

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES BRYAN : CIVIL ACTION
 :
v. :
 :
THE PEP BOYS -- MANNY, MOE and :
JACK, a Pennsylvania Corporation : NO. 00-1525

MEMORANDUM AND ORDER

HUTTON, J.

September 21, 2000

Presently before the Court is the parties' Stipulated [Proposed] Protective Order. For the foregoing reasons, the Court declines to grant the relief sought.

I. BACKGROUND

The parties' propose to designate as "confidential" any information that such party or non-party in good faith believes qualifies as a trade secret under Pennsylvania Law, information of a private or personal nature, including, but not limited to, income tax returns, salary information and private commercial information not publicly available. Other portions of the order propose how the parties would designate and handle confidential information.

II. DISCUSSION

In recent years, litigants have increasingly asked federal courts to grant protective orders restricting the disclosure of

information the parties deem embarrassing or sensitive. See *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 785 (3d Cir. 1994). Seizing upon case law that has established the courts' broad powers to grant such protection in appropriate cases, they have asked courts to protect--both in and out of court-- materials previously understood as unprivileged, public information. See e.g., *Morton v. F.H. Paschen, Inc.*, 1998 WL 13270 (E.D. Pa. January 14, 1998) (denying defendant protective order for payroll and personnel records). But the general rule in the federal system is still freedom of information. See *Leucadia, Inc. v. Applied Extrusion Technologies, Inc.*, 998 F.2d 157, 161-62 (3d Cir. 1993). And a protective order is still an exceptional form of relief, to be granted only where the most serious prejudice is threatened, even--and perhaps especially--where the parties seek it jointly. See *Nault's Automobile Sales, Inc. v. American Honda Motor Co., Inc.*, 148 F.R.D. 25, 43-44 (D. N.H. 1993). Federal Rule of Civil Procedure 26(c) establishes the standard for evaluating a request for a protective order. Under Rule 26(c), a court, "upon good cause shown . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense" See F. R. Civ. P. 26(c) (West 2000). In this Circuit, the good cause requirement is no mere formality. Rather, "Good cause is established on a showing that disclosure will work a clearly defined and serious injury to

the party seeking closure. The injury must be shown with specificity." *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1071 (3d Cir. 1984)). "Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning," do not support a good cause showing. *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986). The burden of justifying the confidentiality of each and every document sought to be covered by a protective order remains on the party seeking the order. *Id.* at 1122. The specificity requirement not only acts as a strict limit upon what may be protected, but further provides the Court with the information necessary to tailor the least restrictive possible order, should the circumstances justify one.

In determining whether good cause exists, the Court considers a number of factors identified in the Third Circuit's *Pansy* decision, and enumerated in *Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 483 (3d Cir. 1995). They are:

- 1) whether disclosure will violate any privacy interests;
- 2) whether the information is being sought for a legitimate purpose or for an improper purpose;
- 3) whether disclosure of the information will cause a party embarrassment;
- 4) whether confidentiality is being sought over information important to public health and safety;
- 5) whether the sharing of information among litigants will

promote fairness and efficiency;

6) whether a party benefitting from the order of confidentiality is a public entity or official; and

7) whether the case involves issues important to the public.

Id.

Therefore, under the Pansy and Glenmede framework, a party desiring a protective order must demonstrate specifically, through an application of these factors, that disclosure would work a clearly defined and serious injury upon him. See Pansy, 23, F.3d at 786. It bears repeating that the fact that such an order is sought jointly by the parties in a non-adversarial manner does not excuse the Court from its duty of scrutinizing the merits of a proposed protective order. See Nault's, 148 F.R.D. at 43-44.

Returning to the present case, the parties have offered the Court no substantiation for the requested order. The parties clearly reached this agreement for the purpose of containing potentially embarrassing facts. But where embarrassment is the chief concern, the embarrassment must be "particularly serious" to suffice. See Pansy, 23 F.3d at 787. Otherwise anxious parties could cloak the legal process with secrecy in even the most mundane cases. See Glickstein v. Neshaminy School Dist., No. CIV.A.96-6236, 1998 WL 83976, *2 (E.D. Pa. Feb. 26, 1998).

In any case, all indications are that this litigation is undeserving of extraordinary protective measures. If the parties

still wish to obtain a protective order, they may re-apply, supplying the Court with the requisite information.

An appropriate Order follows.

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O R D E R

AND NOW, this 21st day of September, 2000, upon
consideration of parties' Stipulated [Proposed] Protective Order,
IT IS HEREBY ORDERED that consent to the Protective Order is
DENIED.

BY THE COURT:

HERBERT J. HUTTON, J.