

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 HOLY SPIRIT HEALTH SYSTEM  
FOR *IN CAMERA* TREATMENT OF PROPOSED EVIDENCE**

Holy Spirit Health System (“Holy Spirit”), 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 Holy Spirit on April 19, 2016 that it intends to introduce into evidence certain documents produced by Holy Spirit, an October 30, 2015 Declaration of Richard LaVanture (Senior Vice President and Chief Strategic Officer for Holy Spirit), and the transcript from the February 25, 2016 deposition of Mr. LaVanture in its entirety. On April 21, counsel for Respondents notified Holy Spirit that they also intend to introduce into evidence the transcript of Mr. LaVanture’s deposition and numerous additional documents produced by Holy Spirit.

In total, the parties have identified sixty-three Holy Spirit documents as potential exhibits. All of the documents were produced by Holy Spirit 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.)). Holy Spirit 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), Holy Spirit respectfully moves for *in camera* treatment of certain portions of the LaVanture deposition and twenty-eight documents identified for possible introduction into evidence (collectively “the Confidential Documents”). As demonstrated below, the Confidential Documents contain information that is competitively sensitive for Holy Spirit, and which Holy Spirit holds in strict confidence. Public disclosure of these materials is likely to cause direct, serious harm to Holy Spirit’s competitive position. Holy Spirit submits the Declaration of Richard LaVanture (the “LaVanture 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 Holy Spirit 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). Holy Spirit 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) (order directing *in camera* treatment for sales statistics over five years old); *In the Matter of General Foods Corp.*, 96 F.T.C. 168, 169 n.4 (1980) (order noting that “[r]ecent sales and profit data generally suggest themselves as being both secret and material to the firm concerned”).

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

**A. Deposition of Richard LaVanture (PX00706 and DX1663)**

Both Parties have indicated that they intend to introduce Mr. LaVanture’s deposition in its entirety (a total of 206 pages). Holy Spirit seeks *in camera* treatment for the following portions of the LaVanture Deposition, all of which reflect competitively sensitive and non-public information: (i) page 79:1 – page 86:2; (ii) page 92:10 - 19; (iii) page 95:24 – page 101:3; and (iv) page 103:16 – page 159:6. [REDACTED]

[REDACTED] Holy Spirit does not disclose this information to the public, or even to employees within Holy Spirit who do not need to know it for their job. Holy Spirit has no plans to further disclose this information. Should this information be disclosed to the public, it would put Holy Spirit at a significant competitive disadvantage in its clinical development strategies. *See* Exhibit A, LaVanture Dec. ¶

7. The deposition excerpts are attached hereto as **Exhibit C**.

**B. Confidential Documents Containing Current Business Plans  
and Forward Looking Strategies**

The remaining exhibits for which Holy Spirit seeks *in camera* treatment reflect Holy Spirit’s business and competitive strategies, all of which are competitively sensitive. Holy Spirit

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treats this information confidentially within the company and its competitors and commercial health plans would benefit significantly and unfairly from gaining access to these materials. See Exhibit A, LaVanture Dec. ¶ 8.

Exhibit No.	Title	Date	Nature of Confidential Information
PX01430	[REDACTED]	12/2/2014	[REDACTED]
PX01526 DX1223	[REDACTED]	11/14/2014	[REDACTED]
DX0039	[REDACTED]	9/4/2014	[REDACTED]
DX0040	[REDACTED]	8/27/2014	[REDACTED]
DX0041	[REDACTED]	12/31/2014	[REDACTED]
DX0090	[REDACTED]	3/12/2015	[REDACTED]
DX0091	[REDACTED]	8/18/2014	[REDACTED]
DX1093	[REDACTED]	10/21/2014	[REDACTED]
DX1096	[REDACTED]	12/16/2014	[REDACTED]
DX1098	[REDACTED]	3/13/2015	[REDACTED]
DX1106	[REDACTED]	10/15/2014	[REDACTED]

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DX1107	[REDACTED]	10/21/2013	[REDACTED]
DX1108	[REDACTED]	10/16/2014	[REDACTED]
DX1109	[REDACTED]	10/16/2014	[REDACTED]
DX1110	[REDACTED]	10/1/2014	[REDACTED]
DX1111	[REDACTED]	9/30/2014	[REDACTED]
DX1112	[REDACTED]	Not Dated	[REDACTED]
DX1113	[REDACTED]	2/6/2015	[REDACTED]
DX1114	[REDACTED]	3/23/2009	[REDACTED]
DX1115	[REDACTED]	Not Dated	[REDACTED]
DX1116	[REDACTED]	3/10/2015	[REDACTED]
DX1117	[REDACTED]	2/25/2015	[REDACTED]
DX1122	[REDACTED]	10/1/2014	[REDACTED]
DX1124	[REDACTED]	10/28/2014	[REDACTED]
DX1125	[REDACTED]	6/5/2014	[REDACTED]

DX1126	[REDACTED]	Not Dated	[REDACTED]
DX1129	[REDACTED]	6/3/2014	[REDACTED]
DX1133	[REDACTED]	8/22/2014	[REDACTED]

Copies of these Confidential Documents are attached hereto as **Exhibit D**. With the exception of DX1114 (a 2009 Financial Analysis), all documents were created in 2014 or 2015 and are less than two-years old. Although DX1114 was created in 2009, the document [REDACTED]. Consequently, DX1114 warrants *in camera* treatment, notwithstanding the presumption that *in camera* treatment will not be provided to information that is three or more years old. *See, e.g., In re General Foods Corp.*, 95 F.T.C. at 353.

If these Confidential Documents are not given *in camera* treatment, Holy Spirit would be placed at a significant competitive disadvantage. The information in these Confidential Documents is of significant value to both Holy Spirit and third parties because of the detail in which the documents discuss Holy Spirit's plans to compete with other hospitals and negotiate with health plans. Competitor hospitals (including Respondents) and third-party payors, would benefit significantly and unfairly from gaining access to these materials. [REDACTED]

[REDACTED] Disclosure to competitor hospitals would jeopardize Holy Spirit's future success and expansion. *See Exhibit A, LaVanture Dec.* ¶ 8.

**C. Holy Spirit Has Preserved the Secrecy and Confidentiality of the Confidential Documents**

The information contained in the Confidential Documents is closely-guarded by Holy Spirit. Holy Spirit treats as confidential every document for which it seeks *in camera* treatment and has carefully guarded the secrecy of these materials. Holy Spirit 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 Holy Spirit or Geisinger. Further, many of Confidential Documents reflect the strategic decision-making of Holy Spirit senior executives and the senior executives of its affiliated entities; this information is not generally known to employees within Holy Spirit or its affiliated entities. *See Exhibit A, LaVanture Dec. ¶ 9.*

**D. The Likelihood of Serious Competitive Harm to Holy Spirit Outweighs the Public Interest In Disclosure**

As a non-party requesting *in camera* treatment for its confidential business information, Holy Spirit 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.* Holy Spirit 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 Holy Spirit’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.

**E. Expiration Date**

Holy Spirit 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 Holy Spirit’s business records with respect to its long term business strategies that are reflected in the Confidential Documents.

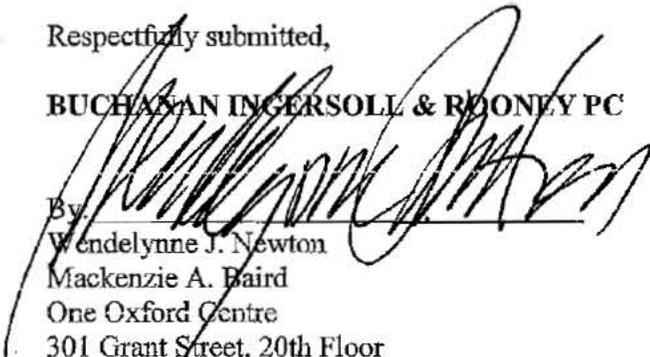
**III. CONCLUSION**

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**

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*Counsel for Non-Party Holy Spirit Health System*

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 HOLY SPIRIT  
HEALTH SYSTEM FOR *IN CAMERA* TREATMENT OF PROPOSED EVIDENCE**

Upon consideration of the Motion of Non-Party Holy Spirit Health System 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

\_\_\_\_\_

**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 RICK LAVANTURE IN SUPPORT OF  
MOTION OF NON-PARTY HOLY SPIRIT HEALTH SYSTEM  
FOR *IN CAMERA* TREATMENT OF PROPOSED EVIDENCE**

I, Rick LaVanture, declare as follows:

1. I am the Senior Vice President and Chief Strategic Officer for Holy Spirit Health System ("Holy Spirit"). As Chief Strategic Officer, my primary responsibility is to research and develop the services that Holy Spirit should offer and promote in the community. I am responsible for all ongoing market research and analysis conducted by Holy Spirit, including research on changing community health needs as well as changes in the competitive landscape.
2. Holy Spirit has been in existence since 1963. Historically, Holy Spirit was an independent, private, not for profit health system founded and sponsored by the Sisters of Christian Charity. On October 1, 2014, Holy Spirit became an affiliate of Geisinger, which is an integrated health services organization that serves residents throughout central and northeast Pennsylvania.
3. Holy Spirit is not a party to the above-captioned matter.
4. Holy Spirit seeks *in camera* treatment for certain portions of the transcript from my February 25, 2016 deposition and twenty-eight documents that Holy Spirit 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 Holy Spirit is seeking *in camera* treatment is attached as Exhibit B to the Motion of Non-Party Holy Spirit Health System 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 Holy Spirit’s business, and my familiarity with the confidentiality protection afforded this type of information by Holy Spirit, it is my belief that disclosure of this information to the public, and to Holy Spirit’s business partners and competitors would cause serious competitive injury to Holy Spirit.

7. Exhibit C to the Motion is an excerpt of the transcript from my February 25, 2016 deposition. Holy Spirit seeks *in camera* treatment for the following portions that reflect competitively sensitive and non-public information: (i) page 79:1 – page 86:2; (ii) page 92:10 – 19; (iii) page 95:24 – page 101:3; and (iv) page 103:16 – page 159:6. [REDACTED]

[REDACTED]

[REDACTED]

Should this information be disclosed to the public, it would put Holy Spirit at a significant competitive disadvantage in its clinical development strategies.

8. The documents attached as Exhibit D to the Motion reflect Holy Spirit’s business and competitive strategies. Each of these documents contains internal information of a highly sensitive and competitive nature. The public disclosure of any of these strategic documents would result in serious competitive injury to Holy Spirit as it would give competitors an improper glimpse into Holy Spirit’s strategic decision-making and future plans, thus giving them a competitive advantage. [REDACTED]

████████████████████ Disclosure to competitor hospitals would jeopardize Holy Spirit's future success and expansion.

9. Holy Spirit has taken substantial measures to guard the confidentiality of the information contained in Exhibits C and D by limiting dissemination of such information and taking every reasonable step to protect its confidentiality. The information in the Confidential Documents is not known to the public or generally outside Holy Spirit or Geisinger. Holy Spirit does not disclose this information to employees within Holy Spirit who do not need to know it for their job. Holy Spirit has no plans to further disclose this information. Many of Confidential Documents reflect the strategic decision-making of Holy Spirit senior executives and the senior executives of its affiliated entities; this information is not generally known to employees within Holy Spirit or its affiliated entities.

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

  
\_\_\_\_\_  
Rick LaVanture

**EXHIBIT B**

PUBLIC VERSION

Exhibit No.	Title	Date	Beginning Bates	Ending Bates
DX0039	[REDACTED]	9/4/2014	HSHS00000869	HSHS00001112
DX0040	[REDACTED]	8/27/2014	HSHS00001120	HSHS00001135
DX0041	[REDACTED]	12/31/2014	HSHS00024754	HSHS00024754
DX0090	[REDACTED]	3/12/2015	HSHS00025507	HSHS00025571
DX0091	[REDACTED]	8/18/2014	HSHS00038954	HSHS00039002
DX1093	[REDACTED]	10/21/2014	HSHS00000839	HSHS00000852
DX1096	[REDACTED]	12/16/2014	HSHS00008072	HSHS00008072
DX1098	[REDACTED]	3/13/2015	HSHS00016395	HSHS00016408
DX1106	[REDACTED]	10/15/2014	HSHS00021415	HSHS00021415
DX1107	[REDACTED]	10/21/2013	HSHS00021416	HSHS00021416
DX1108	[REDACTED]	10/16/2014	HSHS00021470	HSHS00021482
DX1109	[REDACTED]	10/16/2014	HSHS00021483	HSHS00021483
DX1110	[REDACTED]	10/1/2014	HSHS00021542	HSHS00021542

PUBLIC VERSION

DX1111	[REDACTED]	9/30/2014	HS00021543	HS00021543
DX1112	[REDACTED]	Not Dated	HS00021743	HS00021744
DX1113	[REDACTED]	2/6/2015	HS00021968	HS00021968
DX1114	[REDACTED]	3/23/2009	HS00023064	HS00023103
DX1115	[REDACTED]	Not Dated	HS00023118	HS00023177
DX1116	[REDACTED]	3/10/2015	HS00023436	HS00023492
DX1117	[REDACTED]	2/25/2015	HS00023605	HS00023605
DX1122	[REDACTED]	10/1/2014	HS00027685	HS00027685
DX1124	[REDACTED]	10/28/2014	HS00028095	HS00028095
DX1125	[REDACTED]	6/5/2014	HS00028098	HS00028146
DX1126	[REDACTED]	Not Dated	HS00029171	HS00029192
DX1129	[REDACTED]	6/3/2014	HS00036842	HS00036888
DX1133	[REDACTED]	8/22/2014	HS00039322	HS00039328
PX01430	[REDACTED]	12/2/2014	HS00028035	HS00028036

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PX01526	[REDACTED]	11/14/2014	HSHS00027828	HSHS00027829
PX0076 DX1663	Richard LaVanture Deposition Transcript	2/25/16	-	-

# **EXHIBIT C**

**Redacted from Public Version**

# **EXHIBIT D**

**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 Holy Spirit Health System 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  
Geraldyn J. Trujillo  
Nancy Turnblacer  
Theodore Zang

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Federal Trade Commission*

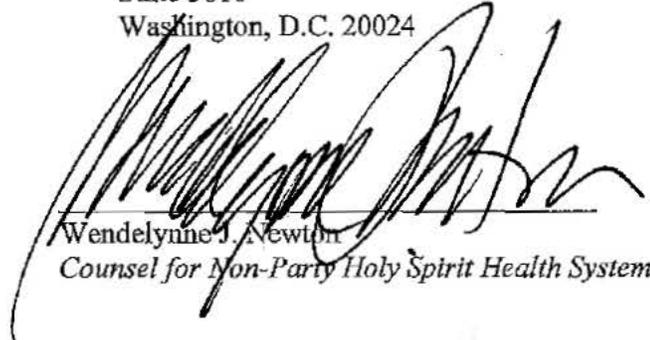
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