

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
WESTERN DIVISION

FILED
DEC 28 2011
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

OSF HEALTHCARE SYSTEM and
ROCKFORD HEALTH SYSTEM,

Defendants.

Case No.: 3:11-cv-50344

Hon. Frederick J. Kapala,
District Judge

Hon. P. Michael Mahoney,
Magistrate Judge

PROTECTIVE ORDER

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order (“Order”) shall govern the handling of all Discovery Material, as hereafter defined.

1. The scope of this protective order is circumscribed by and consistent with the standards adopted by the United States Court of Appeals for the Seventh Circuit. *See Specht v. Leinenweber*, 622 F.3d 697 (7th Cir. 2010); *Baxter Int’l, Inc. v. Abbott Laboratories*, 297 F.3d 544 (7th Cir. 2002); *Union Oil Co. of Cal. v. Leavell*, 220 F.3d 562 (7th Cir. 2000); *Citizens First National Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943 (7th Cir. 1999).

2. As used in this Order, the “Litigation” shall refer to the above-captioned matter (or as said caption may be modified), and any appeal from the above-captioned matter (or as said caption may be modified), through final judgment. “Confidential Material” shall refer to any document or portion thereof which any Producing Party (as defined herein) contends in good faith should be protected from disclosure pursuant to this Protective Order because it contains

competitively sensitive information, including trade secrets or other confidential research, development, commercial or financial information, as such terms are used in Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and in the cases so construing that rule. “Confidential – Attorneys’ Eyes Only Material” means “Confidential Material,” including trade secrets, which the Producing Party reasonably believes might, if disclosed to another parties’ employees, officers, agents or directors, or to the Producing Party’s competitors or customers, have an adverse economic impact on the Producing Party that could not be avoided by less restrictive means. “Producing Party” shall mean any defendant or non-party to the Litigation producing documents, information or other materials or giving testimony in the Litigation, or in the Federal Trade Commission (“Commission”) investigation which preceded the Litigation (the “Commission Investigation”). “Document” shall refer to any discoverable writing or recording, as defined in Rule 1001 of the Federal Rules of Evidence, or transcript of oral testimony in the possession of a party or a third party.

3. Any document or portion thereof submitted by a party or a third party during a Commission Investigation that has been designated as Confidential Material, shall be treated as Confidential Material for purposes of this Order. If a Producing Party wishes to designate a document, or portion thereof, or category of documents previously submitted by it during the Commission Investigation as Confidential – Attorneys’ Eyes Only Material, it shall notify the parties in this matter within five (5) business days of entry of this Order (but in no event is such notification required before January 6, 2012), specifying each such document, or portion thereof, or category of documents. During this notification period, such designated material previously submitted to the Commission shall be treated by the parties as Confidential – Attorneys’ Eyes Only Material.

4. Any Producing Party, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or

portion thereof as Confidential Material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained. No document or other material shall be designated as “Confidential” or “Confidential – Attorneys’ Eyes Only” unless the Producing Party has a good faith belief that such document or material contains Confidential Material or Confidential – Attorneys’ Eyes Only Material.

5. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.

6. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that the Producing Party believes the material so designated constitutes Confidential Material or Confidential – Attorneys’ Eyes Only Material as defined in Paragraph 1 of this Order.

7. Material may be designated as Confidential or Confidential – Attorneys’ Eyes Only by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), the designation “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential Material contained in electronic documents may also be designated as confidential by placing the designation “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain Confidential Material, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

8. In the event a Producing Party inadvertently fails, before production, to designate a document that the Producing Party believes in good faith contains Confidential Material or Confidential – Attorneys’ Eyes Only Material, the Producing Party shall have the opportunity to make such designation upon prompt written notice to all other parties. Upon receipt of notice of such designation, all other parties shall treat the document as Confidential or Confidential – Attorneys’ Eyes Only, per the designation, and disclose it only to those persons authorized pursuant to paragraphs 9 and 10.

9. In the event that any party objects to the designation of any document or transcript as “Confidential” or “Confidential – Attorneys’ Eyes Only,” the Objecting Party shall send written notice of such objection to the Producing Party within fourteen (14) days of receipt of notice of the designation or receipt of additional information giving rise to the challenge to the designation. The parties shall, in good faith, attempt to resolve the matter informally. If a challenge cannot be resolved, the Objecting Party may apply for appropriate relief from the Court. Such disputed document, transcript or discovery materials shall remain Confidential or Confidential – Attorneys’ Eyes Only unless and until the Court rules otherwise. However, nothing in this Protective Order prevents a party who designated a document as Confidential or Confidential – Attorneys’ Eyes Only from agreeing to remove the Confidential or Confidential – Attorneys’ Eyes Only designation.

10. Confidential Material shall be disclosed only to: (a) appropriate judges and court personnel, (b) the Federal Trade Commission and its employees, and personnel retained by Commission as experts or consultants for this proceeding provided they have signed an agreement to abide by the terms of the protective order; (c) outside counsel of record for the Defendants, their associated attorneys and other employees of their law firm(s); (d) experts or

consultants retained to assist outside counsel in the prosecution or defense or trial of the Litigation, provided they have signed an agreement to abide by the terms of the Order; (e) any witness or deponent who authored or is known to have received the information in question; (f) in-house counsel of any Defendant; and (g) present party employees, officers, agents and directors whose review of the information is, in good faith, reasonably necessary to assist in the prosecution or defense or trial of the Litigation, provided they have signed an agreement to abide by the terms of the protective order.

11. Confidential – Attorneys’ Eyes Only Material and any summaries, charts or notes made therefrom, and any facts or information contained therein or derived therefrom shall be disclosed only to: (a) appropriate judges and court personnel, (b) the Federal Trade Commission and its employees, and personnel retained by Commission as experts or consultants for this proceeding provided they have signed an agreement to abide by the terms of the protective order; (c) outside counsel of record for the Defendants, their associated attorneys and other employees of their law firm(s), provided they are not employees of the Defendants; (d) experts or consultants retained to assist outside counsel in the prosecution or defense or trial of the Litigation, provided they are not affiliated in any way with the Defendants and have signed an agreement to abide by the terms of the Order and provided that, for any testifying experts not already disclosed by any party in the Litigation, the producing party is provided three (3) business days’ notice before such experts are provided with that producing party’s Confidential Material; and (e) any witness or deponent who authored or is known to have received the information in question.

12. Disclosure of Confidential Material to any person described in Paragraphs 9 or 10 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or

any appeal therefrom, or for the purpose of the preparation and hearing in the Commission administrative proceeding directly related to the Litigation, and for no other purpose whatsoever.

13. Any Confidential Material that is filed with the Court, including any pleadings or other documents referencing or disclosing such information, will be redacted and filed with the Clerk of the Court and will, if necessary, be presented for *in camera* review. Where good cause is shown in support of a motion for an order sealing any pleading or other documents containing Confidential Material because a statute, rule, or privilege justifies confidentiality, such pleading or other documents will be filed with the Clerk of the Court under seal and made available only to the Court, Court personnel, outside counsel of record, and any other person subject to the limitations in Paragraph 9 and 10. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

14. If a party plans to introduce into evidence at the preliminary injunction hearing any document or transcript containing Confidential Material produced by a Producing Party, it shall provide advance notice to the Producing Party of at least five (5) business days for purposes of allowing that party to seek an order that the document or transcript, or portion thereof, remain under seal because a statute, rule, or privilege justifies confidentiality. If that Producing Party wishes the document or transcript to remain under seal, the Producing Party shall file an appropriate motion with the Court within five (5) business days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where under seal treatment is ordered, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

15. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of Confidential Material or Confidential – Attorneys’ Eyes Only Material submitted by a Producing Party, the recipient of the discovery request shall promptly notify the Producing Party of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the Producing Party at least ten (10) business days before production, and shall include a copy of this Order and a cover letter that will apprise the Producing Party of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for noncompliance with any such order, or to seek any relief from the Court.

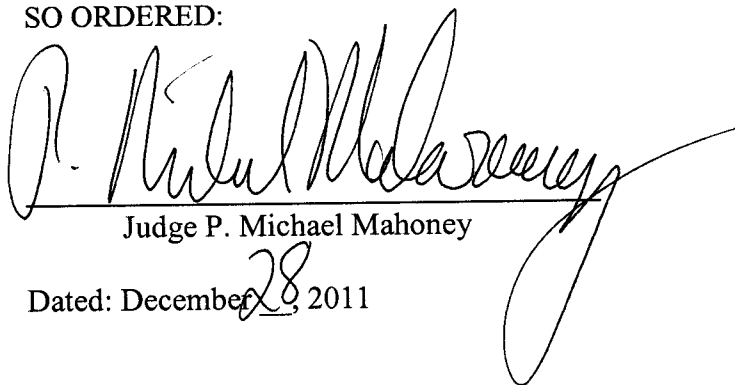
16. This Protective Order shall neither prejudice nor enlarge the right of any party (a) to bring before the Court at any time the question of whether any particular document or information is Confidential Material or Confidential – Attorneys’ Eyes Only Material or whether its use should be restricted, or (b) to present a motion to the Court for a separate protective order as to any particular document or information, including restrictions differing from or greater than those specified herein. This Protective Order shall neither prejudice nor enlarge the rights of any party in any way in any future application for modification, amendment or vacation of this Protective Order. Nothing in this Protective Order shall prevent any party from objecting to discovery which it believes to be otherwise improper.

17. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall, upon a Producing Party’s request, either return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other

papers containing Confidential Material or Confidential – Attorneys’ Eyes Only Material, or provide to the Producing Party an affidavit certifying that s/he has destroyed such materials, with the exception of any final expert reports submitted in the Litigation or in the Commission administrative proceeding directly related to the Litigation. At the conclusion of this proceeding or any related administrative proceedings, including the exhaustion of judicial review, the parties shall, upon a Producing Party’s request, return documents obtained in this action to the Producing Party, or provide an affidavit to the Producing Party certifying that such materials have been destroyed, provided, however, that the Commission’s obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12, and provided, however, this section shall not be construed to require the return or destruction by any party of any documents or exhibits filed with the Court, deposition transcripts and exhibits, or notes or other attorney work product created for or by any party, provided however, any Confidential Material or Confidential – Attorneys’ Eyes Only Material, or portions or excerpts thereof, which are not destroyed or returned pursuant to this section, shall remain subject to the terms of this Protective Order.

18. The provisions of this Order, insofar as they restrict the communication and use of Confidential Material, shall, without written permission of the Producing Party or further order of the Court, continue to be binding after the conclusion of this proceeding, unless superseded by a subsequent order of the Court.

SO ORDERED:



Judge P. Michael Mahoney

Dated: December 28, 2011