

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**DATA TREASURY CORPORATION,**

**2:06-CV-72 DF**

**Plaintiff**

**v.**

**WELLS FARGO & COMPANY; et al.**

**Defendants**

**MOTION FOR ENTRY OF PROTECTIVE ORDER**

Plaintiff Data Treasury Corp. and Defendants Wells Fargo & Company; Wells Fargo Bank, National Association; Bank Of America Corporation; Bank Of America, National Association; U.S. Bancorp; U.S. Bank, National Association; Wachovia Corporation; Wachovia Bank, National Association; BB&T Corporation; Branch Banking And Trust Company; Compass Bancshares, Inc.; Compass Bank; Cullen/Frost Bankers, Inc.; The Frost National Bank; First Horizon National Corporation; First Tennessee Bank, National Association; National City Corporation; National City Bank; Zions Bancorporation; Zions First National Bank; Bank Of New York Co., Inc.; The Bank Of New York; Unionbancal Corporation; Union Bank Of California, National Association; Bank Of Tokyo-Mitsubishi UFJ, Ltd.; City National Corporation; City National Bank; Comerica Incorporated; Comerica Bank & Trust, National Association; Deutsche Bank Trust Company Americas; First Citizens Bancshares, Inc.; First Citizens Bank & Trust Company; Lasalle Bank Corporation; Lasalle Bank NA; M&T Bank Corporation; M&T Bank; UBS Americas, Inc.; Small Value Payments Company, LLC; The Clearing House Payments Company, LLC; Magtek, Inc; First Data Corporation; Telecheck

Services, Inc., Remitco, LLC<sup>1</sup> (the “Moving Parties”) hereby move that the Court enter the protective order attached to this motion as Exhibit A (the “Proposed Order”) to govern discovery in this case.

The Proposed Order is virtually identical to the protective orders this court entered in related litigation: *Data Treasury Corp. v. Bank of America, Corp., Bank of America, N.A.* (2:05-cv-292); *Data Treasury Corp. v. Wachovia Corp., Wachovia Bank N.A.* (2:05-cv-293); and *Data Treasury Corp. v. Wells Fargo & Co, Wells Fargo Bank, N.A.* (2:05-cv-291).<sup>2</sup> Additionally, the Proposed Order is substantially similar to the protective order in the related *Data Treasury Corp. v. J.P. Morgan Chase & Co., et al.* (5:02-cv-124) litigation. Thus, as parties and non-parties to the related prior cases, the Plaintiff and many of the Defendants involved in this case have already, and continue to, work under the Proposed Order’s terms.

The Non-Joining Defendants agree with all of the Protective Order’s provisions except for two. First, the Proposed Order includes only one level of confidentiality such that all documents either receive no confidentiality designation, or are marked “confidential.” “Confidential” documents under the Proposed Order may be shared with outside counsel and in-house counsel who are previously identified and disclosed to all parties. All parties have an opportunity to object to in-house counsels’ receipt of “confidential” information. In contrast, the Non-Joining Defendants request a two-tier protective order that allows documents to be marked either “for outside counsel only (“FOCO”)” or “confidential.” Under their proposal, documents

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<sup>1</sup> This list of defendants includes all defendants except for: Suntrust Banks, Inc.; Suntrust; Harris Bankcorp, Inc.; Harris, N.A.; Keycorp; Keybank, N.A.; The PNC Financial Services Group, Inc.; PNC Bank, N.A.; Electronic Data Systems; HSBC North America Holdings Inc.; HSBC Bank USA, N.A.; Viewpointe Archive Services, LLC; Bancorpsouth, Inc.; Bancorpsouth Bank (the “Non-Joining Defendants”). Additionally, Citizens Financial Group, Inc. is filing a separate notice that joins with the Moving Defendants regarding the one tier protection and joins with the Non-Joining Defendants with regards to the additional language in paragraph 28.

<sup>2</sup> The Proposed Order contains only two differences from the prior orders, and neither is material. First, the last full paragraph of § 1 is new and governs the use of confidential information produced by non-parties in related actions. Second, the words “in accordance with Local Rule CV-5(a)(7)” have been added to the end of § 7 for clarity.

marked “confidential” may be shared with in-house or outside counsel, but documents marked “FOCO” may only be shared with outside counsel.

Many of the documents previously produced under the Proposed Order will be re-produced or otherwise incorporated into this litigation’s document productions because of overlapping patents and parties. Changing to a two-tier order will require the parties to re-review their productions, re-designate confidentiality, re-label their productions, and re-produce their documents. Accordingly, the majority of parties agree that this case should proceed under the same protective order as the previous litigation to prevent that unnecessary hardship and complication. Furthermore, changing the Proposed Order’s terms would add another layer of complexity because it would require the parties to handle the previously produced documents under two different protective orders. The Proposed Order would allow the parties who have already produced documents to simply incorporate the prior productions by reference to the extent those productions are relevant to this case.

Additionally, the Non-Joining Defendants’ concerns can be remedied via other means. The Proposed Order requires a party to disclose the identity of any in-house counsel who may review “confidential” information before granting the in-house counsel access. If the Non-Joining defendants have concerns about particular in-house counsel receiving confidential information, then they can raise those concerns when the in-house counsel are designated. Once those concerns are raised, the parties can address them on an individual basis and enter into such agreements as may be necessary.

The second disagreement the Non-Joining parties have with the Proposed Order regards the exact language of § 28’s prosecution bar. The Moving Defendants believe that the Proposed

Order's language adequately restricts reviewing attorneys' ability to participate in prosecuting new patents, continuations in part, or reexaminations.

Dated: November 9, 2006

Respectfully submitted,

FISH & RICHARDSON P.C.

By: /s/ Thomas M. Melsheimer

Thomas M. Melsheimer  
Texas State Bar No. 13922550  
1717 Main Street  
Suite 5000  
Dallas, TX 75201  
214-747-5070 (Telephone)  
214-747-2091 (Telecopy)

Robert E. Hillman  
Fish & Richardson P.C.  
225 Franklin Street  
Boston, MA 02110-2804  
617-542-5070 (Telephone)  
617-542-8906 (Telecopy)

Robert M. Parker  
Robert Christopher Bunt  
Parker & Bunt, P.C.  
100 E. Ferguson, Suite 1114  
Tyler, Texas 75702  
(903) 531-3535 (Telephone)  
(903) 533-9687 (Telecopy)

Michael E. Jones  
Texas Bar No. 10929400  
E. Glenn Thames, Jr.  
Texas Bar No. 00785097  
Potter Minton  
500 Plaza Tower  
110 North College, Suite 500  
Tyler, TX 75702

ATTORNEYS FOR DEFENDANTS  
BANK OF AMERICA CORPORATION,  
BANK OF AMERICA, NATIONAL  
ASSOCIATION

By:/s/ Thomas M. Melsheimer by permission on behalf of the following counsel:

Danielle Williams  
Kilpatrick Stockton LLP  
1001 West Fourth Street  
Winston-Salem, NC 27101

Bill Boice  
Audra Dial  
Kilpatrick Stockton LLP  
1100 Peachtree Street, Suite 2800  
Atlanta, Georgia 30309-4530

Kenneth Godlewski  
Stephen Baskin  
Kilpatrick Stockton LLP  
607 14th Street, NW, Suite 900  
Washington, DC 20005-2018

**ATTORNEYS FOR DEFENDANTS  
BB&T CORPORATION, BRANCH BANKING  
& TRUST CO., COMERICA BANK & TRUST,  
N.A., COMERICA, INC., M&T BANK, M&T  
CORPORATION, WACHOVIA  
CORPORATION, WACHOVIA BANK, N.A.**

John G. Flaim  
Brian Hurst  
Brian C. McCormack  
Baker & McKenzie  
2001 Ross Avenue, Suite 2300  
Dallas, TX 75201-0800

**ATTORNEYS FOR DEFENDANTS  
WELLS FARGO & COMPANY, WELLS  
FARGO BANK, N.A.**

Raymond Sweigart  
Jack Barufka  
Scott Pivnick  
Pillsbury Winthrop Shaw Pittman LLP  
1650 Tysons Blvd.  
McLean, VA 22102-4859

**ATTORNEYS FOR DEFENDANTS  
BANK OF NEW YORK CO., INC., THE BANK  
OF NEW YORK, UNION BANK OF  
CALIFORNIA, N.A., UNIONBANCAL  
CORPORATION**

David L. Ward, Jr.  
Donalt J. Eglinton  
Ward and Smith, P.A.  
1001 College Court  
New Bern, NC 28562

Larry Carlson  
David Taylor  
Baker Botts L.L.P. (Dallas)  
2001 Ross Avenue  
Dallas, TX 75201-2980

**ATTORNEYS FOR DEFENDANTS  
FIRST CITIZENS BANCSHARES, INC.,  
FIRST CITIZENS BANK & TRUST CO.**

James H. Carter  
James T. Williams  
Jane Jaang  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004-2493

**ATTORNEYS FOR DEFENDANTS  
THE CLEARINGHOUSE PAYMENTS CO.,  
L.L.C. F/K/A  
SMALL VALUE PAYMENTS CO., L.L.C.**

Kurt M. Sauer  
Daffer McDaniel  
The Chase Building  
700 Lavaca, Suite 720  
Austin, TX 78701-3119

**ATTORNEYS FOR DEFENDANTS  
CULLEN/FROST BANKERS, INC., THE  
FROST NATIONAL BANK**

EDWARD G. POPLAWSKI (Pro Hac Vice)  
E-Mail: EPoplaws@Sidley.com  
JEFFREY A. FINN (Pro Hac Vice)  
E-Mail: JFinn@Sidley.com  
CARISSA A. TENER (Pro Hac Vice)  
E-Mail: CTener@Sidley.com  
SIDLEY AUSTIN L.L.P.  
555 West Fifth Street, Suite 4000  
Los Angeles, California 90013  
tel. 213-896-6000  
fax 213-896-6600

LANCE LEE  
Texas Bar No. 240004762  
YOUNG, PICKETT & LEE, L.L.P.  
4122 Texas Blvd.

P.O. Box 1897  
Texarkana, Texas 75504  
tel. 903-794-1303  
fax 903-792-5098  
E-Mail: WLanceLee@aol.com

**COUNSEL FOR FIRST DATA  
CORPORATION, TELECHECK SERVICES,  
INC.;REMITCO, LLC, LASALLE BANK  
CORPORATION, LASALLE BANK NA,  
DEUTSCHE BANK TRUST COMPANY  
AMERICAS, BANK OF TOKYO-MITSUBISHI  
UFJ, LTD.**

ANDRWS KURTH LLP

Jerry L. Beane  
Texas Bar No. 01966000  
[jerrybeane@andrewskurth.com](mailto:jerrybeane@andrewskurth.com)  
Gerald C. Conley  
Texas Bar NO. 04664200  
[geraldconley@andrewskurth.com](mailto:geraldconley@andrewskurth.com)  
Kay Lynn Brumbaugh  
Texas Bar No. 00785152  
[kaylynnbrumbaugh@andrewskurth.com](mailto:kaylynnbrumbaugh@andrewskurth.com)  
Tonya M. Gray  
Texas Bar No. 24012726  
[tonyagray@andrewskurth.com](mailto:tonyagray@andrewskurth.com)  
1717 Main Street, Suite 3700  
Dallas, TX 75201  
Telephone: 214-659-4400  
Telecopy: 214-659-4401

**ATTORNEYS FOR DEFENDANTS COMPASS  
BANCSHARES, INC. AND COMPASS BANK,  
FIRST HORIZON NATIONAL  
CORPORATION  
FIRST TENNESSEE BANK, N.A.**

VINSON ELKINS

William L. LaFuze  
Texas Bar No. 11792500  
[wlafuze@velaw.com](mailto:wlafuze@velaw.com)  
D. Ferguson McNiel  
Texas Bar No. 13830300  
[fmcniel@velaw.com](mailto:fmcniel@velaw.com)  
2300 First City Tower  
1001 Fannin St.  
Houston, TX 77002  
Telephone: 713-758-2595  
Telecopy: 713-615-5017



Scott W. Breedlove  
Texas Bar No. 00790361  
[sbreedlove@velaw.com](mailto:sbreedlove@velaw.com)  
Vinson & Elkins LLP  
3700 Trammell Crow Center  
2001 Ross Ave.  
Dallas, TX 75201-2975  
Telephone: 214-220-7700  
Telecopy: 214-220-7716

Harry Lee Gillam, Jr.  
Texas Bar No. 07921800  
[gil@gillamsmithlaw.com](mailto:gil@gillamsmithlaw.com)  
Melissa Richards Smith  
Texas Bar No. 24001351  
[melissa@gillamsmithlaw.com](mailto:melissa@gillamsmithlaw.com)  
Gillam & Smith LLP  
110 South Bolivar, Suite 204  
Marshall, TX 75670  
Telephone: 903-934-8450  
Telecopy: 903-934-9257

**ATTORNEYS FOR  
UBS AMERICAS, INC.**

IRELL & MANELLA LLP

Betsy Rosenblatt  
[brosenblatt@irell.com](mailto:brosenblatt@irell.com)  
Andrew Weiss  
[aweiss@irell.com](mailto:aweiss@irell.com)  
1800 Avenue of the Stars  
Suite 900  
Los Angeles, CA 90067  
Telephone: 310-203-7106  
Telecopy: 310-556-5206

**ATTORNEYS FOR:  
CITY NATIONAL BANK  
CITY NATIONAL CORP.**

SMEAD, ANDERSON & DUNN LLP

Melvin R. Wilcox, III  
[mrw@smeadlaw.com](mailto:mrw@smeadlaw.com)  
2110 Horseshoe Lane  
P.O. Box 3343  
Longview, TX 75606  
Telephone: 903-232-1892  
Telecopy: 903-232-1881

Of Counsel:  
John J. Feldhaus  
[jfeldhaus@foley.com](mailto:jfeldhaus@foley.com)

Anthony H. Son  
[ason@foley.com](mailto:ason@foley.com)  
FOLEY & LARDNER LLP  
3000 K Street, N.W.  
Washington, DC 20007  
Telephone: 202-672-5300

**ATTORNEYS FOR:  
U.S. BANCORP, U.S. BANK, NATIONAL  
ASSOCIATION, NATIONAL CITY  
CORPORATION AND NATIONAL CITY  
BANK, ZIONS BANCORPORATION AND  
ZIONS FIRST NATIONAL BANK**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on November 6, 2006 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Thomas M. Melsheimer  
Thomas M. Melsheimer

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