

BAYCOL

MASTER FILE NO. 0247408

§§§§§ IN THE DISTRICT COURT OF

IN RE: TEXAS SECOND REGION
BAYCOL LITIGATION

HARRIS COUNTY, TEXAS

295TH JUDICIAL DISTRICT

CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER

BE IT REMEMBERED that on this day, the Court has signed this Protective Order which shall govern the disclosure of certain documents produced, or to be produced by all Defendants in a Baycol case pending in the Second Administrative Region in the course of discovery and trial of this litigation.

WHEREAS, documents or information proprietary to Defendants containing proprietary and/or trade secrets may be produced or disclosed during the course of discovery in this litigation; and,

WHEREAS, disclosure of such confidential information might be injurious to Defendants; and

WHEREAS, good cause has been shown for the entry of a limited protective order pursuant to Rule 166b of the Texas Rules of Civil Procedure; and,

WHEREAS, the Court wishes the parties to proceed expeditiously with discovery in this litigation without burdening the Court with unnecessary procedural litigation.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the following rules and procedures shall govern all documents obtained from Defendants through discovery in this litigation.

1. Any documents, limited to the following categories, which contain trade secrets or proprietary information may be designated as confidential by the producing party. The categories are:

- a. Customer names;
- b. Proprietary licensing, distribution, pricing, marketing, design, development, research and manufacturing information regarding products or services whether previously or currently marketed or under development;
- c. Production information and business organization and strategy information;
- d. Information concerning competitors;
- e. Financial information not publicly filed with any federal or state regulatory authorities; and members and/or customers of any Health Maintenance Organization;
- f. Information submitted to the FDA or other governmental agency that under applicable regulations is exempt from disclosure under the Freedom of Information Act; and
- g. Commercial information which has not been disclosed to the public and which Defendants believe in good faith would result in an invasion of the privacy of Defendants' employees.

2. All such documents designated as confidential shall be marked "Produced Pursuant to Protective Order in Cause No. 0247408," or "Subject to Protective Order, MDL 1431," or other words indicating confidentiality. The stamp shall be affixed in such a manner as not to obliterate or obscure any written matter. Each page shall be stamped by the producing party with an identifying "bates" number.

3. Trade secrets and/or propriety documents, which are appropriately marked, and any copies thereof and any information contained herein or derived therefrom, shall be made available only to the following persons when needed by them in connection with their duties in the conduct of this action:

- a. Attorneys of record in this litigation, their partners or associate attorneys;
- b. Any persons employed by such attorneys or their firms, when working in connection with this litigation under the direct supervision of partners or associate attorneys of said firms;

- c. Any independent expert, consultant or similar person who has been consulted for the purpose of being retained, or who has been retained by counsel to provide assistance, expert advice, technical consultation, or testimony in this litigation, and the employees of such experts, consultants or similar persons when working in connection with this litigation under the direct supervision of said persons;
 - d. The Court;
 - e. Court reporters or other official personnel reasonably required for the preparation of transcripts of testimony;
 - f. Any other person on such terms and conditions as the parties may mutually agree, in writing, or as the Court may hereafter direct by further Order;
 - g. To any current or former officer, employee, agents, subcontractors of these defendants; and
 - h. To any of these defendants' experts for purpose of direct or cross examination.
4. Plaintiffs may share the information, ideas and documents with other attorneys involved in similar pending litigation against Defendants involving allegations similar to those alleged in this litigation.
5. Given the fact that co-defendants may be commercial competitors, defense attorneys shall not disclose to their clients, or to any clients' employees except in-house counsel, any trade secrets, proprietary or confidential information produced by any other Defendant without consent of the producing party, order of the Court, or pursuant to paragraph 3(g) and 7.
6. Except as provided herein, no copies of any such confidential material shall be made or furnished, and no information contained therein shall be disclosed to any person, firm, or corporation except those identified in this Order, without prior written consent of Defendants or their attorneys of record in these actions. Prior to the disclosure of any confidential materials or information covered by this Order, the attorney making such disclosure shall furnish a copy of this Order to the person, firm, or corporation to whom the materials or information contained therein is to be disclosed, and shall advise such persons that, pursuant to this Protective Order, such confidential materials, or the information contained therein, may not be divulged or disseminated, in any way, to any other person, firm or corporation, other than as provided by this Order, and that the Court orders them to comply with the provisions of this Order.

7. Confidential materials, and any copies thereof, may be disclosed to deponents during the course of their preparation for, and the taking of, their depositions. Prior to the disclosure of such information to a deponent, the attorney making the disclosure shall advise the deponent to whom the materials or information contained therein are to be disclosed that, pursuant to this Order, such deponent may not divulge any such materials or the information contained therein to any other person, firm, or corporation.

8. This Order does not restrict or limit the use of confidential material at any hearing or trial. Any matters confidential in nature shall be submitted *in camera* to the Court.

9. In the event that any party to this litigation disagrees with the designation of any information as Confidential information, the party shall first confer with the other parties as to whether they will agree to a change, if that fails either party may seek appropriate relief from the Court. Exceptions to this Order may be made by unanimous agreement of the parties to it, and any party may seek relief from the Court. The producing party shall always have the burden of showing that the materials are trade secrets and/or proprietary in nature rendering them subject to this Order. This Order shall be without prejudice to any party to bring before the Court this issue of whether any particular information, is or is not, confidential.

10. All parties who review documents subject to the terms of this Order are hereby bound by the terms of this Order and subject themselves to the jurisdiction of this Court. The terms of this Order will remain in effect after the termination of this litigation.

11. The deadline for confidentiality designation of deposition testimony and documents marked and used as exhibits therein is two (2) weeks from the date counsel for all parties receives a copy of the deposition transcript, together with all exhibits thereto, from the court reporter for that particular day of deposition.

12. After designation of an expert or witness by a Plaintiff, a Defendant may notify that Plaintiff of the status of the expert or witness as a competitor. Plaintiff will then require the expert or witness to execute an acknowledgment of the Confidentiality Order.

SIGNED AND ENTERED on January ____, 2003.

Judge Tracy Christopher