

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

SOFTWARE CONSULTING PARTNERS, INC. : CIVIL ACTION  
 :  
 v. :  
 :  
 MEDLINE INDUSTRIES, INC. : NO. 98-5359

MEMORANDUM AND ORDER

HUTTON, J.

April 26, 1999

Presently before this Court is the unopposed Motion by Defendant Medline Industries, Inc. ("Medline") for a Protective Order Regarding Confidential Information (Docket No. 19). For the foregoing reasons, Medline's Motion is **DENIED**.

**I. BACKGROUND**

In this matter, Medline Industries, Inc. ("Medline" or "Defendant") argues that all information requested by the moving party should be protected by a confidentiality order. Medline asserts that the all information sought by either side should be subject to a confidentiality order unless otherwise agreed. Medline argues that the subject of the action is a purely private dispute between private parties, thus there is no issue of public concern.

**II. DISCUSSION**

Federal Rule of Civil Procedure 26(c)(7) allows a court, "upon good cause shown," to order that "a trade secret or other

confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way." Miles v. Boeing Co., 154 F.R.D. 112, 114 (E.D. Pa. 1994) (quoting Fed. R. Civ. P. 26 (c)(7)). Nevertheless, such orders of confidentiality cannot be granted arbitrarily. Pansy v. Borough of Stroudsburg, 23 F.3d 772, 785-86 (3d Cir. 1994). "Disturbingly, some courts routinely sign orders which contain confidentiality clauses without considering the propriety of such orders, or the countervailing public interests which are sacrificed by the orders." Id. Therefore, this Court will carefully scrutinize the request for the confidentiality order.

A party wishing to obtain a confidentiality order over discovery materials must demonstrate that "good cause" exists for the order of protection. Pansy, 23 F.3d at 786; Miles, 154 F.R.D. at 114. "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), cert. denied, 484 U.S. 976, 108 S.Ct. 487, 98 L.Ed.2d 485 (1987). 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. Pansy, 23 F.3d at 786-87 (footnote omitted).

In determining whether good cause exists, the federal courts have adopted a balancing approach, under which the following factors may be considered:

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.

Glenmede Trust Co. v. Thompson, 56 F.3d 476, 483 (3d Cir. 1995).

"Whether this disclosure will be limited depends on a judicial balancing of the harm to the party seeking protection (or third persons) and the importance of disclosure to the public." Pansy, 23 F.3d at 787 (citing Arthur R. Miller, Confidentiality, Protective Orders, and Public Access to the Courts, 105 Harv.L.Rev. 427, 435 (1991)).

This Court finds that Medline has not articulated reasons that constitute good cause to justify a confidentiality order. Rather than identify specific information that it wishes to protect, Medline moves this Court to issue a protective order covering virtually all discoverable information. Moreover, the Defendant fails to articulate why a protective order is necessary. Medline claims that "[w]here as here, the subject of litigation concerns the core trade secrets and confidential information of the parties, discovery has customarily been accompanied by a Protective Order." (Def.'s Mem. at 1.) A general allegation of potential harm is insufficient to grant the confidentiality order. More specificity is needed. The interest of the public to have access to information concerning judicial proceedings is a strong one. Pansy, 23 F.3d at 789. This Court will not eviscerate this interest by granting a confidentiality order covering all information in this case based on such general allegations of harm as submitted by the Defendant.

Moreover, the Third Circuit has cautioned against orders of confidentiality "by recognizing the enduring beliefs underlying freedom of information laws: that an informed public is desirable, that access to information prevents governmental abuse and helps secure freedom, and that, ultimately, government must answer to its citizens." Id. at 792. As such, this Court must exercise the appropriate restraint in considering Medline's request by requiring

a limitation to what is confidential information and more than the general allegations of harm offered by the Defendant.

**III. CONCLUSION**

Consequently, Medline has not shown "good cause" to justify a protective order. Accordingly, this Court denies Medline's Motion.

An appropriate Order follows.

