

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

ORIGINAL

In the Matter of:

DOCKET NO. 9368

The Penn State Hershey Medical Center,
a corporation

and

Pinnacle Health System, a corporation,

Respondents



**MOTION OF NON-PARTY GEISINGER HEALTH PLAN
FOR *IN CAMERA* TREATMENT OF PROPOSED EVIDENCE**

Geisinger Health Plan (“GHP”), a non-party to this action, respectfully moves, pursuant to 16 C.F.R. § 3.45(b), for an order granting *in camera* treatment of certain testimony and documents that it produced in response to third-party subpoenas issued by Complaint Counsel and Respondents The Penn State Hershey Medical Center and Pinnacle Health System (“Respondents”) that have been designated for possible introduction in the administrative trial in this matter.

Complaint Counsel notified GHP on April 19, 2016 that it intends to introduce into evidence the November 25, 2015 Declaration of Jason Renne (Chief Strategic Partnership Officer for GHP), the transcript from the March 3, 2016 deposition of Mr. Renne in its entirety, and 55 documents produced by GHP. On April 21, counsel for Respondents notified GHP that they also intend to introduce into evidence Mr. Renne’s November 25, 2015 declaration, March 3, 2016 deposition transcript, and numerous additional documents produced by GHP.

In total, the parties have identified nearly 100 GHP documents as potential exhibits. All of the documents were produced by GHP as “confidential materials” pursuant to Protective

Orders entered on December 8, 2015 (in this matter) and January 25, 2016 (*FTC et al. v. Penn State Hershey Med. Ctr. et al.*, No. 1:15-cv- 2362-JEJ (M.D. Pa.)). GHP is seeking *in camera* treatment for only a small portion of the potential exhibits identified by the Parties, and has limited its request to those documents that contain highly confidential competitive information.

Pursuant to 16 C.F.R. § 3.45(b), GHP respectfully moves for *in camera* treatment of certain portions of the Renne deposition and the November 25, 2015 Renne Declaration, and thirty-one documents identified for possible introduction into evidence (collectively “the Confidential Documents”). As demonstrated below, the Confidential Documents contain information that is competitively sensitive for GHP, and which GHP holds in strict confidence. Public disclosure of these materials is likely to cause direct, serious harm to GHP’s competitive position. GHP submits the Declaration of Jason Renne (the “Renne Dec.”), attached as **Exhibit A**, in further support of this Motion. The document attached as **Exhibit B** is a listing of all documents designated for introduction into evidence by the Parties for which GHP is seeking *in camera* treatment.

I. APPLICABLE LEGAL STANDARD

The Confidential Documents described in this Motion warrant *in camera* treatment as provided by 16 C.F.R. § 3.45(b). Requests for *in camera* treatment must demonstrate that public disclosure of the evidence at issue “will likely result in a clearly defined, serious injury” to the party seeking *in camera* treatment. 16 C.F.R. § 3.45(b); *see also H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). That showing of a clearly defined, serious injury can be made by establishing that the information in question is “sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury.” *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980). Further, “[t]he likely loss of business advantages is a good example of a ‘clearly defined, serious injury.’” *Hoechst Marion Russell, Inc.*, 2000 F.T.C.

LEXIS 138, at *6 (2000) (citing *General Foods*, 95 F.T.C. at 355). In this context, “the courts have generally attempted to protect confidential business information from unnecessary airing.” *Hood*, 58 F.T.C. at 1188.

The Commission has established six factors to consider in determining whether *in camera* treatment is appropriate: (1) the extent to which the information is known outside of the party’s business; (2) the extent to which the information is known by employees and others involved in the business; (3) the extent of measures taken by the party to guard the secrecy of the information; (4) the value of the information to the party and to its competitors—if the information is old, a greater burden is placed on the party to demonstrate its value; (5) the amount of effort or money expended by the party in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *In re Bristol-Meyers Co.*, 90 F.T.C. 455, 456 (1977). The first three factors relate to the confidential nature of the information and the maintenance of that confidentiality; the last three factors relate to the competitive value of the information both to the owner of the information and to third parties. Documents that meet this standard have included recent financial audits, business strategy documents and financial and cost data. *See In the Matter of Evanston Northwestern Healthcare Corp.*, 2005 FTC LEXIS 27, at *6 (Feb. 9, 2005); *see also, In the Matter of SKF Indus., Inc.*, 1977 FTC LEXIS 86, at *3 (Oct. 4, 1977). GHP is seeking *in camera* treatment for the same types of documents.

Moreover, a non-party requesting *in camera* treatment deserves “special solicitude” for its confidential business information. *In the Matter of Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500 (1984) (directing *in camera* treatment for sales over five years old); *In the Matter of*

General Foods Corp., 96 F.T.C. 168, 169 n.4 (1980) (noting that “[r]ecent sales and profit data generally suggest themselves as being both secret and material to the firm concerned”).

**II. GHP’S CONFIDENTIAL TESTIMONY AND DOCUMENTS
WARRANT *IN CAMERA* TREATMENT**

A. Deposition of Jason Renne (PX01222 and DX1649)

Both Parties have indicated that they intend to introduce Mr. Renne’s deposition in its entirety (a total of 224 pages). GHP seeks *in camera* treatment for the following portions of the Renne Deposition, all of which reflect competitively sensitive and non-public information:

(i) page 73:13 - page 75:10; (ii) page 110:10 – page 114:11; (iii) page 123:16 - page 128:5; (iv) page 132:7 - page 134:10. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] GHP does

not disclose this information to the public, or even to employees within GHP who do not need to know it for their job. GHP has no plans to further disclose this information. Should this information be disclosed to the public, it would put GHP at a significant competitive disadvantage [REDACTED]. See Exhibit A, Renne Dec. ¶ 7. The deposition excerpts are attached hereto as **Exhibit C**.

B. November 25, 2015 Declaration of Jason Renne (PX00704 and DX1171)

Both Parties have indicated that they intend to introduce Mr. Renne’s November 25, 2015 Declaration, attached hereto as **Exhibit D**. GHP seeks *in camera* treatment for only Paragraphs 10 and 13 of the Declaration, which reflect competitively sensitive and non-public information.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED], GHP does not disclose this information to the public, or even to employees within GHP who do not need to know it for their job. GHP has no plans to further disclose this information. Should this information be disclosed to the public, it would put GHP at a significant competitive disadvantage [REDACTED].

C. Confidential Documents Reflecting Contractual Relationships, Pricing, and Negotiations

As part of its business, GHP negotiates with hospitals and providers to set reimbursement levels for the provision of products and services to its members. These negotiations are conducted in secret often over a period of many months. The negotiations result in long-term contracts that determine the reimbursement levels. It is critical that information relating to negotiations with hospitals remain confidential in order to preserve GHP's competitiveness in the industry. Again, GHP does not disclose this type of information to the public or even to employees not involved in the negotiations.

The following exhibits, which are attached hereto as **Exhibit E**, relate to these negotiations and contractual relationships, and contain competitively sensitive and non-public information. See Exhibit A, Renne Dec. ¶ 9.

Exhibit No.	Title	Date	Nature of Confidential Information
PX01509	[REDACTED]	Not Dated	[REDACTED]

PUBLIC VERSION

PX01510	[REDACTED]	10/02/2013	[REDACTED]
PX01525	[REDACTED]	4/16/2015	[REDACTED]
PX01528	[REDACTED]	3/1/2016	[REDACTED]
PX01539	[REDACTED]	2/2/2015	[REDACTED]
PX01541	[REDACTED]	2/10/2015	[REDACTED]
PX01552 DX0037	[REDACTED]	10/24/2014	[REDACTED]
PX01557	[REDACTED]	11/21/2014	[REDACTED]

PX01607	[REDACTED]	4/12/2013	[REDACTED]
PX01537	[REDACTED]	10/17/2014	[REDACTED]
DX0020	[REDACTED]	9/29/2014	[REDACTED]
DX0021	[REDACTED]	9/29/2014	[REDACTED]
DX0029	[REDACTED]	9/2/2014	[REDACTED]
DX0036	[REDACTED]	3/10/2014	[REDACTED]
DX1038	[REDACTED]	3/13/2015	[REDACTED]
DX1041	[REDACTED]	Not Dated	[REDACTED]
DX1042	[REDACTED]	1/27/2014	[REDACTED]

With the exception of PX01607 (an April 2013 email and attachment), all documents attached as Exhibit E are less than three years old. Although PX01607 was created in April 2013, the document concerns [REDACTED]

PUBLIC VERSION

PX01544 DX0064 DX1043	[REDACTED]	9/11/2014	[REDACTED]
PX01545	[REDACTED]	7/10/2015	[REDACTED]
PX01546	[REDACTED]	7/13/2015	[REDACTED]
PX01608	[REDACTED]	1/25/2015	[REDACTED]
PX01609	[REDACTED]	1/27/2015	[REDACTED]
PX01610	[REDACTED]	2/25/2015	[REDACTED]
PX01611	[REDACTED]	7/13/2015	[REDACTED]

DX0014	[REDACTED]	9/10/2014	[REDACTED]
DX0018	[REDACTED]	1/27/2015	[REDACTED]
DX1045	[REDACTED]	1/24/2014	[REDACTED]

Copies of these Confidential Documents are attached hereto as **Exhibit F**. Each of these documents was created in 2014 or 2015 and reflects current and forward looking strategic plans. If these Confidential Documents are not given *in camera* treatment, GHP would be placed at a significant competitive disadvantage. The information in Confidential Documents is of significant value to both GHP and third parties. See Exhibit A, Renne Dec. ¶ 10.

E. GHP Has Preserved the Secrecy and Confidentiality of the Confidential Documents

The information contained in the Confidential Documents is closely-guarded by GHP. GHP treats as confidential every document for which it seeks *in camera* treatment and has carefully guarded the secrecy of these materials. GHP was compelled to produce the materials pursuant to third party subpoenas issued by the Parties, and designated the materials as confidential under the applicable Protective Orders. The information in the Confidential Documents is not known to the public or generally outside GHP or the Geisinger Health System. Further, many of Confidential Documents reflect the strategic decision-making of GHP senior executives and the senior executives of its affiliated entities; this information is not generally known to employees within GHP or its affiliated entities. See Exhibit A, Renne Dec. ¶ 11.

F. The Likelihood of Serious Competitive Harm to GHP Outweighs the Public Interest in Disclosure

As a non-party requesting *in camera* treatment for its confidential business information, GHP justifiably requires and merits receiving “special solicitude.” *In the Matter of Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500 (1984) (order directing *in camera* treatment for sales statistics over five years old). *In camera* treatment encourages non-parties to cooperate with future discovery requests in adjudicative proceedings. *Id.* GHP has cooperated with the discovery demands in this case and in the district court proceeding, *FTC v. Penn State Hershey Med. Ctr.*, No. 1:15-cv-2362-JEJ. Disclosing documents and testimony containing GHP’s highly confidential information will not materially promote the resolution of this matter, nor will it further the general public’s understanding of these proceedings. The balance of interests clearly favors *in camera* protection for the documents and testimony at issue in this Motion.

G. Expiration Date

GHP seeks *in camera* treatment of the Confidential Documents for a period of five years—the maximum time period granted by administrative courts for business records. *See Evanston Northwestern Healthcare Corp.*, 2005 F.T.C. LEXIS 27, at *2 (Feb. 9, 2005); *In the Matter of E.I. Dupont de Nemours & Co.*, 97 F.T.C. LEXIS 116, 118 (Jan. 21, 1981) (granting financial data *in camera* treatment for three years). Five years is certainly justified in light of the competitively sensitive discussions in GHP’s business records with respect to its current and prospective contractual relationships, and its long term business and competitive strategies that are reflected in the Confidential Documents.

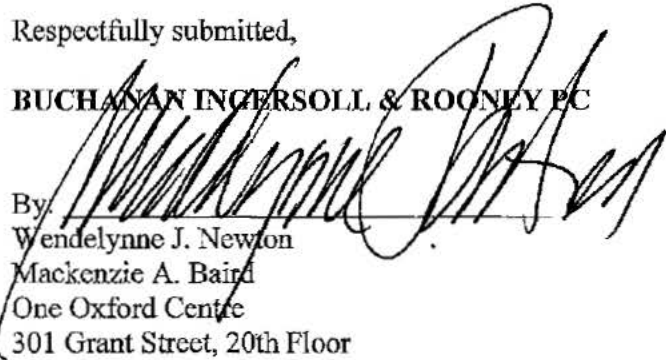
III. CONCLUSION

Under the Federal Trade Commission’s Rules of Practice and relevant FTC precedent, *in camera* treatment of the testimony and documents listed in **Exhibit B** is warranted.

Dated: June 7, 2016

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

By: 
Wendelynne J. Newton
Mackenzie A. Baird
One Oxford Centre
301 Grant Street, 20th Floor
Pittsburgh, PA 15219-1410
Tel: 412-562-8800
wendelynne.newton@bipc.com
mackenzie.baird@bipc.com

Carrie G. Amezcua
1700 K Street, N.W., Suite 300
Washington, DC 20006-3807
Tel: 202 452 7953
carrie.amezcua@bipc.com

Counsel for Non-Party Geisinger Health Plan

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

In the Matter of:

The Penn State Hershey Medical Center,
a corporation

and

Pinnacle Health System, a corporation,

Respondents

DOCKET NO. 9368

**[PROPOSED] ORDER GRANTING MOTION OF NON-PARTY GEISINGER HEALTH
PLAN FOR *IN CAMERA* TREATMENT OF PROPOSED EVIDENCE**

Upon consideration of the Motion of Non-Party Geisinger Health Plan for *In Camera* Treatment of Proposed Evidence, any opposition thereto, any hearing thereon, and the entire record in this action, it is hereby ORDERED, that the Motion is GRANTED.

It is further ORDERED, that pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b), the documents identified in the index attached as Exhibit B to the Motion shall be subject to the requested *in camera* treatment and will be kept confidential and not placed on the public record of this proceeding. The period of *in camera* treatment shall extend for five-years.

Dated: _____, 2016

PUBLIC VERSION

EXHIBIT A

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

In the Matter of:

DOCKET NO. 9368

The Penn State Hershey Medical Center,
a corporation

and

Pinnacle Health System, a corporation,

Respondents

**DECLARATION OF JASON RENNE IN SUPPORT OF
MOTION OF NON-PARTY GEISINGER HEALTH PLAN
FOR IN CAMERA TREATMENT OF PROPOSED EVIDENCE**

I, Jason Renne, declare as follows:

1. I am the Chief Strategic Partnership Officer for Geisinger Health Plan (“GHP”).

As Chief Strategic Partnership Officer, my primary responsibility is developing GHP’s provider network, and I lead a team of people who manage and optimize the provider network as well as negotiate with new and existing providers. I am also responsible for maintaining GHP’s strategic partnerships with providers, which include, for example, joint ventures to launch certain products and/or engage in population health management.

2. GHP is the insurance component of Geisinger Health System Foundation (“Geisinger”), an integrated health services organization that serves residents throughout central and northeast Pennsylvania. Geisinger also operates a clinical enterprise, which includes eight hospital campuses, a multi-specialty group physician practice, two research centers, and primary and specialty clinics. GHP’s network includes providers within the Geisinger clinical enterprise as well as providers that Geisinger does not own.

3. GHP is not a party to the above-captioned matter.

4. GHP seeks *in camera* treatment for certain portions of the transcript from my March 3, 2016 deposition, paragraphs 10 and 13 of my November 25, 2015 declaration, and thirty-one documents that GHP produced in response to third-party subpoenas issued by the FTC and Respondents The Penn State Hershey Medical Center and Pinnacle Health System (“Respondents”).

5. A listing of all documents for which GHP is seeking *in camera* treatment is attached as Exhibit B to the Motion of Non-Party Geisinger Health Plan for *In Camera* Treatment of Proposed Evidence (the “Motion”).

6. I have reviewed the documents identified on Exhibit B. Based on my review, my knowledge of GHP’s business, and my familiarity with the confidentiality protection afforded this type of information by GHP, it is my belief that disclosure of this information to the public and to GHP’s business partners and competitors would cause serious competitive injury to GHP.

7. Exhibit C to the Motion is an excerpt of the transcript from my March 3, 2016 deposition. GHP seeks *in camera* treatment for the following portions that reflect competitively sensitive and non-public information: (i) page 73:13 - page 75:10; (ii) page 110:10 – page 114:11; (iii) page 123:16 - page 128:5; (iv) page 132:7 - page 134:10. [REDACTED]

[REDACTED]

8. Exhibit D to the Motion is a copy of my November 25, 2015 Declaration.

[REDACTED]

These paragraphs reflect competitively sensitive and non-public information.

9. The documents attached as Exhibit E to the Motion relate to GHP's negotiations and contractual relationships with hospitals and providers to set reimbursement levels for the provision of products and services to GHP's members. Each of these documents contains competitively sensitive information relating to the GHP's negotiations and contractual relationships. [REDACTED]

10. The documents attached as Exhibit F to the Motion reflect GHP's business and competitive strategies and future plans. Each of these documents contains internal information of a highly sensitive and competitive nature. [REDACTED]

11. GHP has taken substantial measures to guard the confidentiality of the information contained in Exhibits C, D, E, and F by limiting dissemination of such information and taking every reasonable step to protect its confidentiality. Many of Confidential Documents reflect the strategic decision-making of GHP senior executives and the senior executives of its affiliated entities; this information is not generally known to employees within GHP or its affiliated entities.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

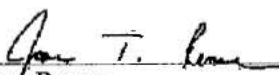

Jason Renne

EXHIBIT B

PUBLIC VERSION

Exhibit No.	Title	Date	Beginning Bates	Ending Bates
DX0014	[REDACTED]	9/10/2014	GHP00005731	GHP00005735
DX0018	[REDACTED]	1/27/2015	GHP00098700	GHP00098702
DX0020	[REDACTED]	9/29/2014	GHP00106395	GHP00106395
DX0021	[REDACTED]	9/29/2014	GHP00106396	GHP00106396
DX0029	[REDACTED]	9/2/2014	GHP00129744	GHP00129758
DX0036	[REDACTED]	3/10/2014	GHP00135933	GHP00135935
DX1038	[REDACTED]	3/13/2015	GHP00105283	GHP00105285
DX1041	[REDACTED]	Not Dated	GHP00129759	GHP00129771
DX1042	[REDACTED]	1/27/2014	GHP00129784	GHP00129788
DX1045	[REDACTED]	1/24/2014	GHP00134758	GHP00134758
PX00704 DX1171	Declaration: Jason Renne (Geisinger Health Plan)	11/25/2015	PX00704-001	PX00704-005
PX01321 DX0028	[REDACTED]	11/17/14	GHP00129743	GHP00129743
PX01509	[REDACTED]	Not Dated	GHP00005860	GHP00005865

PUBLIC VERSION

PX01510	[REDACTED]	10/02/2013	GHP00007104	GHP00007108
PX01525	[REDACTED]	4/16/2015	GHP00126895	GHP00126896
PX01528	[REDACTED]	10/30/156	GHP00138673	GHP00138673
PX01529 DX0016	[REDACTED]	9/2/2014	GHP00098321	GHP00098323
PX10537	[REDACTED]	10/17/2014	GHP00125125	GHP00125126
PX01539	[REDACTED]	2/2/2015	GHP00125911	GHP00125914
PX01541	[REDACTED]	2/10/2015	GHP00126015	GHP00126017
PX01543	[REDACTED]	7/13/2015	GHP00130047	GHP00130050

PUBLIC VERSION

PX01544 DX0064 DX1043	[REDACTED]	9/11/2014	GHP00133901	GHP00133905
PX01545	[REDACTED]	7/10/2015	GHP00135295	GHP00135298
PX01546	[REDACTED]	7/13/2015	GHP00135302	GHP00135304
PX01552 DX0037	[REDACTED]	10/24/2014	GHP00137016	GHP00137017
PX01557	[REDACTED]	11/21/2014	GHP00129846	GHP00129847
PX01607	[REDACTED]	4/12/2013	GHP00116923	GHP00116925
PX01608	[REDACTED]	1/25/2015	GHP00129825	GHP00129826
PX01609	[REDACTED]	1/27/2015	GHP00137266	GHP00137268

PUBLIC VERSION



PX01610		2/25/2015	GHP00137278	GHP00137278
PX01611		7/13/2015	GHP00137547	GHP00137549
PX01222 DX1649	Jason Renne Deposition Transcript	3/3/2016	-	-

EXHIBIT C

Redacted from Public Version

EXHIBIT D

Redacted from Public Version

EXHIBIT E

Redacted from Public Version

EXHIBIT F

Redacted from Public Version

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

In the Matter of:

DOCKET NO. 9368

The Penn State Hershey Medical Center,
a corporation

and

Pinnacle Health System, a corporation,

Respondents

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Motion of Non-Party Geisinger Health Plan for *In Camera* Treatment of Proposed Evidence (Public Version) was served on June 7, 2016 as follows:

William E. Efron
Ryan F. Harsch
Jared P. Nagley
Jonathan W. Platt
Gerald A. Stein
Gerald J. Trujillo
Nancy Turnblacer
Theodore Zang

FEDERAL TRADE COMMISSION
BUREAU OF COMPETITION,
NORTHEAST REGION
One Bowling Green, Suite 318
New York, New York 10004
Telephone: (212) 607-2827
Facsimile: (212) 607-2832

*Counsel Supporting the Complaint
Federal Trade Commission*

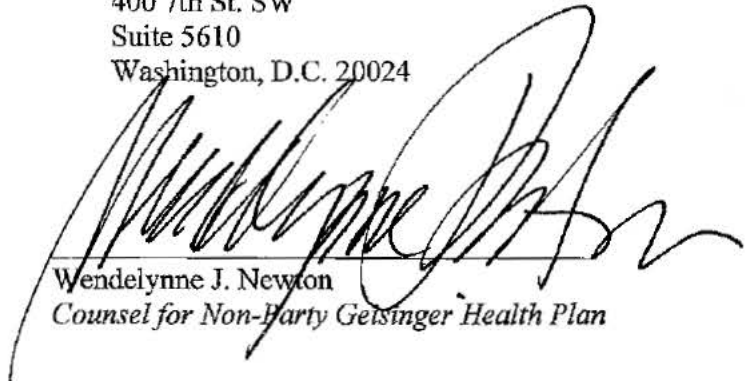
Adrian Wager-Zito
Julia E. McEvoy
Christopher N. Thatch
Kenneth W. Field

JONES DAY
51 Louisiana Ave., NW
Washington, DC 20001
adrianwagerzito@jonesday.com
jmcevoy@jonesday.com
cthatch@jonesday.com
kfield@jonesday.com

*Counsel for Respondents Penn State Hershey
Medical Center and Pinnacle Health System*

D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
Constitution Center
400 7th St. SW
Suite 5610
Washington, D.C. 20024

Donald S. Clark
Office of the Secretary
Federal Trade Commission
Constitution Center
400 7th St. SW
Suite 5610
Washington, D.C. 20024



Wendelynne J. Newton
Counsel for Non-Party Getsinger Health Plan