

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JOHN HICKS, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	CASE NO. 2:09-cv-155-WKW
)	
GARY HETZEL, et al.,)	
)	
Defendants.)	

CONSENT PROTECTIVE ORDER

To expedite the flow of discovery material, facilitate the prompt resolution of disputes over confidentiality, protect adequately material entitled to be kept confidential, and ensure that protection is afforded only to material so entitled, it is, pursuant to the Court’s authority under the *Federal Rules of Civil Procedure* and by the consent of the parties, **ORDERED** as follows:

1. **Nondisclosure of Stamped Confidential Documents.** Except with the prior written consent of the party or other person originally designating a document to be stamped as a confidential document, or as hereinafter provided under this Order, no “stamped confidential document” may be disclosed to any person. A “stamped confidential document” means any document which bears the legend (or which shall otherwise have had the legend recorded upon it in a way that brings it to the attention of a reasonable examiner) “Confidential” to signify that it contains information believed to be subject to protection under the applicable *Federal Rules of Civil Procedure* and this Order. For purposes of this Order, the term “document” means all written, recorded, or graphic material, whether produced pursuant to a request for production, subpoena duces tecum, subpoena, by agreement, or by any other means. Interrogatory answers, responses to requests for admission, deposition transcripts and exhibits, pleadings, motions, affidavits, and briefs that quote, summarize, or contain material entitled to protection may be

accorded status as a stamped confidential document, but, to the extent feasible, shall be prepared in such a manner that the confidential information is bound separately from that not entitled to protection. Any party may designate any document produced in this litigation as confidential notwithstanding whether it is the original producing party, subject to the provisions of paragraph 3 of this order.

2. **Permissible Disclosure.** Notwithstanding paragraph 1, stamped confidential documents may be disclosed to counsel for the parties in this action who are actively engaged in the conduct of this specific action/litigation as cited in the style above; to the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in such litigation; and to court officials involved in this litigation (including court reporters, persons operating video recording equipment at depositions, and any special master or mediator appointed by the court). Such documents may also be disclosed:

- (a) to the parties involved in this litigation for use in this litigation except that neither documents stamped confidential by the Defendants nor information contained in documents stamped confidential by Defendants shall be provided to any Plaintiff or putative class member;
- (b) to any person designated by the Court in the interest of justice, upon such terms as the Court may deem proper; and
- (c) to persons noticed for depositions or designated as trial witnesses to the extent reasonably necessary in preparing to testify; to outside consultants or experts retained for the purpose of assisting counsel in the litigation; to employees of parties involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving data or designing programs for handling data connected with these actions, including the performance of such duties in relation to a computerized litigation support system; and to employees of third-party contractors performing one or more of these functions; provided, however, that in all such cases the individual to whom disclosure is to be made has signed, and counsel for the relevant party has maintained a form containing:
 - (1) a recital that the signatory has read and understands this Order; and

- (2) a recital that the signatory understands that unauthorized disclosures of the stamped confidential documents may constitute contempt of Court.

3. **Declassification.** If a party to this Order who is to receive any stamped confidential documents produced in accordance with this Order disagrees with respect to its designation as confidential, in full or in part, it shall notify the producing party in writing, and the recipient and the producing party will thereupon confer in good faith as to the status of the subject information proffered within the context of this Order. If the recipient and producing party are unable to agree upon the status of the subject information, any party to this Order may raise the issue of such designation with the Court, which shall decide the issue. The Court may raise the issue of designation of the protected status without request from a party. In any disagreement over a designation of confidentiality, the producing party bears the burden of proving that the designated information is protected under the *Federal Rules of Civil Procedure*.

4. **Confidential Information in Depositions.**

- (a) A deponent may during any deposition be shown and examined about stamped confidential documents if the provisions of paragraph 2(c) are complied with. Deponents shall not retain or copy portions of the transcript of their depositions that contain confidential information not provided by them or the entities they represent unless they sign the form prescribed in paragraph 2(c). A deponent who is not a party or a representative of a party shall be furnished a copy of this Order before being examined about, or asked to produce, potentially confidential documents.
- (b) Parties (and deponents) may, within 7 days after receiving a deposition transcript, designate pages of the transcript (and exhibits thereto) as confidential. Confidential information within the deposition transcript may be designated by underlining the portions of the pages that are confidential and marking such pages with the following legend: "Confidential -- Subject to Protection Pursuant to Court Order." Until expiration of the 7-day period, the entire deposition will be treated as subject to protection against disclosure under this order. If no party or deponent timely designates confidential information in a deposition, then none of the transcript will be treated as confidential; if a timely

designation is made, the confidential portions and exhibits shall be filed under seal separate from the portions and exhibits not so marked.

5. **Confidential Information at Trial.** Subject to the *Federal Rules of Evidence*, stamped confidential documents and other confidential information may be offered in evidence at trial or any court hearing, provided that the proponent of the evidence gives ten (10) days advance notice to counsel for any party or other person that designated the information as confidential. Any party may move the Court for an order that the evidence be received *in camera* or under other conditions to prevent unnecessary disclosure. The Court will then determine whether the proffered evidence should continue to be treated as confidential information and, if so, what protection, if any, may be afforded to such information at the trial.

6. **Subpoena by Other Courts or Agencies.** If another court or an administrative agency subpoenas or orders production of stamped confidential documents that a party has obtained under the terms of this Order, such party shall promptly notify the party or other person who designated the document as confidential of the pendency of such subpoena or order.

7. **Filing.** Stamped confidential documents need not be filed with the clerk except when required in connection with motions for summary judgment or other evidentiary matters pending before the Court. If filed, they shall be filed under seal and shall remain sealed while in the office of the clerk so long as they retain their status as stamped confidential documents.

8. **Prohibited Copying.** If a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited." Application for relief from this restriction against copying may be made to the Court, with notice to counsel so designating the document, or the parties may themselves agree in writing to allow copying of such documents under terms and conditions negotiated by them.

9. **Use.** Persons obtaining access to stamped confidential documents under this Order shall use the information only for preparation and trial of this specific action/litigation specified by the style above (including appeals and retrials), and shall not use such information for any other purpose, including business, governmental, commercial, administrative, or other judicial proceedings.

10. **Modification Permitted.** Nothing in this Order shall prevent any party or other person from seeking modification of this Order or from objecting to discovery that it believes to be otherwise improper.

11. **Responsibility of Attorneys.** The attorneys of record are responsible for employing reasonable measures, consistent with this Order, to control duplication of, access to, and distribution of copies of stamped confidential documents. Parties shall not duplicate any stamped confidential document except working copies and for filing in Court under seal.

12. **No Waiver.**

- (a) Review of the confidential documents and information by counsel, experts, or consultants for the litigants in the litigation shall not waive the confidentiality of the documents or objections to production.
- (b) The inadvertent, unintentional, or *in camera* disclosure of confidential document and information shall not, under any circumstances, be deemed a waiver, in whole or in part, of any party's claims of confidentiality.
- (c) In addition, nothing in this Order shall be deemed a waiver of the Plaintiffs' or Defendants' right (a) to oppose any subsequent motion for a protective order; or (b) to oppose any objection by the other party to the production of materials or documents in response to requests for discovery in this litigation.

13. **Return of Documents.** Within 30 days after all matters in this lawsuit or pre-suit discovery petition have been finally resolved, including but not limited to any appeal and proceeding on remand, counsel for a party that produced material marked "Confidential" may

request in writing the return of all such documents (including physical or electronic copies of such documents, if any), from the party to which they were produced. Upon receipt of such a timely request, the responsive documents shall be returned to the counsel for the producing party, except that the returning party may retain a log of documents produced which may identify the individual documents being returned in a manner that does not breach their confidentiality.

14. Any document produced in accordance with this Order shall be deemed authentic, as true and correct copy of the original. Notwithstanding the foregoing, nothing contained in this protective Order and no action taken pursuant to it shall prejudice the right of any party to contest the alleged relevancy, admissibility, or discoverability of the confidential documents and information sought.

DONE and ORDERED this the 8th day of July, 2009.



UNITED STATES MAGISTRATE JUDGE