

**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 LLP,)
)
Defendant.)

Case No. 05 cv 0208

Judge James Zagel

Magistrate Judge Ashman

AMENDED PROTECTIVE ORDER

For the reasons stated by the Court on August 11 and August 25, 2005, and for the reasons set forth in the Agreed Motion for Amendment of Protective Order filed on June 15, 2006, it appears that good cause exists for entry of this Amended Protective Order. 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) names of the 31 former Sidley & Austin partners who were informed of a change to counsel or senior counsel in late 1999;
- 2) social security numbers;
- 3) unlisted home address and telephone numbers;
- 4) financial information stating any individual information that is not available to the public, including information regarding an individual’s participation or compensation, capital accounts, retirement payments, loans, annuities, benefits and personal expenses.

- 5) Private, proprietary, or trade secret information as to which Sidley & Austin has maintained confidentiality and which is not disclosed outside Sidley & Austin, limited to these categories:
- (a) non-public information regarding Sidley & Austin's revenues, profits and expenses;
 - (b) non-public information regarding compensation, 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 the performance of individual partners and attorneys where that information is associated with an individual who is identified by name;
 - (d) non-public information regarding Sidley & Austin's strategic plans and business goals;
 - (e) partner compensation criteria;
 - (f) Sidley & Austin's billing policies;
 - (g) partnership agreements and other confidential agreements between and with Sidley & Austin's partners.

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, 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 by signing Exhibit A.

- 1) Confidential Information may be used by the parties, their attorneys, legal interns actively engaged in the conduct of this litigation, 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.
- 2) No personnel files or performance-related information shall be produced or disclosed in pretrial discovery unless the individual to whom the information relates is given fourteen (14) days' notice, in the form provided in Exhibit B to this Order.
- 3) Confidential Information relating to performance, billings, collections, realizations, hours and partner participation/compensation may be disclosed to putative class members, deponents and fact witnesses, as

needed for purposes of this litigation in the course of pretrial discovery, provided that such persons agree to be subject to the terms of the Protective Order by signing Exhibit A. Such information may be shared only in the presence of an EEOC attorney or an attorney representing the Defendant, and no copies or other reproductions of this Information shall be made or retained by any putative class member, deponent or fact witness.

- 4) 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.
- 5) The authors, addressees, copy recipients, originators of the Confidential Information or other persons (a) who have previously seen the Confidential Information; and (b) to whom it is necessary to make such disclosure in connection with the preparation for the prosecution or defense of this action provided they agree to be subject to the terms of this Protective Order by signing Exhibit A.
- 6) Confidential Information may be disclosed to a court reporter during the course of a deposition.

C. The portion of all deposition exhibits, pleadings, discovery responses, transcripts, and other writings filed with the Court in this litigation that contain Confidential Information will be filed in a sealed envelope labeled "CONFIDENTIAL. FILED UNDER SEAL PURSUANT

TO PROTECTIVE ORDER.” If the party filing under seal believes that some or all of the Documents or Information filed under seal should not be sealed, the party shall include a statement identifying such Documents or Information. The other party will be given the opportunity to respond to the filing party’s statement prior to a Court ruling on whether, and what portion of, the filed Documents or Information shall remain under seal. A party receiving a filing under seal may object to the filing of some or all of such Documents or Information under seal by submitting a similar statement. The filing party will be given the same opportunity to respond prior to a Court ruling.

D. The parties shall make reasonable efforts to reach agreement on redacting, coding or otherwise removing Confidential Information to avoid the necessity of filing under seal or to allow documents to be unsealed. Documents may be filed under normal Court procedures if the Confidential Information listed in paragraph I.A of this Order has been redacted, coded or otherwise removed from the document.

E. Nothing shall prevent disclosure of Confidential Information beyond the terms of this Order if both parties, and any individual whose Confidential Information is to be disclosed, 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.

D. A party designating all or a portion of a document or record of a deposition or oral hearing Confidential (“Designated Material”) on or after June 8, 2006, shall contemporaneously identify the subparagraph(s) of the definition of “Confidential Information” (identified by paragraph and any subparagraph of § I.A) that support the designation. If the Designated Material is a record of a deposition or oral hearing and the designating party has determined that more than one paragraph or subparagraph of § I.A supports the designation, the designating party shall identify the portion(s) of the Designated Material to which each paragraph or subparagraph of § I.A applies.

IV. MISCELLANEOUS

A. This Order does not limit the right of any party to object to the scope of discovery in the 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 and regulations. All retained documents will remain subject to this 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.

IT IS SO ORDERED.

Dated: _____

James B. Zagel
United States District Judge

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

[Date]

Re: United States Equal Employment Opportunity Commission
vs. Sidley Austin Brown & Wood LLP
Case No.: 05 C 0208 N.D. Ill.

Dear Counsel:

At the direction of the Honorable James B. Zagel, United States District Court Judge for the Northern District of Illinois, counsel for the United States Equal Employment Opportunity Commission ("EEOC") and Sidley Austin Brown & Wood LLP ("Sidley") are transmitting this letter to inform you about the contents of a Protective Order that will govern discovery in the above-captioned case and the production of information, as detailed below. If you have an objection to the production of this information, you may communicate in writing directly with Judge Zagel and explain the reasons for your objection.

As you are aware from a previous letter, this case involves a Complaint filed by the EEOC on January 3, 2005 alleging that Sidley discriminated against certain former Sidley partners based on their age. Sidley has denied these allegations.

The EEOC has requested information relating to your work at Sidley, including performance-related information and your personnel file.¹ Performance-related information and all non-public individual financial information, including information relating to individual compensation and benefits, will be produced by Sidley pursuant to a Protective Order and treated as Confidential Information under the terms of that Order. Other information in your personnel file (if any), as redacted, will be produced by Sidley but will not be treated as confidential under

¹ Social security numbers, unlisted telephone numbers, information regarding your children, spouses, dependents or named beneficiaries and medical information will be redacted from the file.

[Date]
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the Protective Order. In conformity with the Protective Order, your performance-related information will be disclosed only to the EEOC and its staff, with two exceptions.

First, during the course of discovery Confidential Information may be disclosed to putative class members, prospective witnesses and deponents for use solely in the above-referenced litigation. Prior to disclosing any Confidential Information to these individuals, they will be required to execute a Confidentiality Agreement (“Agreement”), agreeing to be bound by the Protective Order. The Protective Order prohibits these individuals from disclosing Confidential Information to anyone else or from making or retaining a copy of this information.

Second, the information may be filed with the Court or introduced into evidence at some date in the future if deemed relevant by Judge Zagel to motions or trial issues. The Judge has ordered that all Confidential Information be filed under seal subject to his review.

If you have an objection to the disclosure of this information about you to putative class members, prospective witnesses or deponents, you must mail a written objection (“Objection”) to Judge Zagel setting forth your reasons. Your Objection must be postmarked by September 26, 2005. It is not necessary that your Objection be in any particular form nor is it necessary that you retain counsel to submit your Objection, although you may choose to do so. If your Objection contains factual assertions, it must be subscribed as follows:

I declare under penalty of perjury that the foregoing is true and correct. Executed on _____. (Signature)

If you fail to file a timely Objection, you will be deemed to have waived any such Objection.

Any Objection should be mailed to The Honorable James B. Zagel, United States District Court for the Northern District of Illinois, Eastern Division, 219 South Dearborn Street, Suite 2588, Chicago, Illinois 60604. Copies should also be sent to the EEOC and Sidley, as

[Date]
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follows: Equal Employment Opportunity Commission at 500 W. Madison, Suite 2800, Chicago, Illinois 60661, care of Deborah Hamilton and Laurie Elkin, and Grippo & Elden at 111 S. Wacker, Chicago, Illinois 60606, care of Gregory C. Jones.

The Judge has barred both Sidley and the EEOC from advising you as to the appropriateness of filing an objection. If you have any questions regarding what has been requested or produced in discovery or to whom the information may be shown, however, you or your counsel may direct them to: Gregory Jones of Grippo & Elden at (312) 704-7725, and Deborah Hamilton or Laurie Elkin of the EEOC at (312) 353-7649 or (312) 353-7726.

Thank you for your attention to this matter.

Very truly yours,

Gary M. Elden, on behalf of
Sidley Austin Brown & Wood, LLP

John C. Hendrickson, Regional Attorney,
on behalf of Equal Employment
Opportunity Commission