

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THREE ANGELS BROADCASTING
NETWORK, INC., DANNY LEE SHELTON,
Plaintiff

v.

GAILON ARTHUR JOY
ROBERT PICKLE,
Defendants

CIVIL ACTION NO. 07-40098-FDS

CONFIDENTIALITY AND PROTECTIVE ORDER

THE ABOVE ENTITLED MATTER came before me for hearing on March 7, 2008 upon Plaintiffs Three Angels Broadcasting Network, Inc. and Danny Lee Shelton's Motion for Protective Order (Document #40). On March 10, 2008, I invited both parties to submit a proposed Confidentiality Order. Based upon the pleadings, the written and oral submissions of the parties, the proceedings before the Court, and the file and record in this matter, this Court hereby ORDERS that, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the following protections, directives, and procedures shall govern the discovery and production of documents, information and materials by any person or entity in relation to this case.

This Order governs all documents and information produced, or to be produced by any party or third party in connection with this litigation, including documents and things produced or to be produced, any answers to interrogatories, responses to requests for admissions, and deposition and other testimony disclosed through discovery in this case (the "Subject Discovery Materials"). The Subject Discovery Materials will be used for no other purpose than this

litigation. "Confidential Information" as used herein means any type or classification of information in any of the Subject Discovery Materials which is designated as "**CONFIDENTIAL**" by one of the parties, or a third party (the "designating party"), in accordance with this Order.

Confidential Designation

1. Whenever the designating party determines that a disclosure of the Subject Discovery Materials will reveal matters that such party believes in good faith are not generally known or readily available to the public, and that such party deems to constitute proprietary information, confidential business or commercial information, and/or trade secrets relating to its business, such party has the right to designate such information as confidential. In the case of written information, this designation must be made by marking the page or pages where such Confidential Information is contained, "**CONFIDENTIAL**", either prior to its disclosure to the other party (the "receiving party"), or at the time a copy(ies) of such written information is provided to the receiving party.

Any party wishing to designate a document as Confidential Information shall first discuss with the requesting party whether the production of the requested information in redacted form would be satisfactory, or if some other accommodation regarding the document(s) can be reached. If after consultation, the parties are unable to come to agreement regarding the production in redacted, or other form, they shall confer per Local Rule 37.1. Thereafter, the requesting party may move to compel the production of the document(s) at issue and the

responding party shall file the documents at issue with the court under seal per the provisions of Local Rule 7.2. as part of their opposition to the motion to compel.

Depositions

2. In the case of a deposition or other testimony, testimony containing Confidential Information shall be designated "**CONFIDENTIAL**" either at the time of testimony or within two weeks of receipt of the written transcript. Until such designations are made, the transcript must not be disclosed by the non-designating party to persons other than those persons named or approved according to Paragraph 4 herein.

At any time during the taking of a deposition on oral examination, counsel for the designating party may state that a particular line of questioning should be treated as "**CONFIDENTIAL**" as in the case of written disclosures of information covered by Paragraph 1 above. Counsel for the parties shall then determine whether the line of questioning should not be carried out at that particular time, or whether it should be carried out with the following conditions:

a. The reporter may be instructed to transcribe the questions and answers separate from the transcript for the remainder of the deposition, which pages shall be marked as "**CONFIDENTIAL**".

b. During any time that the line of questioning involving Confidential Information is being followed, any and all representatives of the receiving party other than counsel, parties, and outside experts subject to the terms of this Agreement as evidenced by the signing of a document in the form of **Exhibit A** attached hereto and served on opposing

counsel prior to disclosure of such Confidential Information may be excluded from the deposition.

c. Any other conditions mutually agreeable to the parties to protect the confidential status of the information.

Use of Confidential Information

3. If any non-designating party or their counsel intends to use at trial, or for the purpose of any motion filed with the Court, any documents, interrogatory answers, deposition testimony, or other discovery responses which have been designated as Confidential Information, he/she shall so advise designating party's counsel seven (7) days prior to such use, and counsel for all parties shall confer in an effort to agree upon a procedure to maintain the confidentiality of such Confidential Information. If no agreement is reached, the matter shall be submitted to the Court by the party opposing the use of Confidential Information by motion with the material at issue filed under seal per the provisions of Local Rule 7.2.

Use of Information Designated "Confidential"

4. All Subject Discovery Materials that are received by either party pursuant to pretrial discovery in this action that have been designated by the other party as containing or comprising Confidential Information must be retained by the receiving party and must not be furnished, shown or disclosed to any other person, except that, and solely for the purposes of this action, any such Confidential Information may be disclosed by counsel to "Qualified Persons." Qualified Persons as used herein means:

i. the Board of Directors, officers or internal experts of receiving party, on a strict need-to-know basis;

- ii. legal counsel involved in the present action, including in-house counsel for each party;
- iii. any litigation assistant or paralegal employed by and assisting such counsel, and stenographic, secretarial or clerical personnel employed by and assisting such counsel in this action;
- iv. any court reporter or typist recording or transcribing testimony given in this action; and
- v. outside experts subject to the terms of this Agreement as evidenced by the signing of a document in the form of **Exhibit A** attached hereto and served on opposing counsel prior to such disclosure of Confidential Information.

5. In the event that counsel for the receiving party finds it necessary to make a disclosure of Confidential Information pursuant to Paragraph 3 above to a person other than a Qualified Person, including designated experts who are assisting counsel in the prosecution or defense of this action and who shall not otherwise be employed by or be a consultant to the receiving party, counsel for such party must, no less than ten (10) days in advance of such disclosure, notify the producing party's outside trial counsel in writing of:

- i. the Confidential Information to be disclosed; and
- ii. the person(s) to whom such disclosure is to be made.

The producing party or their outside trial counsel has ten (10) days after receipt of the written notice within which to object in writing to the disclosure and, in the event objection is made, no disclosure will be made without Court Order. If no objection is made or if an Order of Court permits the disclosure, counsel for the receiving party must, prior to the disclosure, inform the individual to whom the Confidential Information is to be disclosed as to the terms of this

Agreement, and have the individual acknowledge this in writing by signing a document in the form of **Exhibit A** attached hereto, the executed document to be served on the producing party within ten (10) days of the signing, acknowledging that he/she is fully conversant with the terms of this Agreement and agrees to comply with it and be bound by it.

6. If a producing party inadvertently produces to a receiving party any document that it deems confidential without designating it as Confidential Information, upon discovery of such inadvertent disclosure, the producing party must promptly inform the receiving party in writing, and the receiving party shall thereafter treat the document as Confidential Information under this Stipulation.

7. Neither party is obligated to challenge the propriety of any Subject Discovery Materials designated as Confidential Information, and a failure to do so in this action does not preclude a subsequent attack on the propriety of the designation.

8. This Agreement shall not preclude any party from using or disclosing any of its own documents or materials for any lawful purpose.

/s/Timothy S. Hillman
TIMOTHY S. HILLMAN
MAGISTRATE JUDGE

April 17, 2008

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

*,
Plaintiff
v.
*,
Defendant

CIVIL ACTION NO.

I, _____, hereby declare under penalty of perjury that:

I confirm that I have read the Stipulation of Confidentiality and Protective Order (the “Stipulation”) entered in this case.

I hereby confirm that:

a. I will maintain the confidentiality of the Confidential Information in accordance with the Stipulation, and will use, store and maintain such documents in accordance with the Stipulation so as to prevent the disclosure of such Confidential Information to any unauthorized person.

b. I will use any Confidential Information imparted to me solely for the purpose of the above litigation, and I will make no commercial use or any other litigation or non-litigation use of any part of such Confidential Information and shall not assist or permit any other person to do so.

c. Upon the earlier of: (i) demand of counsel of record for the party who supplied the Confidential Information to me or (ii) within 30 days after the final termination of instant litigation, including appeal, I will return all Confidential Information and all copies thereof, including all notes, abstracts, summaries and memoranda relating thereto which contain any of the substance thereof, to the person or party from whom I received the Confidential Information.

I agree to be fully bound by the Stipulation and I hereby submit to the jurisdiction of the United States District Court for the District of Massachusetts, for purposes of enforcement of the Stipulation and this undertaking.

Dated: _____

Signature

Address: