

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**)
)
Plaintiff,)
)
v.)
)
SIDLEY AUSTIN BROWN & WOOD,)
)
Defendant.)

Civil No. 05 cv 0208

**Judge Zagel
Magistrate Ashman**

FILED
JUL 19 2005
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

EEOC’S MOTION TO COMPEL AND FOR ENTRY OF PROTECTIVE ORDER

Plaintiff, Equal Employment Opportunity Commission (“EEOC”), hereby moves this Court for entry of an order compelling Defendant, Sidley Austin Brown & Wood (“Sidley”) to produce documents in response to EEOC’s First Request for Production of Documents and for entry of the Protective Order attached hereto as Exhibit A.¹ In support of this motion, EEOC states:

1. On April 28, 2005, EEOC served upon Defendant EEOC’s First Set of Document Production Requests.
2. On June 28, 2005, Defendant served on EEOC Defendant’s written Response to EEOC’s First Set of Document Production Requests (“Document Response”). Defendant did not produce any documents or make any documents available for inspection and copying. Rather, in its written Document Response, Defendant stated that “production of documents referenced in

¹ EEOC certifies pursuant to Rule 37 of the Federal Rules of Civil Procedure that it has in good faith conferred with Defendant in an effort to secure production of the requested documents and to secure an agreement on a protective order.

the responses is dependent upon the entry of an appropriate Protective Order.” Cover page of Document Response, attached as Exhibit B.

3. EEOC has tried but been unable to reach agreement with Defendant on a reasonable Protective Order. Defendant seeks to conduct this litigation virtually in secret. For example, Defendant proposed a protective order that would prevent EEOC from sharing broad categories of information, such as information regarding compensation and performance of Sidley attorneys, with class members and with witnesses during depositions. Such information is at the heart of the case and preventing EEOC from discussing it with class members and witnesses would make it virtually impossible for EEOC to develop its case of age discrimination. Moreover, Defendant’s proposed restrictions are contrary to case law permitting a party to share confidential information with class members and witnesses. *See, e.g., EEOC v. Morgan Stanley & Co.*, 2002 WL 1431685 (S.D.N.Y. July 1, 2002)(affirming order permitting EEOC to show class members confidential data regarding other employees’ compensation and promotion history). *See also, Baxter Intl., Inc. v. Abbott Labs*, 297 F.3d 544, 546 (7th Cir. 2002)(while “many litigants would like to keep confidential the salary they make, the injuries they suffered or the price they agreed to pay under a contract, . . . when these things are vital to claims made in litigation, they must be revealed.”)

4. The attached Protective Order proposed by EEOC and rejected by Defendant is consistent with established case law permitting parties to share confidential information with class member and case law requiring court approval before confidential materials can be filed under seal. *See Baxter Intl.*, 297 F.3d at 545. The Protective Order attached is thus in line with the “strong presumption” favoring public disclosure of court files and documents. *See Globe*

Newspaper Co. v. Superior Court, 457 U.S. 596, 603 (1982). This presumption exists as the “public at large pays for the courts and therefore has an interest in what goes on at all stages of a judicial proceeding.” *Grove Fresh Distrib., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 987 (7th Cir. 1994). The EEOC is a public agency whose civil litigation is conducted in public, is funded entirely by the public, and is expected to serve the public interest. Therefore, the EEOC considers it a matter of some urgency that the conduct of this and other litigation be to the maximum extent possible—as the Seventh Circuit has directed--on the public record and not burdened by a regime of secrecy created by over-broad protective orders.

5. For the foregoing reasons, EEOC seeks an order entering the attached Protective Order and entry of an order requiring Defendant to produce the documents referenced in its Document Response.

WHEREFORE, EEOC respectfully requests the Court enter the attached protective order and order Defendant to produce the documents referenced in its Document Response.

Respectfully submitted,



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EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION,)	
)	
Plaintiff,)	
)	Case No. 05 cv 0208
v.)	
)	Judge James Zagel
SIDLEY AUSTIN BROWN & WOOD LLP,)	Magistrate Judge Ashman
)	
Defendant.)	

PROTECTIVE ORDER

This matter came before the Court pursuant to Rule 26(c) of the Federal Rules of Civil Procedure for the entry of a Protective Order governing the disclosure of documents and information pertaining to confidential matters. It appears to the Court that entry of this Order is appropriate.

In order to preserve and maintain the confidentiality of certain documents and information to be produced in this litigation, the Court hereby orders as follows:

I. CONFIDENTIAL INFORMATION

A. The term “Confidential Information” is defined as any of the following types of information:

- 1) social security numbers;
- 2) unlisted home address and telephone numbers;
- 3) financial information stating any individual information that is not available to the public, including information regarding an individual’s participation or compensation, capital accounts and retirement payments.

- 4) Proprietary trade secrets as to which Sidley & Austin has maintained confidentiality and which are not disclosed outside Sidley & Austin including: a) non-public information regarding Sidley & Austin's revenues, profits and expenses; b) non-public information regarding chargeable and non-chargeable hours, hourly billing rates, billings, collections and realization where that information is associated with an individual who is identified by name; c) non-public information regarding performance of individual partners and attorneys where that information is associated with an individual who is identified by name; non-public information regarding Sidley & Austin's strategic plans and business goals; and d) partner compensation criteria list.

B. The term "Confidential Document" refers to a document that contains any of the above types of information defined as "Confidential Information," including but not limited to memoranda, databases, compilations and discovery responses that incorporate such Confidential Information.

C. As used herein, "disclosure" or "to disclose" shall mean to divulge, reveal, describe, summarize, paraphrase, quote, transmit, or otherwise communicate directly or indirectly Confidential Information or compilations derived therefrom.

II. RESTRICTION ON USE OF CONFIDENTIAL INFORMATION

A. During the pendency of this litigation, Confidential Information shall be retained solely in the custody of the parties' attorneys and shall not be placed in the possession of or disclosed to any other person, except as otherwise allowed by this Order, as agreed upon by the parties, as otherwise required by law subject to Paragraph II.F of this Order, or as ordered by the

Court. Confidential Information shall be utilized only for the purpose of this litigation (including any appeals).

B. Confidential Information protected by this Order shall not be disclosed in any manner, directly or indirectly, to any persons except as follows, provided that any such person agrees to abide by the terms and conditions of this Order:

- 1) Confidential Information may be used by the parties, class members, witnesses, their attorneys, legal interns and any clerks, paralegals, secretaries, data processors and other support staff in the employ of or retained by such parties or attorneys for the purpose of this litigation provided that all such persons agree to be bound by this Order.
- 2) Confidential Information may be used in all pretrial discovery proceedings, such as depositions, and may be filed in Court, such as in support of or in opposition to summary judgment, or other motions without limitations other than those set forth in Paragraph C of this Order or by Order of the Court.
- 3) Confidential Information may be reviewed by an expert witness or consultant expressly employed or retained by counsel or a party to this litigation to whom it is necessary or appropriate to disclose Confidential Information for the purpose of prosecuting or defending this litigation, provided that these persons agree to be subject to the terms of the Protective Order by signing Exhibit A.

- 4) Confidential Information may be used for motions, at trial, and on appeal of this case, without limitations other than those set forth in Paragraph C of this Order or by Order of the Court.
- 5) Confidential Information may be disclosed to a court reporter during the course of a deposition.

C. Should Confidential Information be included in a pleading, motion, or other court filing, either party may seek leave, upon further order of the Court and for good cause shown, to file such Confidential Information under seal. No document or part of a document shall be filed under seal without Court approval, and in the event that a document or part of a document is filed under seal, the filing party shall also prepare a public version of the document to be filed with the Court with the Confidential Information redacted.

D. A filing party desiring to use Confidential Information shall give the other party sufficient time to comply with the Court's notice of motion requirements to file a motion seeking leave to require the information to be filed under seal or to oppose such a motion. If notice to the other side is impractical under the circumstances, the filing party will take reasonable precautions to exclude Confidential Information or discussion of the particulars of such material until an Order of the Court regarding the filing of the Information is issued. Pending a decision by the Court, documents can be filed under normal Court procedures if the Confidential Information listed in Paragraph I.A. of this Order has been redacted or otherwise removed from the document.

E. Nothing shall prevent disclosure of Confidential Information beyond the terms of this Order if both parties consent in writing to such disclosure, or if the Court, after notice to all affected parties, permits such disclosure.

F. If Confidential Documents are subpoenaed by a third party or requested pursuant to a request under the Freedom of Information Act, the EEOC Compliance Manual, or otherwise, the party subpoenaed or to whom the request is directed will provide the producing party ten days notice when feasible, but no less than five days notice prior to production to enable that party to seek a Protective Order from the Court.

III. DESIGNATION

A. A document or portion of a document that a party determines in good faith to contain Confidential Information as defined in Paragraph I may be designated as Confidential by (1) stamping the word "CONFIDENTIAL" on the document, (2) otherwise indicating that it contains Confidential Information, (3) employing other means provided by this order, or (4) using any other reasonable method agreed upon by the parties.

B. A party may, on the record of a deposition or oral hearing or by written notice to opposing counsel not later than fourteen (14) days after receipt of the transcript of such deposition or oral hearing, designate any portion(s) of the deposition as confidential if the party determines in good faith that the designated portion(s) contain(s) Confidential Information as defined in paragraph I. Until expiration of the above fourteen (14) day period, all transcripts will be deemed "Confidential Documents" under this Protective Order and information therein will be deemed "Confidential Information" under this Protective Order unless otherwise agreed to in writing by the parties. After expiration of this period, any portion of a transcript that has not been designated as Confidential shall not be subject to this Protective Order.

C. If a party inadvertently fails to designate Discovery Material as Confidential Information, it may make the designation belatedly so long as it does so promptly after learning of the oversight. Counsel for the receiving parties shall take reasonably necessary steps to ensure the confidentiality of the Confidential Information, including reasonable efforts to secure return

of the Confidential Information from individuals to whom disclosure was made but would not have been permitted by this Protective Order had the Discovery Material been originally designated as Confidential Information.

IV. MISCELLANEOUS

A. This Order does not limit the right of any party to object to the scope of discovery in this case.

B. This Order does not constitute a determination of the admissibility or evidentiary foundation for the documents or a waiver of any party's objections thereto.

C. Within 90 days after the final completion of the litigation (including any appeals) the parties shall return to each other or (upon request) destroy all copies of Confidential Documents except as required by applicable law or regulation. All retained documents will remain subject to the terms of this Protective Order.

D. The designation of documents or information as Confidential Information or as Confidential Documents shall not be construed as a waiver of any applicable privilege or other immunities from discovery (including without limitation the attorney-client privilege and the attorney work product doctrine) or as a concession by the designating party that such information is relevant or material to any issue or is otherwise discoverable.

E. This Order shall continue indefinitely during and after this litigation, unless modified or terminated by order of this Court.

F. The restrictions set forth in any of the preceding paragraphs shall not apply to Confidential Information that was, is, or becomes public knowledge in a manner other than by violation of this Order.

ORDER

IT IS ORDERED.

Dated: _____, 2005

James B. Zagel, United States District Judge
United States District Court

Dated: _____, 2005

Exhibit A

Statement of Confidentiality and Agreement to Abide by Protective Order

By signing this document, I hereby certify that I have read the Protective Order issued by the United States District Court for the Northern District of Illinois, Eastern Division, governing production and disclosure of Confidential Information in EEOC v. Sidley Austin Brown & Wood, Case No. 05 cv 0208. I understand the Protective Order and agree to be bound by and abide by its contents. I understand that pursuant to the Protective Order, I am prohibited from disclosing the Confidential Information, or any information derived from the Confidential Information, to anyone. I submit to the jurisdiction of the Court for purposes of enforcing the Protective Order.

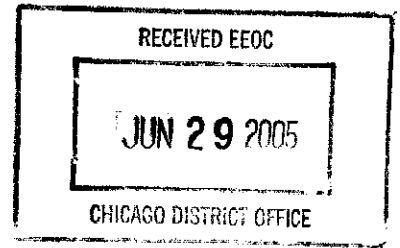
Signature

Name

Date

EXHIBIT B

IN THE UNITED STATE DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION



UNITED STATES EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
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Plaintiff,)
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SIDLEY AUSTIN BROWN & WOOD LLP,)
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Defendant.)

No. 05 C 0208
Honorable James B. Zagel
Magistrate Martin C. Ashman

**DEFENDANT SIDLEY AUSTIN BROWN & WOOD LLP'S RESPONSE
TO THE EEOC'S FIRST SET OF DOCUMENT PRODUCTION REQUESTS**

Defendant Sidley Austin Brown & Wood LLP ("Sidley" or the "Firm") responds to plaintiff Equal Employment Opportunity Commission ("the EEOC") First Set of Document Production Requests as follows:

**RESPONSES AND OBJECTIONS TO
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Subject to the general objections set forth in Appendix A and further specific objections, and without waiver thereof, Sidley responds to the EEOC's requests for production of documents as set forth below. The following responses reflect Sidley's current knowledge and are the result of its investigation conducted to date. Sidley expressly reserves the right to amend or supplement its responses as may be necessary or appropriate, including the right to assert additional general or specific objections to the EEOC's document requests. Because of the highly sensitive and confidential nature of certain of the information sought, production of the documents referenced in the responses is dependent upon the entry of an appropriate Protective Order. Sidley is prepared to meet and confer with the EEOC regarding any questions it may have respecting these responses.