

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ADOBE SYSTEMS INCORPORATED, a Delaware Corporation,

Plaintiff,

v.

ST. PAUL FIRE AND MARINE INSURANCE COMPANY, a Minnesota Corporation,

Defendant.

Case No.: C 07-00385 JSW

**STIPULATION AND [PROPOSED]
PROTECTIVE ORDER RE
DEPOSITIONS**

The Honorable Jeffrey S. White

1 WHEREAS, defendant St. Paul Fire and Marine Insurance Company (“St. Paul”) issued
2 Policy No. TE09404801 (the “Policy”) to plaintiff Adobe Systems Incorporated (“Adobe”);

3 WHEREAS, this lawsuit concerns, among other things, Adobe’s allegations that St. Paul is
4 obligated under the Policy to defend and indemnify Adobe in connection with Claims made and
5 asserted by Agfa Monotype Corporation and International Typeface Corporation (collectively,
6 “Agfa/ITC”) which resulted in the following underlying proceedings: (1) *Agfa Monotype Corp. et*
7 *al. v. Adobe Systems Incorporated*, No. 1:02-cv-06320 (N.D. Illinois); (2) *International Typeface*
8 *Corp. v. Adobe Systems Incorporated*, No. 1:02-cv-08256 (N.D. Illinois); (3) *Adobe Systems*
9 *Incorporated v. International Typeface Corporation et al.*, No. 5:02-cv-04176 (N.D. California);
10 and (4) arbitration proceedings which commenced in London on or about September 4, 2002
11 between Adobe and Agfa/ITC in accordance with the Chartered Institute of Arbitrators Arbitration
12 Rules (2000 ed.) (collectively, the Claims and proceedings are referred to as the “Underlying
13 Actions”);

14 WHEREAS, Adobe has produced invoices (the “Invoices”) regarding attorneys fees and
15 costs in connection with the Underlying Actions;

16 WHEREAS, Adobe believes that the Invoices constitute and/or contain attorney-client
17 communications and/or attorney work product, and St. Paul disputes these contentions;

18 WHEREAS, in a December 4, 2007 order, the Court ordered Adobe to produce the Invoices
19 on a rolling basis, with the final documents produced no later than December 20, 2007, subject to
20 entry of a protective order “to protect the production from constituting a waiver of the attorney-
21 client privilege or a waiver of the attorney work product protection,” which protective order was
22 entered on December 13, 2007;

23 WHEREAS, Adobe is producing additional documents generated in connection with the
24 Underlying Actions that Adobe believes constitute and/or contain attorney-client communications
25 and/or attorney work product (the “Other Underlying Documents”), such as (1) correspondence
26 between Adobe and its outside counsel in the Underlying Actions; and (2) other documents from
27 the files of Adobe’s in-house and outside counsel in the Underlying Actions. The term “Other
28 Underlying Documents” does not include: (a) pleadings from the Underlying Actions; (b)

1 correspondence exchanged between Adobe and Agfa/ITC in the Underlying Actions; or (c)
2 documents produced by Adobe, Agfa/ITC, or third parties in the Underlying Actions;

3 WHEREAS, St. Paul may dispute that some or all of the Other Underlying Documents
4 constitute and/or contain attorney-client communications and/or attorney work product;

5 WHEREAS, St. Paul intends to depose, and has deposed, current or former employees,
6 agents or in-house or outside counsel for Adobe, and may seek and/or has sought to examine them
7 on subjects regarding the Underlying Actions, including the contents of the Invoices or the Other
8 Underlying Documents;

9 WHEREAS, Adobe believes that testimony regarding the Invoices, Other Underlying
10 Documents, or other subjects regarding the Underlying Actions may constitute and/or contain
11 attorney-client communications and/or attorney work product, and St. Paul disputes these
12 contentions;

13 NOW, THEREFORE, IT IS HEREBY STIPULATED by and among the parties hereto,
14 through their respective counsel of record, as follows:

15 The fact that any current or former Adobe employee, agent, in-house counsel or outside
16 counsel testifies or gives evidence regarding the Invoices, Other Underlying Documents, the subject
17 matter of the Invoices or Other Underlying Documents, or other subjects regarding the Underlying
18 Actions does not constitute a waiver of the attorney-client privilege and/or the protections of the
19 attorney work product doctrine, to the extent such privilege and protections are applicable, whether
20 as to: (a) the Invoices; (b) Other Underlying Documents; (c) the subject matter of the Invoices or
21 Other Underlying Documents; or (d) any other or broader subject matter. St. Paul is prohibited
22 from arguing that the fact that such testimony or evidence is provided constitutes such a waiver.
23 However, St. Paul has the right to otherwise assert that the Invoices, Other Underlying Documents,
24 the subject matter of the Invoices or Other Underlying Documents, other subjects regarding the
25 Underlying Actions, or any other or broader subject matter, do not constitute and/or contain
26 attorney-client communications and/or attorney work product. Subject to this Order, the December
27 13, 2007 Stipulated Protective Order Re Non-Waiver of Attorney-Client Privilege and Work
28 Product Doctrine, and the Court's December 4, 2007 Order, the Court may resolve on a later date

1 all issues of privilege and work product protection as they relate to the Invoices, Other Underlying
2 Documents, the subject matter of the Invoices or Other Underlying Documents, other subjects
3 regarding the Underlying Actions, or any other or broader subject matter.

4 The provisions of this Protective Order apply to all depositions of Adobe's current or former
5 employees, agents, in-house counsel or outside counsel in this action, whether the depositions were
6 taken before, on, or after the date on which this Stipulated Protective Order was fully executed by
7 the parties.

8 IT IS SO STIPULATED.

9
10 DATED: February 5, 2008

HELLER EHRMAN LLP

11
12 By _____


RAYMOND H. SHEEN

13
14 Attorneys for Plaintiff
15 ADOBE SYSTEMS INCORPORATED

16 DATED: February __, 2008

SEDGWICK DETERT MORAN & ARNOLD LLP

17
18 By _____

MARK HANCOCK

19
20 Attorneys for Defendant
21 ST. PAUL FIRE AND MARINE INSURANCE
22 COMPANY

23 **[PROPOSED] ORDER**

24 IT IS SO ORDERED.

25
26 Dated: _____

By: _____

The Honorable Jeffrey S. White
United States District Court Judge
Northern District of California

1 all issues of privilege and work product protection as they relate to the Invoices, Other Underlying
2 Documents, the subject matter of the Invoices or Other Underlying Documents, other subjects
3 regarding the Underlying Actions, or any other or broader subject matter.

4 The provisions of this Protective Order apply to all depositions of Adobe's current or former
5 employees, agents, in-house counsel or outside counsel in this action, whether the depositions were
6 taken before, on, or after the date on which this Stipulated Protective Order was fully executed by
7 the parties.

8
9 **IT IS SO STIPULATED.**

10
11 DATED: February __, 2008

HELLER EHRMAN LLP

12
13 By _____
14 RAYMOND H. SHEEN

15 Attorneys for Plaintiff
16 ADOBE SYSTEMS INCORPORATED

17 DATED: February 5, 2008

SEDGWICK DETERT MORAN & ARNOLD LLP

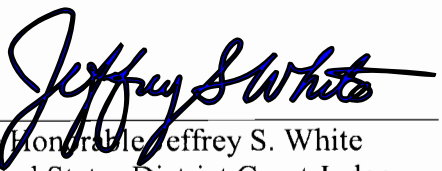
18
19 By  _____
20 MARK HANCOCK

21 Attorneys for Defendant
22 ST. PAUL FIRE AND MARINE INSURANCE
23 COMPANY

24 **PROPOSED ORDER**

25 **IT IS SO ORDERED.**

26
27 Dated: February 6, 2008 _____

28 By:  _____
The Honorable Jeffrey S. White
United States District Court Judge
Northern District of California

Heller
Ehrman LLP