UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

INSTRUCTIONS FOR USE OF FORM CONFIDENTIALITY ORDER

To: Counsel and Parties Requesting Entry of a Confidentiality Order
From: Joseph F. Anderson, Jr., Chief Judge
Subject: Form Confidentiality Order
Date: May 6, 2004

The court has adopted a form Confidentiality Order for use in this district. All judges will accept this form order and will require its use as a base form. Even when required, however, the court will consider requested modifications of the language as discussed below. The form may be found on the district court's website (www.scd.uscourts.gov) under "Forms."

I. PROCEDURE FOR OBTAINING A CONFIDENTIALITY ORDER.

A. Joint request for unmodified form order.

The court will automatically approve joint requests for entry of a confidentiality order if submitted in the form found on the court's website. If you are requesting an unmodified order, you should: (1) download the form order; (2) make the appropriate edits (addition of caption and selection of the introductory and closing paragraphs designated "if by consent"); (3) obtain signatures of counsel for all parties; and (4) submit the proposed consent order to the court via cover letter. The cover letter should inform the court that the order is unmodified.

B. Joint request for modified form order.

Counsel may also jointly request a modified form order. If requesting a modified form order, counsel should submit a proposed consent order (edited as noted above), signed by counsel, and reflecting all proposed modifications. **In addition,** counsel should submit a cover letter explaining the basis for each proposed modification along with a redlined version of the order comparing the form document to the proposed order. **Note:** Neither a redlined version nor explanation is required to delete the Reading Room provisions, although the change should be noted in the cover letter.

C. Competing versions.

If counsel agree that a confidentiality order should be entered, but disagree as to the specific provisions, they should submit a single draft redlined order along with a disk containing the proposed alternative versions of the order. The draft redlined order should indicate which, if any, proposed changes to the form order are by agreement. It should also indicate the alternative proposals as to any areas of dispute. The alternative proposals shall be clearly marked to indicate which party advances each alternative. The parties may submit either joint

or separate cover letters explaining the basis for all proposed changes.[1]

When competing versions of the order are submitted, the introductory and closing paragraphs marked "if not fully by consent" should be selected. Counsel should not sign the proposed order as it would not be fully by consent.

D. Disagreement as to need for Confidentiality Order

If the parties disagree as to the need for a confidentiality order, application for an order shall be by motion with appropriate supporting memorandum. The party proposing the order should: (1) utilize the form Confidentiality Order as a base for the proposed order; (2) attach both the proposed order and a redlined version comparing the form order to the proposed order (if seeking changes to the standard language); and (3) explain the need for a confidentiality order and any proposed modifications.

II. KEY PROVISIONS OF FORM CONFIDENTIALITY ORDER

The form order contains a number of key provisions that are likely to be appropriate to most cases. For instance, it:

imposes limits on what may be designated as confidential and imposes a duty on counsel to certify that the designation is appropriate (¶ 3);

delineates the procedures for filing documents under seal (¶7) ;

establishes procedures for challenging confidentiality (¶ 9) ;

addresses how both unfiled confidential documents and filed sealed documents are to be handled at the conclusion of the action (¶ 10);

provides that the order is always subject to modification, including on motion of third parties (¶ 11); and

prohibits representation of the order as a specific judicial finding that any particular document is, in fact, subject to protection under the Federal Rules of Civil Procedure or otherwise (¶ 12).

In addition, there are some provisions which may be appropriate only in a more limited category of case. For example, the Reading Room provisions (¶ 4) may be counter-productive in cases involving few documents while they may be critical to document intensive cases. Similarly, the provisions placing special conditions on access by litigants or their employees may not be necessary in every case. These latter provisions are included as it would be easier to delete them in the inappropriate case than to redraft them for the appropriate ones.

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[1] Where the dispute is substantial, the court may require the parties to submit their dispute by motion.