

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

RWJ COMPANIES, INC.

Plaintiff,

v.

Case No.: 1:05-cv-1394-DFH-TAB

EQUILON ENTERPRISES LLC, d/b/a SHELL  
OIL PRODUCTS US,

Defendant.

**STIPULATED PROTECTIVE ORDER**

This matter comes before the Court on joint motion and stipulation by Plaintiff RWJ Companies, Inc. ("RWJ") and Defendant Equilon Enterprises LLC, d/b/a Shell Oil Products US ("Shell") pursuant to Rule 26(c)(7) of the Federal Rules of Civil Procedure. The purpose of this Order is to limit the disclosure and use of information contained in documents exchanged during the discovery process which pertains to the parties' trade secrets and confidential research, development or commercial information, as set forth below.

1. The parties anticipate that they will exchange documents and things during the course of this litigation which may contain trade secrets, proprietary information and other confidential research, development or commercial information (hereinafter "Confidential" or "Highly Confidential" information).

2. If Confidential or Highly Confidential information were to be disseminated to the public or provided to the parties' competitors, it would harm the parties in the following manner:

a. The Non-Binding Indication of Interest for 54 Shell Branded Locations Indianapolis Region, dated June 30, 2005, is Highly Confidential because it contains the

successful bid in an open offering for the purchase/sale of Shell's Indianapolis real estate, including the offer price and other confidential terms. Dissemination of this information to RWJ and the public would be harmful to Shell because of the proprietary nature of the information, particularly in light of the fact that the transaction has not yet closed. Because of the possibility that the transaction between the successful bidder and Shell may never close, dissemination of the information contained within the successful bid would be harmful to Shell because Shell may wish to place the real estate on the market again. If third parties are privy to this information, it would put Shell at a disadvantage for receiving an acceptable bid which, because of the passage of time and the incurrence of additional expenses, may be higher than the current successful bid.

b. Documents designated by Shell as "Confidential" are confidential and should not be disseminated to the public because they contain Shell's trade secrets, confidential research and development, and other commercial information, including information concerning the nature of Shell's business and the process by which Shell conducts business. In particular, the following documents may contain Shell's confidential trade practices: Shell marketing materials, guides and brochures; Customer Value Proposition (CVP) manuals and guides; Shell Brand manuals, guides and brochures; Shell MSO University materials and practice guides; MSO Site Operations manuals and guides and other training materials; Shell Health, Safety & Environment Manual; MSO Operator meeting agenda and materials; Shell's private website materials, accessible only with a password; and Shell's contracts with RWJ. Dissemination of this material to the public will result in Shell's competitors becoming privy to Shell's

confidential and proprietary information, and will put Shell at a disadvantage in the competitive fuel industry.

3. Based upon the parties' uncontested representations, the Court finds that good cause has been shown for entry of a protective order pursuant to Rule 26(c)(7) of the Federal Rules of Civil Procedure, as follows.

4. This Protective Order applies only to:

a. the materials or things (including copies, transcriptions, or other reproductions of materials) produced by a party in this action pursuant to the discovery provisions of the Federal Rules of Civil Procedure, an order of this Court, or otherwise; and

b. portions of deposition or hearing transcripts discussing or revealing such materials or things;

which are designated as "Confidential" or "Highly Confidential" by the producing party under the terms of this Order (sometimes collectively referred to herein as "Confidential Material").

5. Any party may designate as "Confidential" or "Highly Confidential" any materials produced in this action, or any portion thereof, as well as any transcript of proceedings such as depositions or hearings, which contain, describe, evidence, identify, or refer to Confidential Material. Materials previously produced without being stamped "Confidential" or "Highly Confidential" may be so designated by written notice from the producing party which identifies the documents by Bates number or other specific description. Except where expressly stated otherwise herein, all documents, things or transcript portions designated as Confidential Materials shall be treated as such for all purposes of this Protective Order.

6. Any document or thing produced in this action may be designated as Confidential Material by marking each page that contains such Confidential Material with the word "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." In lieu of marking the original of a document, if the original is not produced, the designating party may mark the copy or copies that are produced or exchanged.

7. Confidential Materials shall be used for purposes of this action only and for no other purpose, and shall not, without leave of this Court, be disclosed to any person or entity except in accordance with the terms of this Order.

8. Materials marked "Confidential" shall not be disclosed or made available to persons other than "Qualified Persons."

9. The term "Qualified Persons" includes and is limited to:

- (a) Attorneys for a party (in-house or outside counsel) in this litigation, and the law clerks, paralegals, clerical, secretarial or administrative staff of the attorneys to whom it is appropriate that the material be shown for purposes of this litigation;
- (b) The Court, personnel of the Court (including personnel in the Clerk's office), deposition stenographers, and deposition videographers;
- (c) The directors, officers, partners, principals, employees, or agents of any corporation or other organization that is a Party and who are assisting the parties' attorneys in the litigation; and
- (d) Expert witnesses or consultants employed by the parties or their counsel for purposes of this litigation.

10. Materials marked "Highly Confidential" shall not be disclosed or made available to persons other than in-house or outside counsel for a party who have signed an Affidavit in the form of Exhibit A hereto; current or former employees of the designating party during the course of a deposition; or the Court, provided that such materials are filed under seal.

11. Expert Witnesses.

a. *Current Employees of a Competitor of Shell:* To the extent that RWJ retains an expert witness which is currently employed by a competitor of Shell's, RWJ shall provide Shell fifteen (15) days advance notice prior to providing that person Confidential Materials, as well as sufficient information to enable Shell to (1) determine whether it has an objection to such disclosure and the use of said witness and (2) seek relief from this Court. If Shell consents to RWJ's retention of the expert witness or the Court overrules an objection by Shell to such retention, and RWJ does not, in fact, retain such expert witness to testify on behalf of RWJ, then Shell and its counsel of record in this matter agree not to contact such disclosed expert witness regarding the subject matter of the above-captioned lawsuit and regarding RWJ's operation of the Indianapolis Cluster, as defined in RWJ's Complaint.

b. *Former Employees of a Competitor of Shell:* To the extent that RWJ retains an expert witness which was formerly employed by a competitor of Shell's, the following process shall apply:

i. RWJ may retain an expert witness which was formerly employed by a competitor of Shell's without any additional notification to Shell; provided, however, that counsel for RWJ obtains an attestation in writing from such expert witness that he/she meets the following profile characteristics:

a. not currently or formerly involved in litigation with Shell individually or as an owner of a business;

b. with the exception of an expert testifying on behalf of RWJ as to its alleged damages, not subject to any other Protective Order entered in a lawsuit involving Shell as a party;

c. not engaged personally or through a firm as a business expert or consultant with respect to competitors of Shell regarding alternative channels of trade, such as the multi-site contract-operator model or other similar contract-operator model;

d. not engaged personally or through a firm as a business expert or consultant on behalf of any competitor of Shell concerning distribution methods and/or channels of trade;

e. agrees not to provide expert or consultant services to any competitor of Shell concerning distribution methods and/or channels of trade until after the final conclusion of this action; and

f. executes the undertaking required by this Protective Order.

ii. If RWJ retains an expert witness which was formerly employed by a competitor of Shell's that does not attest to all of the foregoing profile characteristics, RWJ shall notify Shell of the retention of such expert witness and identify the profile characteristics that such expert witness fails to meet. Shell shall have fifteen (15) days to petition the Court to perform an *in camera* review of RWJ's retention of the expert witness, without disclosure to Shell of the identify of such expert witness. RWJ shall have fifteen (15) days thereafter to respond to Shell's objections. The Court may consider whether suitable protections can be implemented to preserve Shell's legitimate concerns regarding confidentiality and may impose such protections in allowing the expert witness to gain access to Confidential Materials. If the Court finds that the expert witness fails to meet the foregoing profile characteristics and that there is an inadequacy

of other measures to preserve Shell's legitimate concerns regarding confidentiality, then such expert witness shall be barred from gaining access to Confidential Materials.

As used in this paragraph, the phrase "employed by" shall mean "provided with a job that pays wages or a salary."

12. Anyone who provides Confidential Materials to a Qualified Person shall ensure that such person has received and reviewed this Protective Order. If anyone discloses Confidential Material to a Qualified Person described in section 10(d), they shall obtain from said person an Affidavit in the Form of Exhibit A hereto prior to, and as a condition of, said disclosure.

13. If Confidential Materials are used or referenced at a deposition in this case, the parties may designate those portions of the deposition during which such Confidential Materials are discussed as Confidential or Highly Confidential. Only "Qualified Persons" shall be present during the discussion of any Confidential Materials. The portion of the transcript of any deposition taken in this action which has been designated as Confidential or Highly Confidential shall be treated as Confidential Material under the terms of this Protective Order.

14. Any member of the public or any party may challenge the designation of a document, thing or transcript as Confidential Material at any time. In the event of such a challenge, the challenger shall first make a reasonable attempt to resolve the dispute through good faith negotiation with the designating party or non-party. If the matter cannot be resolved, the challenger may file an appropriate motion with this Court. The designating party or non-party shall have the burden to establish that its designation is supported by good cause and fits within the terms of this Order.

15. Nothing in this Protective Order shall be construed to preclude the party producing Confidential Materials from seeking additional protection for such materials or the contents of such materials. Likewise, nothing in this Protective Order shall prejudice the right of any party or member of the public to seek relief from or modification to the requirements of this Order for any purpose deemed sufficient by the Court.

16. Any non-party which produces documents in this case may receive the benefits of and be bound by the terms of this Protective Order by completing an Affidavit in the form of Exhibit A, filing it with this Court and serving it upon all parties of record.

17. Nothing in this Protective Order shall be construed to prevent this Court from disclosing any facts relied upon by it in making or rendering any finding, ruling, order, judgment, or decree of whatever description.

18. The Clerk of this Court is directed to maintain under seal all Confidential Materials that are filed in Court in this litigation.

19. In the event that a party wishes to use any Confidential Materials in any affidavits, briefs, memoranda of law, or other papers filed in Court in this litigation after the entry of this Protective Order, such Confidential Materials shall be filed in a sealed envelope bearing the following designation:

CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

IN ACCORDANCE WITH THE AGREED PROTECTIVE ORDER OF THE COURT, THE CONFIDENTIAL MATERIAL INSIDE THIS ENVELOPE SHALL BE TREATED AS CONFIDENTIAL AND MUST NOT BE SHOWN TO A PERSON OTHER THAN COURT PERSONNEL AND COUNSEL OF RECORD IN THIS ACTION.

The sealed envelope containing the Confidential Material shall be maintained under seal by the Court.



20. Whenever Confidential Material is introduced or used at a hearing or other proceeding, excluding trial, the portions of the proceeding that concerns such Confidential Material shall be conducted under circumstances to ensure that only Qualified Persons have access to such Confidential Materials. Upon the request of any party, the portions of the transcript of any such proceeding, along with associated exhibits, that concern Confidential Materials shall be sealed and kept confidential pursuant to the provisions of this Order.

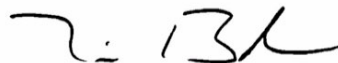
21. This Order does not govern the handling of Confidential Material at trial. The parties may later apply to the Court for an order governing the use of Confidential Material in trial proceedings.

22. Except as to materials filed with the Court, within sixty (60) days after final conclusion of this action, whether by settlement, trial, or appeal, the portions of any documents and all reproductions of any documents produced by a party and all deposition transcripts and all summaries that contain information designated as Confidential Material under this Order shall either be surrendered to the designating party or destroyed, unless the Court otherwise orders.

23. This Order and any others entered in this action which restrict the communication and use of any documents or information produced in this action shall continue to be binding after the conclusion of this action except (a) that there shall be no restriction on documents that are used as exhibits in Court (unless such exhibits were admitted under seal), and (b) that a party or member of the public may seek written permission from the designating party or an order of the Court with respect to dissolution or modification of this Order or any other protective order.

**SO ORDERED:**

Dated: January 18, 2006



---

Tim A. Baker  
United States Magistrate Judge  
Southern District of Indiana

Accepted and Agreed:

**EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

RWJ COMPANIES, INC.

Plaintiff,

v.

EQUILON ENTERPRISES LLC, d/b/a SHELL  
OIL PRODUCTS US,

Defendant.

Case No.: 1:05-cv-1394-DFH-TAB

**AFFIDAVIT OF**

\_\_\_\_\_, being duly sworn, states:

1. That he/she resides at \_\_\_\_\_ in the City/County of \_\_\_\_\_ and State of \_\_\_\_\_. That he/she is an employee of \_\_\_\_\_.

2. That he/she has read the Stipulated Protective Order dated \_\_\_\_\_, 2005, in RWJ Companies, Inc. v. Equilon Enterprises LLC d/b/a Shell Oil Products US, Case No. 1:05-cv-1394-DFH-TAB in the United States District Court for the Southern District of Indiana.

3. That he/she is familiar with, understands and agrees to comply with and be bound by the terms of said Protective Order.

4. That he/she will not disclose to persons other than those specifically authorized by said Order, and will not copy or use except for the purposes of this litigation as defined in the Protective Order, any documents or information obtained pursuant to said Order, and

5. That he/she consents to the jurisdiction of the United States District Court for the Southern District of Indiana, and to venue in that Court, even after final adjudication, including settlement or other disposition, of this case, to enforce the Protective Order, to punish disobedience of the Protective Order, and to decide all issues involving the Protective Order, even if he/she resides or is employed outside the State of Indiana.

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(title/position)

SWORN TO BEFORE ME and subscribed in my presence this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public