, the deponent's name, the letters "Dep." or "IHT", and the page number. Do not provide line numbers. Do not use first initials unless there is more than one declarant with the same last name. The cite following the statement of fact shall be in parentheses. An example of the format that shall be used is: (RX 100 (Smith, Dep. at 1098)).

¹The parties are directed to comply with the Order Granting Respondents' Motion to Strike, issued in *Chicago Bridge & Iron Co.*, 2003 FTC LEXIS 98 (June 12, 2003).

15. Do not use "Id." as a cite in the proposed findings of fact or the reply findings of fact.
16. Do not cite to more than one copy of the same document. (*I.e.*, if RX 100 and CX 200 are different copies of the same document, cite to only one exhibit number.)
17. The proper format for citing to an exhibit is: (RX 100). Do not use the following formats: RX100, RX-100, RX0100, or RX 0100.
18. If a document has both a number following the exhibit number (*e.g.*, CX 200-009) and a page number on the document itself, cite to the CX or RX number.
19. Briefs and proposed findings and replies thereto must be spiral bound. Velo binding shall not be used.
20. Briefs or proposed findings or replies thereto which exceed 150 pages shall be divided into separately numbered volumes.
21. The parties shall provide the OALJ with one set in hard copy of all exhibits that are cited to by either side in their briefs or proposed findings. The parties are to confer to ensure that duplicate sets of exhibits that are used by both sides are not provided. The parties shall provide this set of exhibits within five business days of filing their post trial reply briefs.
22. If a deposition transcript or investigational hearing transcript is submitted as an exhibit, the party providing the exhibit shall also include the index to the transcript.
23. Three ring binders containing the exhibits must not exceed three inches.
24. Violations of the requirements of this Order shall be pointed out by the opposing party in the reply brief or reply to proposed findings of fact.

ORDERED:


Stephen J. McGuire
Chief Administrative Law Judge

Date: April 6, 2005