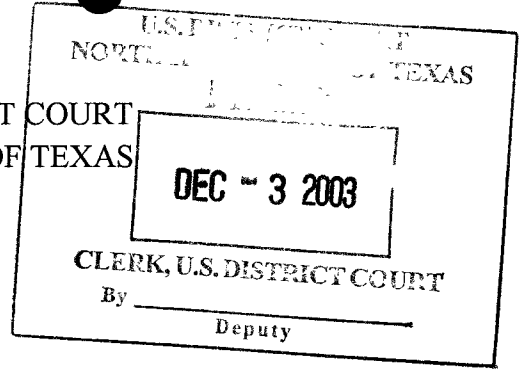


ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

vs.

TXI OPERATIONS, L.P.,

Defendant.

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CIVIL ACTION NO. 303 CV 1868 P

**AGREED PROTECTIVE ORDER**

The parties are seeking the production of certain business, personnel, employment, medical and legal records in this action. Those documents contain confidential personal information about Plaintiff Julie Fundling and certain other present or former employees of Defendant TXI Operations, L.P. ("TXI"), as well as proprietary business information and/or confidential employment related information. These documents may also contain information that is protected by the attorney-client relationship. The parties desire to maintain the confidentiality of all information contained in these sensitive records for all purposes and uses other than those that may be required for the conduct of this litigation. The parties therefore enter into this Agreed Protective Order to limit the disclosure of such documents and information and to ensure that no unfair advantage is gained by any party as a result of discovery or other activities. By entering into this Agreed Protective Order, neither party is agreeing to produce any specific records or waiving their objections to producing specific records.

Accordingly, the parties stipulate and agree, by and through their undersigned counsel of record, as follows:

1. Any disclosure that a party believes in good faith contains proprietary information, privileged information or confidential or otherwise sensitive business or personnel information, including but not limited to answers to interrogatories, answers to requests for admissions, deposition testimony, production of documents or tangible things, and other discovery responses contemplated by the Federal Rules of Civil Procedure, may be designated CONFIDENTIAL by a marking that prominently displays the word "CONFIDENTIAL."

2. Confidential Information shall be maintained in confidence and shall not be disclosed to anyone other than those permitted herein. Confidential Information and information derived therefrom will be used solely for the purpose of pursuing Ms. Fundling's claims in this litigation.

3. Counsel receiving Confidential Information may, subject to the limitations of paragraph 4, disclose the Confidential Information to the following individuals, solely for the purpose of pursuing Ms. Fundling's claims in this litigation:

- (i) the Court (including court staff);
- (ii) Attorneys of record for the parties, including any attorney, clerical staff, paralegal, law clerk, or other employee of counsel for TXI's firm and of the legal department of the EEOC (including outside copy services), and Defendant's in-house legal representatives;
- (iii) testifying experts retained by a party;
- (iv) consulting only experts retained by a party;
- (v) the parties and their employees who are assisting counsel and who have a need to know the Confidential Information;

(vi) any court reporter(s) taking deposition testimony and their necessary stenographic, videographic, and clerical personnel; and

(vii) other witnesses, in connection with preparation for their testimony or for use during depositions or testimony at any trial.

4. Counsel of record receiving Confidential Information, prior to disclosing it, except to persons in categories 3(i), 3(ii) and 3(vi), shall: (a) inform the individual as to the terms of this order; (b) obtain that person's written agreement to be bound by the provisions of this Order in the form attached as Exhibit A; and (c) submit an executed copy of the agreement promptly to counsel producing the Confidential Information.

However, counsel of record need not obtain written agreement to be bound by the Protective Order prior to utilizing Confidential Information during a deposition of a witness over whom the counsel has no opportunity to discuss and/or obtain the witness's agreement, so long as all other provisions of this Order are complied with, the Confidential Information is maintained as required by this Order and the use of the Confidential Information in the deposition is not designed to avoid obtaining the written agreement required by this Order.

5. Nothing in this Order precludes TXI from using information obtained in this lawsuit internally for proper and lawful business purposes.

6. Nothing herein will prevent any party from applying to the Court for modification of the terms of this Order at any time upon a showing of good cause.

7. At any time after the production of any materials designated as Confidential by one party, any other party to this Order may serve a notice of objection to such designation stating the reasons for such objection. The parties shall make a good faith effort to confer verbally and to resolve any disagreement over any objection to a "Confidential" designation of

documents or information. Should the parties be unable to resolve the issue raised by the objection, the objecting party may thereupon seek a ruling from this Court with respect to the merits of the designation. The burden of proving the appropriateness of the designation shall be upon the party designating the materials as confidential.

8. At times, witnesses at depositions may testify about documents or other information that is deemed confidential in accordance with this order. During the deposition, any party may designate all or portions of deposition testimony as confidential under this Agreed Protective Order by advising the court reporter and the videographer, as applicable, and all counsel at the deposition or proceeding of such fact. The court reporter shall transcribe those portions of the testimony so designated and mark the face of each relevant page of the transcript with the word "Confidential."

9. Whenever any confidential document is identified or marked as an exhibit in connection with deposition testimony given in these proceedings, it shall be kept separate from the other exhibits in an envelope marked "Confidential – Subject to Agreed Protective Order." Once the written transcript is marked and prepared in the foregoing manner, the videographer shall label any tape which includes confidential information as "Confidential – Subject to Agreed Protective Order."

10. Subject to the Federal Rules of Evidence, the Confidential Information may be offered in evidence at trial, deposition, court hearing, or in connection with any motion, response or other pleading filed with the Court, but only under the terms of this protective order.

11. If filed with the Court, the Confidential Information, whether it be deposition testimony or confidential documents, shall be filed under seal to be reviewed by Court personnel only and not to be released to the public. Each sealed envelope containing the specific

information detailed in this paragraph shall be labeled with the caption of this action, the terms “Confidential Information” or “Confidential—Attorneys’ Only” and the following statement:

“This envelope is sealed pursuant to order of the Court. It contains Confidential Information produced in this case by one of the parties and shall not be opened, or its contents displayed or revealed, prior to trial except by the Court or the Court’s judicial staff or by further order of the Court.”

The parties will agree to confer, prior to filing a pleading or other document with the Court, as to whether any documents marked as “Confidential” can be filed without the protections of this paragraph.

12. Nothing in this Protective Order shall preclude any party from seeking and obtaining from the Court additional protection with respect to the confidentiality of information, documents, or other things, as that party may consider appropriate. Nothing in this Protective Order shall be construed as a waiver of any objections that a party may have with regard to any document, thing, or information.

13. If the case is appealed, the party designating the Confidential Information shall agree to such orders as necessary to allow the Confidential Information to be included in the record of appeal.

14. If another court or an administrative agency subpoenas or orders the production of Confidential Information from any Party, the Party from whom the information is sought shall notify the other Parties of such subpoena or order as soon as possible and, at least, within five (5) days of receipt of the subpoena or order. The Party from whom information is sought shall wait a minimum of ten (10) days to tender the documents to the requesting entity, unless the requesting entity asks the documents be produced in less than ten days, in order to give the other Parties an opportunity to review the order or subpoena and seek appropriate relief from the Court if desired. In the event that the information ordered by the requesting entity is to be produced

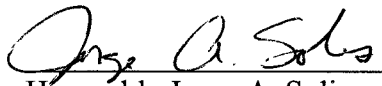
within ten days, the party from whom the information is sought shall notify the other parties within one day of its receipt of the subpoena or order and will not produce the documents until so ordered.

15. This Order is intended to facilitate efficient litigation between the parties and is not intended to alter resolution of any substantive issues or to affect the parties' substantive rights.

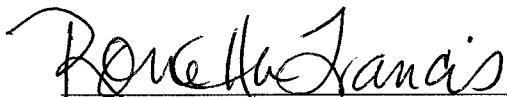
16. This Order may be amended by agreement of counsel for the parties in the form of a stipulation filed with and approved by the Court.

17. The Order shall survive until the final destruction of the Confidential Information, and the Court shall retain jurisdiction to resolve any dispute concerning the use or disclosure of Confidential Information. The EEOC will maintain the Confidential Information in accordance with this Order and then destroy these records in accordance with EEOC Order 201/Appendix A. The parties may not use Confidential Information for any reason other than for the purposes of pursuing Julie Fundling's claims as asserted by the EEOC in this litigation, and all appeals therefrom.

IT IS SO ORDERED this 31<sup>st</sup> day of December, 2003.

  
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Honorable Jorge A. Solis  
United States District Judge

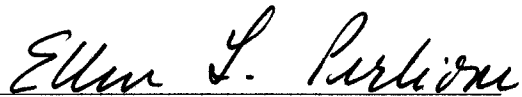
AGREED



Ronetta J. Francis  
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ATTORNEYS FOR DEFENDANT  
TXI OPERATIONS, L.P.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

EQUAL EMPLOYMENT  
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Defendant.

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CIVIL ACTION NO. 303 CV 1868 P

1. My name is \_\_\_\_\_.
2. I am aware that an Agreed Protective Order has been entered in the above-captioned action and a copy of this Order has been given to me.
3. I agree that any documents, information, materials or testimony, which are protected under the Agreed Protective Order entered in this case and designated as Confidential Materials will be used by me only in connection with the above-captioned matter.
4. I agree not to disclose or discuss such protected materials with any person other than those individuals permitted by the Order to review such materials.
5. I understand that any use of such confidential documents, information, materials, or testimony obtained by me (or any portions or summaries thereof) in any manner contrary to the provisions of the Order may subject me to a sanction from this Court for violating the Order.

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