



PUBLIC VERSION
UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of §
§
CCC Holdings, Inc. §
§
and § Docket No. 9334
§
Aurora Equity Partners III, L.P. §
§
_____ §

**NON-PARTY PROPERTY DAMAGE APPRAISERS, INC.’S
MOTION FOR *IN CAMERA* TREATMENT
OF DOCUMENTS PREVIOUSLY DESIGNATED AS CONFIDENTIAL AND
TESTIMONY OF RODNEY CAUDILL**

Non-Party Property Damage Appraisers, Inc. (“PDA”), files this Motion for *In Camera* Treatment of Documents Previously Designated as Confidential and Testimony of Rodney Caudill, Chief Operating Officer of PDA, pursuant to the Federal Trade Commission Rules of Practice, 16 C.F.R. §3.45(b). PDA respectfully moves for an order directing *in camera* treatment of the documents (Exhibit “A”) previously designated as confidential in the Declaration of Rodney Caudill (“Caudill”), attached hereto as Exhibit “1,” in support of this Motion (“Rodney Decl.”), and the testimony of Rodney Caudill relating to such documents.

PDA’S CONFIDENTIAL DOCUMENTS AND THE TESTIMONY OF RODNEY CAUDILL, RELATING THERETO, DESERVE *IN CAMERA* TREATMENT UNDER THE FEDERAL TRADE COMMISSION’S RULES OF PRACTICE

PDA is not a party to this proceeding. The documents that are described in this Motion, and the testimony of Caudill relating to such documents, warrant *in camera* treatment as provided in 16 C.F.R. §3.45(b). Under 16 C.F.R. §3.45(b), requests for *in*

camera treatment must show that public disclosure of the document in question “will result in a clearly defined, serious injury to the person or corporation whose records are involved.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). That showing can be made by establishing that the documents in question are “sufficiently secret and sufficiently material” to PDA’s business “that disclosure would result in serious competitive injury.” *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980). In this context, “the courts have generally attempted to protect confidential business information from unnecessary airing.” *Hood*, 58 F.T.C. at 1188. Under this standard, *in camera* treatment of the documents in question, and the testimony relating to such documents, is warranted.

A. PDA has Preserved the Confidentiality of the Documents and Information

PDA has taken significant steps to protect the confidential nature of the subject documents which were produced in response to a subpoena issued by the Federal Trade Commission and requests by the Federal Trade Commission. (Caudill Decl. at ¶2) These documents were produced under compulsory process and pursuant to the Protective Order Governing Discovery Material issued in this matter on January 7, 2009 (the “Protective Order”). (Id. at ¶3) The purpose of the Protective Order was to expedite discovery while ensuring that materials produced would receive sufficient protection from disclosure to competitors and the public.

In addition to these measures, PDA has taken substantial measures to guard the secrecy of the subject documents, limiting dissemination of such information and taking every reasonable step to protect its confidentiality. (Caudill Decl. at ¶2-3) Such information is only disclosed to a limited number of PDA employees. (Id.) It would be

very difficult for other entities to access or recreate the information contained in the subject documents. (Id.) These efforts demonstrate that PDA has gone to great lengths to preserve the confidentiality of the information contained in Exhibit “A.” (Id.)

B. Disclosure of the Information in Exhibit “A,” and the Testimony of Rodney Caudill Relating Thereto, Would Result in Serious Competitive Injury to PDA

Exhibit “A” contains detailed statistical and analytical information assembled by PDA relating to the confidential operations of its various offices and franchise system throughout the United States. (Caudill Decl. at ¶4-5) In particular, the documents contain franchisee, pricing, volume and critical timing matters and information relating to the internal and proprietary operations of PDA’s offices and franchisee system. (Id.) In addition, the documents contain contractual information relating to PDA’s business operations. The documents contain sensitive contractual pricing strategies and contractual terms relating to PDA’s software licensing arrangements. (Id.) In particular, the contract itself, is a product of negotiations over extended periods of time and reflects the contracting strategies and financial modeling used by PDA in its contractual relationships with its providers. PDA designated the subject documents as “CONFIDENTIAL” because they specify detailed information about PDA’s franchise operations and sensitive contractual matters. (Caudill Decl. at ¶2) Public access to PDA’s confidential and proprietary information, and the testimony of Rodney Caudill relating thereto, would expose PDA to a serious competitive disadvantage and would be harmful to PDA. (Caudill Decl. at ¶4-6)

C. The Public Interest in Disclosure of Exhibit “A” is Outweighed by the Likelihood of Serious Competitive Harm to PDA

PDA deserves “special solicitude” as a non-party requesting *in camera* treatment for its confidential business information. See *In the Matter of Kaiser Aluminum & Chemical Corporation*, 103 F.T.C. 500, 500 (1984). Reasonable periods of *in camera* treatment encourage non-parties to cooperate with future discovery requests in adjudicative proceedings. *Id.* PDA has cooperated with the discovery demands in this case, and has taken steps to facilitate access of the parties to highly sensitive non-party documents. Conversely, disclosing documents, and the testimony of Caudill relating thereto, containing PDA’s highly confidential information will not materially promote the resolution of this matter, nor will these documents, or the testimony of Caudill relating thereto, lend measurable public understanding of these proceedings. The balance of interests clearly favors *in camera* protection of the documents contained in Exhibit “A” and the testimony of Caudill relating to any such documents. See *In re Bristol-Meyers*, 90 F.T.C. 455, 456 (1977) (describing six-factor test for determining secrecy and materiality).

D. Protection Should Extend Indefinitely or, at Minimum, for Ten Years

The nature of the highly confidential information contained in Exhibit “A” (and any testimony of Caudill relating thereto) warrants lasting protection. PDA’s statistical, analytical, strategically, and franchise information are vital to PDA’s competitive position. (Caudill Decl. at ¶4-6) Public disclosure of such crucial information would be harmful to PDA. (*Id.*) In addition, the contractual terms and rates paid by PDA for its software licensing arrangements are crucial to PDA’s competitive position in the marketplace. (*Id.*) It is uncertain as to when the contractual information will no longer

reflect current pricing and contract terms. Moreover, the market is such that even disclosure of terms of contracts no longer in force creates an unreasonable and unnecessary risk of harm to PDA. (Caudill Decl. at ¶5) PDA is not a party to this proceeding. Accordingly, PDA respectfully requests that Exhibit "A," and any testimony of Caudill relating to the documents contained in Exhibit "A," be afforded *in camera* protection indefinitely or, at a minimum, for period of ten (10) years.

CONCLUSION

Exhibit "A" satisfies the standard for *in camera* protection under the Commission's Rules and relevant Federal Trade Commission precedent. Accordingly, *in camera* protection should be extended to these confidential documents and any testimony of Rodney Caudill, Chief Executive Officer of PDA, relating thereto.

DATED: March 11, 2009

Respectfully Submitted,

HIGGINS & SHURTZ, PLLC

By: 

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**ATTORNEYS FOR PROPERTY
DAMAGE APPRAISERS, INC.**

CERTIFICATE OF SERVICE

I, David F. Shurtz, hereby certify that on this 11th day of March, 2009, I caused the foregoing Motion for *In Camera* Treatment of Documents Previously Designated as Confidential and Testimony of Rodney Caudill, the supporting Declaration of Rodney Caudill and exhibit(s), and the Proposed Order to be filed and/or served as follows:

a copy of the Public Record version sent overnight delivery to:

Donald S. Clark
Secretary of the Commission
Federal Trade Commission
600 Pennsylvania Ave., NW
Room H-135
Washington, D.C. 20580

the original and one copy of *In Camera* version sent overnight delivery to:

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

a copy of *In Camera* version sent overnight delivery to:
counsel for CCC Holdings Inc.

Adam Wilson
Gibson, Dunn & Crutcher LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105-2933

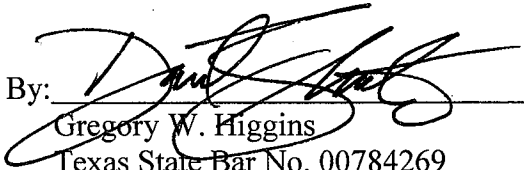
a copy of *In Camera* version sent overnight delivery to:
counsel for Aurora Equity Partners III, L.P.

Darren Tucker
O'Melveny & Myers LLP
Times Square Tower
7 Times Square
New York, NY 10036

a copy of *In Camera* version sent overnight delivery to:

Eric M. Sprague
Attorney, Mergers II (1032), Bureau of Competition
Federal Trade Commission
Room 6153
601 New Jersey Avenue, N.W.
Washington, D.C. 20001

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**ATTORNEYS FOR PROPERTY
DAMAGE APPRAISERS, INC**

Exhibit 1
REDACTED

Exhibit “A”

REDACTED

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BEFORE THE FEDERAL TRADE COMMISSION**

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Aurora Equity Partners III, L.P.	§	
	§	

[Proposed] Order

Non-Party Property Damages Appraisers, Inc. (“PDA”) filed a motion for *in camera* treatment of (i) confidential business information contained in various documents produced by PDA pursuant to a subpoena issued by the Federal Trade Commission and (ii) the testimony of Rodney Caudill, Chief Executive Officer of PDA, relating to such confidential business information. After considering the Motion and Declaration in support thereof,

IT IS HEREBY ORDERED that PDA’s Motion is GRANTED. The information set forth in the PDA documents identified as follows, and the testimony of Rodney Caudill, Chief Executive Officer of PDA, relating to such documents and business information shall be subject to *in camera* treatment under 16 C.F.R. §3.45 and shall be kept confidential indefinitely.

- Those documents identified as Exhibit “A” to PDA’s Motion for *In Camera* Treatment of Documents Previously Designated as Confidential and Testimony of Rodney Caudill

ORDERED:

D. Michael Chappell
Administrative Law Judge

DATED: _____