IN THE UNITED STATED DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMERICAN INFRASTRUCTURE, INC., :

CIVIL ACTION

Plaintiff

.

v. : 08-2701

ZACHRY CONSTRUCTION CORP. : and ZACHRY AMERICAN :

INFRASTRUCTURE,

:

Defendants.

MEMORANDUM

Goldberg, J. February 23, 2009

This is a trademark infringement case between private litigants involving discovery requests which include materials that the parties claim to be trade secrets or other "confidential research, development, or commercial information." Consequently, counsel have submitted a proposed Stipulated Protective Order pursuant to Fed. R. Civ. P. 26(c).

Rule 26(c) expressly sanctions the entry of protective orders regarding the revelation of trade secrets, etc. "Good cause" must exist for such protection. A showing that materials are trade secrets or other confidential business information and would provide competitive advantage to third parties thereby resulting in particularized harm upon disclosure does demonstrate "good cause." <u>Leucadia Inc. v. Applied Extrusion</u> Technologies, Inc., 998 F.2d 157, 166 (3d Cir. 1993).

The proposed protective order sets forth the types of information that may be sought through discovery within the specified categories that are protectable, and that significant,

particularized and competitive harm would result should such discovery proceed without

the protection sought. Further, the Court finds that the need for a protective order

outweighs any legitimate public interest in disclosure. Both parties are private litigants

involved in a private cause of action and there appear to be no issues raised in this lawsuit

which have importance for public health or safety. On the other hand, the public interest

is, under the circumstances here, fostered by the protection of intellectual property and

confidential business information.

The terms of the protective order being entered herewith are consistent with the

teaching of Glenmede Trust Company v. Thompson, 56 F.3d 476 (3d Cir. 1995). The

order contains procedures which properly allocate the burden of proof under Rule 26 (c)

and should assure the smooth exchange of discovery material in this complex case,

thereby avoiding unnecessary adjudication of confidentiality on a document-by-document

basis. Although disclosure is restricted to certain parties' respective legal personnel and

expert consultants, it is broad enough to permit the parties adequate trial preparation and

at the same time prevent unnecessary intrusions on protected interests.

The Court, therefore, approves the attached Proposed Protective order.

BY THE COURT:

MITCHELL S. GOLDBERG, J.

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