

STATE OF MAINE
Cumberland, ss.

BUSINESS AND CONSUMER DOCKET
Docket No. BCD-WB-CV-09-39

L.L. BEAN, INC.)
)
Plaintiff/Counterclaim Defendant)
)
v.)
)
WORCESTER RESOURCES, INC.)
)
Defendant/ Counterclaim Plaintiff)

STATE OF MAINE
Cumberland, ss, Clerk's Office
JUL 28 2011
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SUPPLEMENTAL CONFIDENTIALITY ORDER

Following on the telephonic conference of counsel pursuant to M.R. Civ. P. 26(g) on July 22, 2011, the court issues this supplemental order regarding criteria for designating documents as “Confidential” or “Highly Confidential—Attorney Eyes Only” under the January 22, 2010 Confidentiality Order in this case.

In the course of responding to discovery in this case, Defendant/Counterclaim Plaintiff Worcester Resources, Inc. [“Worcester”] has designated thousands of its documents as “Highly Confidential- Attorney Eyes Only” for purposes of the Confidentiality Order.¹ Plaintiff/Counterclaim Defendant L.L. Bean disputes the designation as being vastly overbroad and has moved for sanctions.

¹ The spreadsheet Worcester has filed lists documents by category and has a “No. Pages” column that presumably identifies the total pages of documents in that category. At the end of the spreadsheet, the heading is 21,862 Total Documents Produced. It is not clear whether the 21,862 refers to the total number of documents designated by Worcester as “Highly Confidential—Attorney Eyes Only” or to the total number of pages in the documents so designated. Whether the total is 21,862 pages or 21,862 documents, it is more than the court has time to review in the context of a discovery dispute.

The motion for sanctions is denied, as the parties' disagreement appears to stem from a good-faith difference in interpretation of the Confidentiality Order.

This Supplemental Order is intended to help the parties narrow their disagreement. Essentially, it is the court's view that a document qualifies for designation as "Highly Confidential—Attorney Eyes Only" only if disclosure of that document in and of itself could cause competitive injury. Thus, a routine purchase order or invoice or cancelled check would not be eligible because the information contained in each such document means little in isolation. However, any company financials would likely qualify.

As indicated during the conference, if the dispute over designation of documents narrows to a number of documents in the low three figures (meaning about one or two hundred), the court can review those to determine whether the designation is justified. The court does not have time to review many more documents than that, and if such review is required, intends to appoint a referee at a cost to be shared initially but subject to allocation solely to one party depending on the outcome of the referee's analysis. Plainly, the trial now scheduled for the fall of 2011 will be in jeopardy if a reference is required.

IT IS ORDERED THAT the January 22, 2010 Confidentiality Order is hereby modified as follows:

1. A document may be designated as "Confidential" if if the document contains information about a party's corporate activities, strategic planning, financial condition or other commercial information, or contains information of a sensitive nature about a party's identifiable employees or other persons affiliated with the party. The names of employees contained in any payroll or employment records

may be redacted, provided that the redacting party assigns numbers or other means of identifying employees other than by name.

2. A document may be designated as “Highly Confidential—Attorney Eyes Only” only if the document meets both of the following requirements

(a) within its four corners, the document contains “information protected from disclosure by statute or that should be protected from disclosure as confidential personal information, trade secrets, personnel records, or commercial information.” *Confidentiality Order* at ¶ 3, and

(b) the designating party has a reasonable good-faith belief that disclosure of the document to any one beyond the opposing party’s attorneys and legal staff, in and of itself and standing alone, “would reasonably be expected to result in injury to the designating party.” *Confidentiality Order* at ¶ 6.

3. L.L. Bean employees may view documents designated as “Confidential,” under the following conditions:

(a) No L.L. Bean employee whose duties include regular (at least once a month) contact by any means or medium with any vendor of balsam products shall be permitted to view Confidential documents.

(b) L.L. Bean counsel will maintain a log which identifies, by name and job title, each L.L. Bean employee who views Confidential documents.

(c) Each such employee will sign an agreement confirming that the employee has read, understands and promises to obey the terms of the January 22, 2010 Confidentiality Order and this Supplemental Confidentiality Order.

4. L.L. Bean’s Motion for Sanctions is denied.

Except as expressly modified herein, the Confidentiality Order remains in full force and effect. Pursuant to M.R. Civ. P. 79(a), the clerk is hereby directed to incorporate this order by reference in the docket.

Dated 27 July 2011



A. M. Horton
Justice, Superior Court

Entered on the Docket: 7.28.2011
Copies sent via Mail Electronically