

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

LEFLORIS LYON,)	
)	
Plaintiff)	
)	
vs)	
)	Civil Action No. 4:10-cv-185
CANADIAN NATIONAL RAILWAY COMPANY, et al.)	
)	
Defendants)	
)	
)	

REVISED PROTECTIVE ORDER

This matter is before the Court on the motion of Plaintiff LeFloris Lyon to amend the original Protective Order entered by this Court (Docket Entry No. 57) to clarify that he may contact prospective legal counsel. All Defendants oppose the motion due to the highly sensitive nature of the information and materials that Lyon possesses, including information and materials protected by the attorney-client privilege, the work product doctrine, and that are otherwise confidential. After considering the arguments of the parties, the Court finds that the Protective Order should be amended only to (1) add Paragraph 6(e) to the list of “Qualified Persons” and (2) attach “Appendix A” to the Protective Order. Those amendments are incorporated below as part of this Revised Protective Order.

It is hereby ORDERED that:

1. This Order shall govern “Confidential Material,” which is defined as all information and materials in the possession of either party, whether tangible or intangible and in whatever form, that is/are subject to the attorney-client privilege and/or the work product doctrine.

2. Confidential Materials shall not be disclosed, discussed with or made available to any person other than “Qualified Persons” as defined in this Order, unless expressly permitted by the Court.

3. All Confidential Material, and any copy thereof and any notes or summaries made therefrom, should be designated as “Confidential Material Subject to Protective Order” by the party filing, submitting, producing or generating the Confidential Material. However, any and all Confidential Materials are automatically subject to the protections set forth in this Order, and the failure to specifically designate them as such does not remove them from the protections of this Order.

4. Any Confidential Materials exchanged in the course of discovery must be designated as “Confidential Material Subject to Protective Order” and any party receiving such Confidential Materials may not disclose, discuss, or make available those Confidential Materials to any person other than “Qualified Persons” as defined in this Order.

5. All Confidential Materials filed in the Court, or submitted to any officer of the Court, shall be held under seal and shall not be disclosed to anyone other than “Qualified Persons” as defined in this Order.

6. “Qualified Persons” are limited to:

- (a) The parties and their attorney(s) or designated representative(s);
- (b) The parties’ staff or agents, or their attorneys’ and designated representatives’ staff or agents, if employed for the purpose of assisting in the litigation of this matter and only if all necessary steps are taken to ensure that persons receiving Confidential Material pursuant to this paragraph (i) maintain such material in a

protected and secure manner, with access restricted at all times to Qualified Persons, and (ii) abide by the terms of this Protective Order;

- (c) Independent personnel retained by the parties, their attorneys and or designated representatives, for the purpose of furnishing technical or other expert services or advice or to give expert testimony and only if all necessary steps are taken to ensure that persons receiving Confidential Material pursuant to this paragraph (i) maintain such material in a protected and secure manner, with access restricted at all times to Qualified Persons, and (ii) abide by the terms of this Protective Order;
- (d) The Court and its staff members.
- (e) Prospective legal counsel, but **only to the extent necessary** to permit counsel to determine whether to represent Plaintiff LeFloris Lyon in the matter and only after the prospective legal counsel acknowledges in writing adherence to the protective order by signing the form attached to this Order as Appendix A. Provided, however, that Plaintiff may not disclose Confidential Materials to an attorney that is involved in pending litigation against any of the Defendants or that anticipates pursuing litigation against the Defendants in the future. Further provided, that prior to contacting prospective legal counsel, Plaintiff must provide the Defendants with the name and address of any attorney (or attorneys) that he intends to contact and allow the Defendants 48 hours to state whether they object to Plaintiff having contact with the attorney (or attorneys) because the attorney is currently involved in litigation against the Defendants, or has been in the past and is anticipated to be in the future. If the Defendants object, Lyon may not contact the objected-to attorney (or attorneys) without prior approval by the Court.

6. If any party believes that it is necessary to disclose Confidential Material to anyone other than the Qualified Persons identified in this Order, such party shall provide all other parties 14 days prior written notice of the intent to disclose Confidential Material to such additional person(s), which notice shall state the name and address of the additional person(s) and the reason(s) review by such additional person(s) is desired. If any party objects in writing to such disclosure within that 14-day period, then such Confidential Material will not be disclosed unless and until the Court overrules the party's objection. Confidential Material will only be disclosed to a third-party pursuant this paragraph if the third-party recipient agrees to be bound by the protections and limitations imposed by this Order.

7. If any party believes that a particular filing, submission, document or thing ("challenged document") should not be subject to protection under this Order, that party may object and petition the Court to unseal the challenged document, or a portion thereof. Any such objection must be raised within 30 days of receipt of the challenged document and the objecting party must give all other parties written notice of the objection, identifying the challenged document and providing reasons that it should be removed from the protection afforded by this Order. Any party may file a response to the objecting party's petition within 14 days and provide reasons why the challenged document should remain subject to the protective order. The Court, after response and argument, will determine whether the challenged document is subject to this Protective Order. If no objection is raised within 30 days after receipt of any Confidential Material, the material(s) will remain permanently sealed to the extent permitted by law.

8. If Confidential Material is utilized or referred to during depositions, any party may request and require that only Qualified Persons, the deponent and the reporter shall be present. A party shall, either at the deposition itself, or within 14 days after actual receipt of the transcript thereof, notify all other parties and the deponent on the record or in writing, that the information is confidential and shall designate the transcript or portions thereof for which such claim is made. The transcript or portions thereof, including exhibits, for which confidentiality is claimed shall be bound separately under seal and prominently marked "Confidential Material subject to Protective Order." Any and all computer-readable versions of the deposition or portions thereof shall also be so marked. If notification of confidentiality is made other than at the deposition itself, the court reporter shall upon request provide any party with a list of persons to whom transcripts and/or exhibits have already been sent, and all parties shall cooperate in ensuring that all originals or copies of such transcripts or exhibits, including those in computer-readable form, are appropriately marked and separately bound. The court reporter shall be advised to limit the distribution of the confidential portion(s) of the transcripts and exhibits to specified Counsel and to the deponent or his or her attorney. The deponent shall be instructed in advance that he or she may not disclose Confidential Material or the information contained therein.

9. At any time after 60 days following the termination of this action, including the final resolution of any appeals, any party may request that Confidential Materials exchanged during discovery be returned by the opposing party by notifying the opposing party, or the opposing party's attorney or designated representative, of his request and the opposing party, his attorney or designated representative, shall promptly

return all copies of Confidential Materials produced to it, including all copies of materials provided by the opposing party, his attorney or designated representative, to a Qualified Person who received copies of the Confidential Materials pursuant to this Order. Alternatively or in addition to such a request, a party may request that the opposing party certify, in writing, its destruction of all copies of Confidential Material produced to it, including all copies of Confidential Material provided to a Qualified Person who received copies of Confidential Materials pursuant to this Order.

10. This Revised Protective Order shall survive the termination of this action. All Confidential Material shall retain that designation and shall remain subject to this Order until such time, if ever, as the Court or other competent officer or entity, renders a decision that any challenged material shall not be covered by the terms of this Protective Order and any and all proceedings and appeals challenging such decision shall have been concluded.

11. This Revised Protective Order supersedes all other orders protecting the confidentiality of materials in this litigation.

SO ORDERED, this the 10th day of February 2012.

S/ Linda R. Anderson
UNITED STATES MAGISTRATE JUDGE

**IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
 EASTERN DIVISION**

LEFLORIS LYON,)	
)	
Plaintiff)	
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vs)	Civil Action No. 4:10-cv-185-DPJ-LRA
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CANADIAN NATIONAL RAILWAY COMPANY, et al.)	
)	
Defendants)	
)	

APPENDIX A to the REVISED PROTECTIVE ORDER

Pursuant to Paragraph 6(e) of the governing protective order, any attorney that communicates with Plaintiff LeFloris Lyon regarding this litigation must first (1) review the Revised Protective Order and (2) read the statement below and sign this form indicating the attorney’s agreement to be bound by the Revised Protective Order:

I have reviewed the Revised Protective Order that has been entered in the case styled *LeFloris Lyon v. Canadian National Railway Company et al.*, No. 4:10-cv-185, pending in the U.S. District Court for the Southern District of Mississippi, and I agree to be bound by and abide by the provisions of that Protective Order whether or not I agree to represent Plaintiff LeFloris Lyon. I further understand and acknowledge that, having been exposed to privileged attorney-client information and/or information protected by the work product doctrine, I would likely be disqualified from representing clients in cases adverse to the defendants in the above-referenced case, including Canadian National Railway Company, Illinois Central Railroad Company, Laird Pitz, Michael Novak, Constance Valkan, Wise Carter Child & Caraway PA, George Ritter, and Charlie Russell.

Signed: _____

Please print the following information:

Name: _____

Address: _____

Bar No./State: _____

