



UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GREAT LAKES EXPLORATION GROUP LLC
Plaintiff,
v.
The Unidentified, Wrecked and (For Salvage-Right Purposes), Abandoned Sailing Vessel, her tackle, apparel, appurtenances, cargo, etc. located within a circle having a radius of 3.5 statute miles, whose center point is at coordinates 45° 32.8' North latitude and 86° 41.5' West longitude, In Rem
Defendant.
File No. 1:04-CV-375
HON. ROBERT HOLMES BELL

PROTECTIVE ORDER

For good cause show, it is hereby ADJUDGED, ORDERED AND DECREED that all documents, testimony, evidence and information produced in this case shall be governed by the terms of this Protective Order on Confidential Information.

1. SCOPE OF ORDER.

The terms and conditions of this Order shall be applicable to and govern all confidential documents and information, and tangible things produced by Plaintiff, in response to discovery of the Intervenor and other proceedings in this case (hereafter referred to as "discovery material"), as well as testimony in the proceeding, matters in evidence, and other information exchanged by the parties in this action or produced by a third party witness which Plaintiff designates as "CONFIDENTIAL" hereunder. Any and all such information may be used solely and exclusively for purposes of the Intervenor's Motion to Dismiss in this proceeding.

2. DESIGNATION OF CONFIDENTIAL MATERIALS

A. Plaintiff shall have the right to designate as “CONFIDENTIAL” any information or thing it believes in good faith constitutes or embodies matter containing or reflecting trade secrets, non-public research or other similar non-public information, confidential or proprietary information, or other information covered by a legitimate privacy right or interest, including without limitation, information about the location, nature, composition and/or characteristics, search for, research regarding, and/or exploration of, the site which is the subject of this proceeding. Within five (5) business days of the entry of this Order, Intervenor shall file with the Court under seal, and shall serve on counsel for Plaintiff, all information that they claim that have independently developed as to the location and/or nature of the Defendant, including all details thereof. In addition, if the Intervenor asserts that they had independently developed any information that is designated by the Plaintiff as CONFIDENTIAL prior to disclosure of such information by Plaintiff pursuant to the terms of this Order, Intervenor shall, within ten (10) business days of service of any such document, thing or other information by Plaintiff, file under seal with the Court, and serve on all counsel for Plaintiff: (a) a detailed and comprehensive written specification of all such information; (b) a notarized notice, signed under oath by the Intervenor, stating the details of Intervenor’s claim that such information had been independently developed by Intervenor prior to such disclosure by the Plaintiff; (c) the names and addresses of all persons having knowledge of such independent development; and (d) all evidence supporting the Intervenor’s claim of independent development. If Plaintiff disagrees with such claim, it shall file a notice with the Court within (10) business days following receipt of such evidence to file a response. The Court will then proceed to adjudicate whether the information had been independently developed by Intervenor prior to such disclosure by Plaintiff, and shall make written findings of fact and conclusions of law thereon. Otherwise, the

designation of material as “CONFIDENTIAL” shall be deemed binding and conclusive.

B. Plaintiff shall designate documents and information as “CONFIDENTIAL” by having stamped or affixed thereon the word “CONFIDENTIAL.” Multi-paged discovery material that is bound together need only be designated “CONFIDENTIAL” on the first page. If the discovery material cannot be so labeled, it shall be designated “CONFIDENTIAL” by a cover letter, memorandum or other appropriate manner. Any “CONFIDENTIAL” designation that is inadvertently omitted during document production may be corrected by timely written notice to opposing counsel.

C. If inspection, measuring, testing, sampling, or photographing of Plaintiff’s processes, documents, interests, property or other claimed rights will reveal or disclose information that is “CONFIDENTIAL,” Plaintiff shall advise Intervenor that the inspection, measuring, testing, sampling, or photographing will be permitted subject to the terms of this Protective Order and that material discovered and the information derived from that material shall be treated as “CONFIDENTIAL.”

D. In addition to the foregoing, any information, document, inference or conclusion utilizing, based upon, and/or derived from confidential information shall also be treated as “CONFIDENTIAL.”

3. RESTRICTION ON DISCLOSURE OF DESIGNATED MATERIALS

A. No information or material designated “CONFIDENTIAL” shall be disclosed to any person or entity except as set forth in this Protective Order. No person shall use any material or information designated “CONFIDENTIAL” except for purposes of Intervenor’s Motion to Dismiss.

B. Information and material designated as “CONFIDENTIAL” shall not be provided, shown, made available, or communicated in any way to any person or entity with the exception of:

(i) the trial attorney of record for Intervenors, and clerical employees working under the direct supervision of such attorney;

(ii) the employee(s) of Intervenors who expressly designated by Intervenors in writing to Plaintiff to assist in the preparation of the Intervenors' at-sea investigation of the search area designated by Plaintiff, with disclosure only to the extent necessary to perform such work. "CONFIDENTIAL" material shall not be disclosed to any such employee until that person has executed a written declaration in the form attached hereto as Exhibit A, acknowledging that he or she has read a copy of this Protective Order, and agrees to be bound by these terms and conditions. Furthermore, no "CONFIDENTIAL" information shall be disclosed to such employee until at least ten (10) business days have elapsed following written provision to lead trial counsel for Plaintiff of (1) the expected disclosure to the proposed employee, and (2) a copy of the written declaration in the form attached as Exhibit A signed by such employee. If the Plaintiff makes a written objection to the proposed disclosure within the ten day period, no disclosure of "CONFIDENTIAL" information may be made to the proposed employee pending, further order of the Court;

(iii) the Court or its staff in connection with the Court's administration and adjudication of the Intervenors' Motion to Dismiss;

(iv) any other individuals who are mutually agreed upon in writing by the parties hereto (as provided for in § 2(C)).

C. Prior to any disclosure of material or information designated "CONFIDENTIAL" other than as provided in section 2(i) and (iii) above, counsel desiring to make such a disclosure shall provide written notice to counsel for the Plaintiff of its intent to make the disclosure, stating therein the specific material to be disclosed at least ten (10) business days before any "CONFIDENTIAL" material is made available to such person(s) along with an explanation of the background (including

each person's place of employment, title, and job description) sufficient to allow the Plaintiff to determine if disclosure will injure the designating party. "CONFIDENTIAL" material shall not be disclosed to any such person until such person has executed a written declaration in the form attached hereto as Exhibit A, acknowledging that he or she has read a copy of this Protective Order and agrees to be bound by its terms. The Plaintiff reserves the right to object to the disclosure of "CONFIDENTIAL" information to any such person, and such objection shall be communicated in writing to the lead trial counsel for the Intervenors within ten (10) business days following Plaintiff counsel's receipt of the name of the person in question. If the parties cannot resolve the issue, they may thereupon present the issue to the Court.

D. In the event that any "CONFIDENTIAL" material or information is used in any court proceeding in connection with the Motion to Dismiss, it shall not lose its "CONFIDENTIAL" status through such use, and the Intervenors shall take all steps required to protect its confidentiality during such use. Any reference to such Confidential information shall be *in camera* and under seal.

4. FILING DESIGNATED MATERIALS

In the event that Intervenors wish to use any Confidential Information in any paper filed in connection with their Motion to Dismiss, they shall file any such paper under seal and comply with all applicable Local Rules for the U.S. District Court for the Western District of Michigan in connection therewith. To assist the Clerk, Intervenors shall file such information in a sealed envelope or other appropriate sealed container on which shall be endorsed the case caption and docket number of this action, an identification of the nature of the contents of the sealed envelope or container, the words "CONFIDENTIAL DOCUMENTS SUBJECT TO PROTECTIVE ORDER" and the date of this Protective Order.

All information shall be held in strict confidence by the Court, and no such sealed envelope

or container shall be provided to any persons except the persons specified in Paragraphs 2(B)(i) and (iii) of this Protective Order.

5. NOTICE

All notices required by this Protective Order are to be served via facsimile with confirmation by regular U.S. mail and e-mail to Richard T. Robol, Esq. and James, Piggush, Esq. The date by which a party receiving a notice shall respond, or otherwise take action, shall be computed from the date indicating that the facsimile was received. Any of the notice requirements herein may be waived in whole or in part, but only in writing signed by an attorney for the designating party.

6. DISPOSITION OF DESIGNATED MATERIALS AT TERMINATION OF THE CASE.

A. Termination of proceedings shall not relieve any person from any obligation, duty or liability under this Protective Order.

B. With respect to any documents marked "CONFIDENTIAL" that have been filed with the Court, it is the obligation of the party who has filed the information to withdraw Confidential Information in accordance with the procedures set forth in the applicable Local Rules for the U.S. District Court for the Western District of Michigan, upon termination of this action. Intervenors shall forthwith return all such documents to Plaintiff.

C. With respect to any documents marked "CONFIDENTIAL" that have not been filed with the Court, within forty-five (45) days after the adjudication of the Intervenors' Motion to Dismiss, or resolution through settlement, Intervenors shall assemble and return all confidential material, including all copies thereof, to the Plaintiff and shall certify by affidavit provided to Plaintiff that all such material has been returned to Plaintiff.

7. THIRD PARTY SUBPOENA OF “CONFIDENTIAL” INFORMATION

If a third party subpoenas information designated “CONFIDENTIAL” under this Protective Order, Intervenor shall not produce “CONFIDENTIAL” information in response to the subpoena but shall instead immediately provide written notice of the subpoena to Plaintiff and to the Court. The Court shall then enter an order appropriate to implementing the purpose, terms and conditions of this Confidentiality Order.

8. GENERAL PROVISIONS

A. “CONFIDENTIAL” materials and information shall be held in the strictest confidence by each person to whom it is disclosed, shall be used by the Intervenor only for purposes of their Motion to Dismiss and no other purpose, whatsoever, and shall not be disclosed to any other person. All “CONFIDENTIAL” information shall be carefully maintained by counsel for Intervenor, who shall ensure that no person receives any access unless entitled to receive such information by the express terms of this Protective Order.

B. The designation of “CONFIDENTIAL” material or information pursuant to this Protective Order shall not be construed as a concession by either party that such information is relevant or material to any issues or is otherwise discoverable.

C. If the Plaintiff through inadvertence produces or provides discovery which it believes is subject to a claim under the attorney-client privilege and/or work product doctrine, it may give written notice to the counsel for the Intervenor that the document or thing is subject to a claim of attorney-client privilege and/or work product and request that the document or thing be returned to the Plaintiff. The Intervenor shall forthwith return to the producing party such document or thing. Return of the document by the Intervenor shall not constitute an admission or concession, or permit any inference, that the returned document or thing is, in fact, properly subject to a claim of attorney-

client privilege and/or work product, nor shall it foreclose them from moving the Court for an order that such document or thing has been improperly designated or should be producible for reasons other than a waiver caused by the inadvertent production.

D. If Plaintiff through inadvertence produces or provides discovery of any material without labeling, marking, or designating it as “CONFIDENTIAL,” it may give written notice to the Intervenor that the document, thing, or other discovery information is “CONFIDENTIAL” and should be treated in accordance with the provisions of this Protective Order. The Intervenor must treat such documents, things, and information as “CONFIDENTIAL” from the date such notice is received.

E. Breach of any Intervenor’s obligations under this Protective Order may result in a finding of contempt of court, and the imposition of sanctions, and may subject the breaching party to civil liability. In addition to the remedies specified above, in light of the inherent difficulty that Plaintiff faces in detecting, proving and enforcing a violation of this Order, in the event that the Court determines that any information has been used or disclosed in violation of this Order as a result of an act or omission of either Intervenor, Plaintiff will be entitled to liquidated damages of one hundred thousand dollars (\$100,000) from the party or parties causing or contributing to such violation.

F. Nothing herein shall be deemed to limit Plaintiff’s other rights in the event of a violation of this Order.

G. Intervenor shall each be subject to the jurisdiction of the United States District Court for the Western District of Michigan, Grand Rapids Division, for all purposes of enforcement of this Protective Order.

H. This Protective Order entered herein shall survive the final adjudication of this

litigation (including any appellate proceedings), and the Court retains continuing jurisdiction to enforce all provisions of this Order.

IT IS SO ORDERED

U.S. DISTRICT JUDGE