

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES

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March 23, 1998

Honorable Henry J. Hyde
Chairman, Committee on the Judiciary
United States House of Representatives
Room 2138, Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Hyde:

I write to advise you of the position of the Judicial Conference's Advisory Committee on Civil Rules regarding proposed amendments to Rule 26(c) of the Federal Rules of Civil Procedure dealing with protective orders. The proposed provision would require a judge to make particularized findings of fact that information subject to a discovery request is not relevant to the protection of public health or safety before approving any protective order. I understand that the provision may be brought up for discussion during mark-up of H.R. 1252, the "Judicial Reform Act."

The advisory committee has carefully studied various proposals addressing concerns over abuses involving protective orders, including earlier versions contained in H.R. 2017 (102d Congress) and S. 1404 (103d Congress). In 1995, the advisory committee crafted a proposal that it believed would meet the concerns of the competing interests, but the proposal was returned by the Judicial Conference for further study. The advisory committee has now completed a study of the general scope and nature of discovery to identify and address its impact on litigation cost and delay. Protective orders were once again examined as part of the study.

The advisory committee continues to oppose legislation that would require a judge to make particularized findings of fact regarding the discovery materials under consideration. No change along these lines was appropriate, because the present rule already addresses in a meaningful fashion the concerns relating to public safety while at the same time balancing the competing interests of the parties to the suit. The following discussion sets out the history and reasons for the committee's conclusions.

Judiciary's Response to Concerns Regarding Protective Orders

The Advisory Committee on Civil Rules began serious study of protective order practices in November 1992 in response to pending legislation. The committee sought to inform itself whether the

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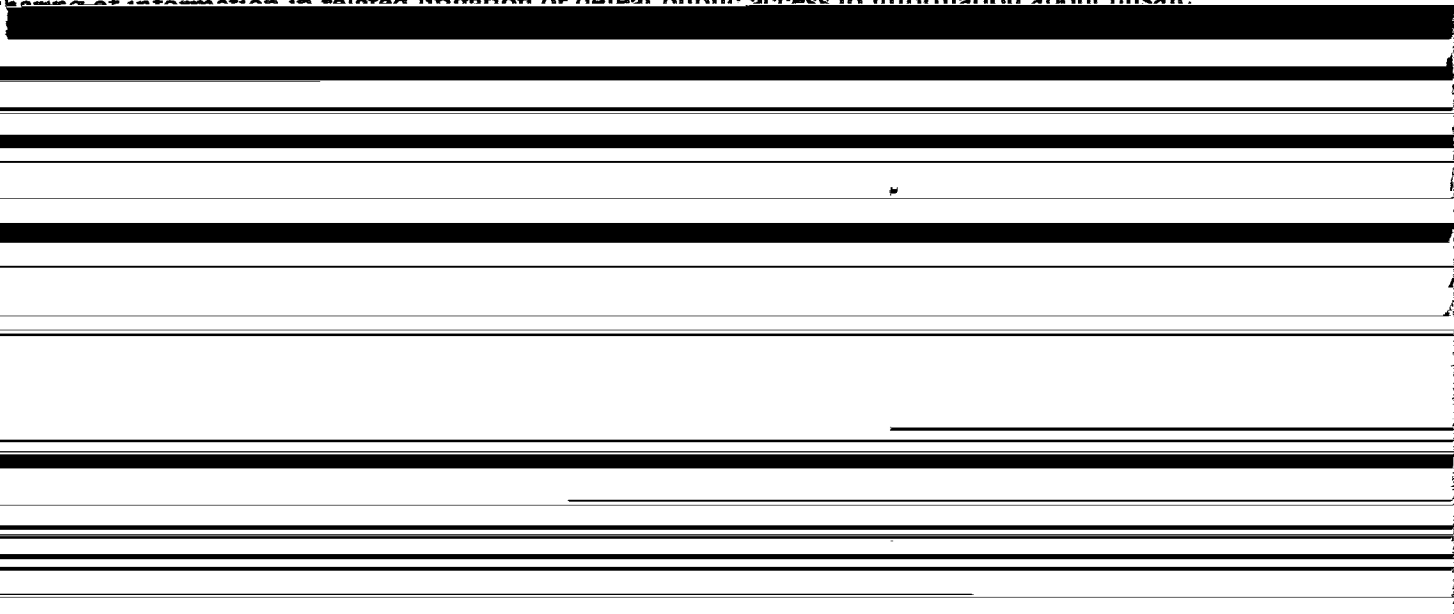
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These studies all suggested that there is no need to make it more difficult to issue discovery protective orders. The studies generally showed:

- that there is no evidence that protective orders in fact create any significant problem in concealing information about public hazards or in impeding efficient sharing of discovery information;
- that much information can be gathered from parties and nonparties during discovery that no one would have a right to learn outside the needs of a particular lawsuit;
- that discovery would become more burdensome and costly if the parties can not reasonably rely on protective orders; and
- that administration of a rule creating broader rights of public access would impose great burdens on the court system.

The advisory committee also kept in mind the wide variety of interests that are involved with protective orders. Although it is common to focus on the often legitimate needs to protect trade-secret and other confidential commercial information, protective orders often protect intensely personal privacy interests. The Federal Judicial Center study, for example, found that the most frequent use of protective orders occurs in civil rights and employment discrimination litigation. The privacy interests protected often are those of nonparties, who have had no voice in the decision whether to initiate litigation and little or no interest in the outcome. An added concern is that discovery has been designed from the very beginning to function without need of judicial supervision. Courts are not equipped to supervise the details of discovery. Voluntary exchanges of information remain indispensable. It would be counterproductive and expensive to attempt to add hurdles that impede the efficient entry of protective orders.

The advisory committee found little reason to believe that protective orders prevent desirable sharing of information in related litigation or defeat public access to information about unsafe



unchanged. Ultimately, the proposed amendments to Rule 26(c) were returned to the advisory committee by the Judicial Conference for further study.

The advisory committee began consideration of the scope of discovery at its October 1996 meeting. A Discovery Subcommittee, chaired by Judge David F. Levi, was formed. The subcommittee met with a large group of lawyers drawn from all branches of the profession and convened a national symposium, which was held in September at the Boston College School of Law. It reviewed suggestions from the major national lawyer associations. The entire advisory committee also participated in the American Bar Association's conference on the RAND report on the Civil Justice Reform Act.

After this exhaustive study, the advisory committee continues to strongly oppose legislation that would amend Rule 26(c) to require a judge to make particularized findings of fact for every protective order request.

CONCLUSIONS

The advisory committee has determined that the instances when protective orders impede access to information that affects the public health or safety are not widespread. A number of experts on the subject have examined the commonly cited illustrations and have concluded that information sufficient to protect public health and safety has always been available from other sources. The advisory committee has studied this matter carefully and concluded that no change to the present protective-order practice is warranted. But it is important to approach whatever perceived problem there may be with care, lest discovery be made even more complex and costly. Attempts to increase access to discovery information may indeed backfire, as parties become less and less willing to exchange information without prolonged discovery litigation. It is not necessary to transform a private dispute-resolution mechanism into a public information mechanism, and doing so would have profound effects on private litigation.

For these reasons, I urge you to decline to include in the Judicial Reform Act of 1997 the proposed amendment to Rule 26(c). Thank you for your consideration.

Sincerely yours,



Paul V. Niemeyer
United States Court of Appeals

cc: Committee on the Judiciary,
United States House of Representatives



memorandum

DATE: April 16, 1996
TO: Members of the Advisory Committee on Civil Rules
FROM: Beth Wiggins

About a year ago, I presented a preliminary report to the Civil Rules Committee on protective activity in three federal district courts. Professor Cooper refers to this report in this meeting's agenda item on Rule 26(c). I am enclosing a revised version of that report. Its general thrust is the same as before, but the numbers have been refined and some detail added. I will attend the Rule 26(c) portion of this week's Committee meeting and will be happy to address any questions you have then.

**Protective Order Activity in Three Federal Judicial Districts
Report to the Advisory Committee on Civil Rules**

**Elizabeth C. Wiggins, Melissa J. Pecherski, and George Cort
Federal Judicial Center
April 1996**

Introduction and Methods

This report summarizes work underway at the Federal Judicial Center concerning protective orders, confidential settlement agreements, and other sealed court records. The general purpose of our work is to provide the information necessary to evaluate the efficacy of Fed. R. Civ. P. 26(c) and to address the potential need for additional provisions in the rules relating to sealed court records and sealed settlement agreements.

This report focuses on the use of protective orders in three federal district courts. Our research approach entailed identifying cases that involved protective order activity in the three courts and then transcribing information from the docket sheets and case files of a sample of those cases.

Civil cases filed in 1990-1992 in the District of Columbia and those filed in 1991-92 in the Eastern District of Michigan and the Eastern District of Pennsylvania were included in the study. We identified cases involving protective order activity by electronically searching the computerized databases of civil case dockets for event and relief codes associated with this type of activity. We then obtained more detailed information about a random sample of cases that involved protective order activity from each district by recording information from docket sheets and case files.¹

In this report, we present information about the following issues:

- the incidence of protective order activity;
- the extent to which protective order activity is initiated by stipulated agreement versus motion;
- the extent to which motions for protective orders are contested;
- the extent to which motions for protective orders are granted;
- the stated objectives of protective orders;

¹For the District of Columbia, we searched the electronic database during the fall of 1993 and collected the information from the docket sheets and case files during the spring and summer of 1994. In the Eastern District of Pennsylvania and the Eastern District of Michigan, we searched the electronic databases during the summer of 1994 and collected the information from the docket sheets and case files during that summer and fall.

- the types of cases in which protective orders are granted, including the nature of suit and the types of parties involved;
- the types of cases in which access to discovered material is restricted;
- the frequency with which protective orders are modified or dissolved;
and
- the disposition of cases in which protective orders are granted.

Findings

The remainder of this report sets forth our findings. Each general finding is numbered and set forth in bold, followed by a fuller explanation and/or data tables.

1. In the Eastern District of Michigan and the Eastern District of Pennsylvania, protective order activity occurred in approximately 5% of civil cases filed in 1991 and 1992. In the District of Columbia, the incidence of protective order activity was higher; it occurred in approximately 10.0% of cases

and 8.1% of the civil cases filed in 1990, 1991, and 1992, respectively.

Table 1 shows for each district the number of civil cases filed during the time period studied and the number of those cases in which protective order activity had occurred at the time we electronically searched the dockets. Because some of the cases filed during the study period were still pending at the time of our electronic search, the percentages shown in the third row likely underestimate the actual amount of protective order activity that will ultimately occur and should be interpreted as lower bounds. Table 2 on the next page shows the number of cases in each district that we examined in more detail, and the number of motions, stipulated agreements, and "sua sponte" protective orders occurring in those cases. By "sua sponte," we mean that the protective order was entered by a judge in the absence of a docketed motion or stipulated agreement. Most of the cases (between 69% and 74%

Table 2
Description of Samples Examined in More Detail

	District of Columbia	Eastern Michigan	Eastern Pennsylvania
Number of cases examined in more detail	204	195	202
Number of motions, stipulated agreements, "sua sponte" orders in those cases	317	293	317

Note: By "sua sponte," we mean that the protective order was entered by a judge in the absence of a docketed motion or stipulated agreement.

2. Protective order activity was most commonly initiated by motion rather than by stipulated agreement. About half of the motions were opposed. In two districts, hearings were held on few of the motions; in the third district, hearings were held on over half of the motions, often in conjunction with hearings on other motions in the cases.

As shown in Table 3, most of the protective order activity in each district began with a motion by the plaintiff, defendant, another party, or non-party, although a significant amount of activity began with a stipulated agreement between opposing parties. Responses in opposition to about half of the motions were filed (see Table 4). About half of these responses were met with a reply in the District of Columbia and fewer than half of these responses were met with a reply in the other two districts, as shown in Table 5.

In the District of Columbia and the Eastern District of Pennsylvania, hearings were held on few of the motions. In the Eastern District of Michigan, however, hearings were held on over half of the motions (see Table 6). These hearings were often combined with hearings on other motions in the cases.

Table 3
Origin of Protective Order Activity

	District of Columbia		Eastern Michigan		Eastern Pennsylvania	
Motion by plaintiff	55	17%	63	22%	57	18%
Motion by defendant	184	58%	122	42%	153	48%
Motion by other party or non-party	12	4%	13	4%	25	8%
Stipulated agreement between opposing parties	53	17%	77	26%	77	24%
Judge's order in the absence of a docketed motion or stipulated agreement	13	4%	18	6%	5	2%
TOTAL NUMBER OF SEPARATE PROTECTIVE ORDER ACTIVITIES	317		293		317	

Table 4
Number of Motions to Which a Response was Filed

	District of Columbia		Eastern Michigan		Eastern Pennsylvania	
No response filed	78	31%	84	42%	111	47%
Response in opposition filed	143	57%	91	46%	107	46%
Response in concurrence filed	4	2%	1	<1%	3	1%
Response seeking an amendment to the motion	1	<1%	0	0%	0	0%
Response filed, but unknown if in opposition or concurrence	24	10%	21	11%	10	4%
Unable to ascertain whether a response was filed	1	<1%	1	<1%	4	2%
TOTAL NUMBER OF MOTIONS FOR PROTECTIVE ORDER	251		198		235	

Table 5
Number of Responses to which a Reply was Filed

	District of Columbia		Eastern Michigan		Eastern Pennsylvania	
No reply filed	92	53%	81	72%	100	83%
Reply filed	74	43%	30	27%	20	17%
Unable to ascertain whether a reply was filed	6	3%	2	2%	0	0%
TOTAL NUMBER OF RESPONSES	172		113		120	

Table 6
Number of Motions for which a Hearing was Held

	District of Columbia		Eastern Michigan		Eastern Pennsylvania	
Hearing held	27	11%	117	59%	5	2%
No hearing held	216	86%	76	38%	224	95%
Unable to determine if a hearing held	8	3%	5	3%	6	3%
TOTAL NUMBER OF MOTIONS FOR PROTECTIVE ORDER	251		198		235	

3. Approximately 40% of the motions for a protective order were granted either in whole or in part (see Table 7). Only two stipulated agreements were rejected by the court on the record.

Table 7
Disposition of motions for protective orders

	District of Columbia		Eastern Michigan		Eastern Pennsylvania	
1. Motion granted in whole	77	32%	53	27%	54	23%
2. Motion granted in part	24	10%	25	13%	29	12%
3. Motion denied (includes some motions denied as moot)	69	29%	58	30%	105	45%
4. Motion not ruled on although case closed (i.e., motion is moot)	70	29%	27	14%	40	17%
5. Motion withdrawn	2	1%	32	16%	6	3%
6. Motion pending	5		3		1	
7. Unknown	4		0		0	
NUMBER OF MOTIONS THAT WERE RESOLVED (categories 1, 2, 3, and 4 above)	240		195		234	

Note: Category 3: Motion Denied includes some motions that were denied as moot. We estimate that the reason for between 20 and 35% of the denials was mootness. The percentages were calculated excluding the categories (6) motion pending and (7) unknown. One stipulated agreement in the Eastern District of Pennsylvania and one stipulated agreement in the District of Columbia were rejected by the court; this is not reflected in the above figures.

Only two stipulated agreements for a protective order were rejected by the court on the record (one in the Eastern District of Pennsylvania and one in the District of Columbia). One explanation for the infrequency of this event is that parties discuss with the court whether a protective order is warranted and what provisions should be included before a formal agreement is presented, thus drastically reducing the number that are rejected. The alternate explanation is, of course, that judges are reluctant to reject an agreement between opposing parties, except in rare circumstances.

4. 166, 173, and 164 protective orders were entered in 127, 140, and 131 cases in the District of Columbia, the Eastern District of Michigan, and the Eastern District of Pennsylvania, respectively. Of the protective orders that were entered, between 45% and 61% were initiated by motion and between 31% and 46% were initiated by stipulated agreement between the parties (see Table 8). The objectives of these orders are summarized in Tables 9 and 10, and discussed below.

Table 8
Protective Orders Entered

	District of Columbia		Eastern Michigan		Eastern Pennsylvania	
Initiated by motion	101	61%	78	45%	83	51%
Initiated by agreement of parties	52	31%	77	45%	76	46%
Initiated sua sponte by court order	13	8%	18	10%	5	3%
TOTAL NUMBER OF PROTECTIVE ORDERS ENTERED	166		173		164	

Note: By "sua sponte", we mean the protective order was entered by a judge in the absence of a docketed motion or stipulated agreement.

Table 9 on the next page summarizes the objectives of these orders. The percentages in the tables are of the total number of protective orders. Because the objective of some orders was multi-faceted, the numbers within columns do not sum to the number of orders entered nor do the percentages sum to 100. Table 10 shows the nature of suit of the cases in which such a restriction was imposed.

Seventy-six, 89, and 82 orders in 62, 81, and 75 cases in the District of Columbia, the Eastern District of Michigan, and the Eastern District of Pennsylvania, respectively, restricted a party from disclosing materials to others. Many of the orders originated with a stipulated agreement (63% in the District of Columbia, 74% in the Eastern District of Michigan, and 88% in the Eastern District of Pennsylvania).

Almost all of the orders applied the restriction to anyone outside the litigation; many also set forth an inclusive list of those people who were allowed access. Many of the orders restricting access to discovered material set forth a set of procedures for handling confidential information. A typical order would describe the general type of material to held confidential (e.g., "party-designated confidential", medical records, trade secrets, business records, financial information, personnel or payroll records, depending on the type of case); describe how a party designates material as confidential and how that designation can be challenged; identify who is (is not) to have access to confidential information; allow documents marked as confidential to be filed under seal; and require the return or destruction of discovered materials.

Table 9
Objective of protective orders

	District of Columbia		Eastern Michigan		Eastern Pennsylvania	
That discovery not be had	19	12%	17	11%	19	13%
That discovery be had only by a method of discovery other than that selected by the party seeking discovery	0	0%	1	1%	4	3%
That certain matters not be inquired into or that scope of discovery be limited to certain matters	9	6%	12	8%	11	7%
Restrict party from disclosing materials to others	76	48%	89	59%	82	55%
Require return or destruction of discovered materials	56	36%	61	41%	47	32%
Stay discovery pending, for example, ruling on dispositive motion or until other party complies with discovery request	43	27%	26	17%	14	9%
Limit number of interrogatories	0	0%	1	1%	2	1%
Limit number or length of deposition	0	0%	2	1%	2	1%
Designate time and place of discovery	6	4%	1	1%	14	9%
Other provision	7	4%	7	5%	13	9%
Objective of Order Unknown	9		23		16	
TOTAL NUMBER OF PROTECTIVE ORDERS	166		173		164	

Note: Percentages were calculated using the number of protective orders for which the objective was known (District of Columbia: 157; Eastern District of Michigan: 150, and Eastern District of Pennsylvania: 148.)

Table 10
 Nature of Suit for Cases in Which a Protective Order Restricting Access to Discovery Materials
 was Entered

NATURE OF SUIT	District of Columbia		Eastern Michigan		Eastern Pennsylvania	
Contract	11	17.7%	22	27.2%	18	24%
Insurance (110)	0	0%	3	3.7%	5	6.7%
Miller Act (130)	0	0%	0	0%	1	1.3%
Negotiable Instrument (140)	0	0%	1	1.2%	0	0%
Other Contract (190)	11	17.7%	17	21.0%	12	16.0%
Product Liability (195)	0	0%	1	1.2%	0	0%
Real Property	1	1.6%	0	0% %	0	0%
Rent, Lease and Ejectment (230)	1	1.6%	0	0% %	0	0%
Personal Injury	7	11.3%	6	7.4%	6	8.0%
Airplane Personal Injury (310)	0	0%	1	1.2%	0	0%
Personal Injury: Assault, Libel and Slander (320)	1	1.6%	0	0%	0	0%
Personal Injury: FELA (330)	1	1.6%	0	0%	0	0%
Personal Injury: Marine Personal Injury (340)	0	0%	0	0%	1	1.3%
Personal Injury: Motor Vehicle (350)	1	1.6%	0	0%	0	0%
Personal Injury: Other Personal Injury (360)	2	3.2%	0	0%	1	1.3%
Personal Injury: Medical Malpractice (362)	2	3.2%	0	0%	0	0%
Personal Injury: Personal Injury Product Liability (365)	0	0%	5	6.2%	4	5.3%
Personal Property	0	0%	4	4.9%	5	6.7%
Personal Property Damage: Other Fraud (370)	0	0%	4	4.9%	3	4.0%
Personal Property Damage: Other Personal Property Damage (380)	0	0%	0	0%	2	2.7%
Civil Rights	22	35.5%	21	25.9%	19	25.3%
Other (440)	0	0%	11	13.6%	3	4.0%
Employment (442)	21	33.9%	10	12.3%	16	21.3%
Accommodations (443)	1	1.6%	0	0%	0	0%
Prisoner Petitions (550)	1	1.6%	0	0%	0	0%
Labor	3	4.8%	8	9.9%	5	6.6%
Fair Labor Standards Act (710)	1	1.6%	1	1.2%	1	1.3%
Other Labor Litigation (790)	0	0%	2	2.5%	1	1.3%
ERISA (791)	2	3.2%	5	6.2%	3	4.0%
Property Rights	6	9.7%	13	16.0%	9	12%
Copyright (820)	2	3.2%	3	3.7%	2	2.7%
Patent (830)	2	3.2%	4	4.9%	5	6.7%
Trademark (840)	2	3.2%	6	7.4%	2	2.7%
Other Statutes	11	17.7%	7	8.6%	13	17.3%
Antitrust (410)	3	4.8%	2	2.5%	2	2.7%
Withdrawal (423)	0	0%	1	1.2%	1	1.3%
Banks and Banking (430)	1	1.6%	0	0%	2	2.7%
Racketeer Influenced and Corrupt Organizations (470)	1	1.6%	0	0%	0	0%
Securities, Commodities, and Exchange (850)	0	0%	2	2.5%	7	9.3%
Other Statutory Actions (890)	4	6.5%	2	2.5%	1	1.3%
Freedom of Information Act (895)	2	3.2%	0	0%	0	0%
TOTAL	62		81		75	

5. Across the three districts, few protective orders had been modified or dissolved at the time the case files were examined.

It was not uncommon for protective orders, particularly those restricting access to discovery materials, to contain a provision indicating that the order could be dissolved by agreement of the parties or by the court. These orders, however, typically did not elaborate on the specific factors the court would consider in modifying or dissolving the order.

As shown in Tables 11 and 12, few protective orders had been modified or dissolved at the time the case files were examined. Following the tables, we describe the ways in which the orders were modified or dissolved.

Table 11
Modification of Protective Orders by the Court or by Agreement of the Parties

	District of Columbia	Eastern Michigan	Eastern Pennsylvania
Number of protective orders modified by the court	2	6	3
Number of protective orders modified by agreement between the parties	4	0	3
Number of protective orders the court affirmatively refused to modify	1	1	0
Number of protective orders for which a motion to reconsider the protective order was pending	1	2	0

Table 12
Dissolution of Protective Orders by the Court or by Agreement of the Parties

	District of Columbia	Eastern Michigan	Eastern Pennsylvania
Number of protective orders dissolved by the court	2	0	4
Number of protective orders dissolved by agreement between the parties	0	0	1
Number of protective orders the court affirmatively refused to dissolve	0	2	0
Number of protective orders for which a motion to reconsider the protective order was pending	1	2	0

Protective orders modified by the court

A confidentiality order was modified to add: "Nothing in this order shall prevent disclosure of confidential materials under Commission Rule 4.11(b), 16 C.F.R. Section 4.11(b), in response to a request from a Congressional committee or subcommittee."

A confidentiality order was modified to bind an intervenor to its terms.

A deadline for taking a telephone deposition was extended - the original date was specified in a protective order.

A protective order limiting the scope of discovery was modified -- information previously protected from discovery during a deposition is discoverable, as long as discovering party keeps the information confidential and does not disclose it to any other parties.

A confidentiality order was amended to include performers and groups, whose merchandising rights plaintiff had recently acquired, in the scope of persons who should not have access to confidential information.

An order prohibiting the asking of certain questions during a deposition was modified in undetermined way.

A confidentiality order was expanded to cover other documents.

A confidentiality order was modified to allow plaintiff's counsel access to limited documents pertaining to jurisdiction.

A confidentiality order was modified to permit defendant to use non-privileged discovery matters in another pending case to which it is a party, provided the defendant abides by the original confidentiality agreement.

A sealed complaint was partially unsealed to facilitate discussion between the plaintiff and defendant.

After in camera review of certain documents, the court modified (strengthened) a protective order to require the plaintiff to keep the documents confidential and to return them to the defendant after trial.

Protective orders modified by agreement of the parties

Parties agreed that to the extent the provisions of two confidentiality orders contradicted a third, they were vacated. The third order was sealed.

A confidentiality order was modified twice to change the list of persons having access to confidential material.

A confidentiality order was modified to clarify that parties have access to discovered materials.

A confidentiality order was modified to clarify how counsel should designate documents/depositions confidential and challenge the confidential designation, and who may view/use confidential information.

An order restricting access to discovered materials was extended for a period of two years after entry of a stipulation of dismissal with prejudice.

A confidentiality order initially proposed by the plaintiff was vacated and a confidentiality order stipulated to by the parties was entered in its place.

Protective orders the court affirmatively declined to modify

A motion by an intervening plaintiff to modify a confidentiality order was denied.

A motion to modify a protective order staying discovery was denied.

Protective orders vacated by the court

Court vacated a temporary protective order that barred a deposition and denied the original motion as moot.

Court vacated an order staying discovery pending resolution of defendant's motion to dismiss.

Court ordered that all sealed documents in the case be unsealed immediately (three orders in one case, one order in a second case).

Protective orders dissolved by agreement of the parties

Documents sealed under the stipulated protective order are to be unsealed.

Protective orders the court affirmatively declined to vacate

Court declined to vacate an order staying discovery. (two orders in two cases)

7. In the District of Columbia and the Eastern District of Pennsylvania, the nature of suit for 85% and 81%, respectively, of the cases involving protective order activity fell into the nature of suit categories (1) contract, (2) personal injury, (3) civil rights, and (4) other statutes. The cases in which a protective order was actually entered also were concentrated in these four categories. In the Eastern District of Michigan, the nature of suit for 40% of the cases involving protective order activity fell into the nature of suit categories (1) contract and (2) civil rights; from 9% to 12% of the cases fell into each of the following other nature of suit categories: (1) personal injury, (2) prisoner petitions, (3) labor, (4) property rights, and (5) other statutes. The cases in which a protective order was actually entered were distributed across nature of suit categories in a similar fashion.

Table 13 shows the nature of suit for the cases involving any protective order activity. Table 14 presents the same information for cases in which a protective order was entered. More detailed tables are attached as Appendices A and B.

Table 13
Nature of Suit for Cases Involving Protective Order Activity

NATURE OF SUIT	District of Columbia		Eastern Michigan		Eastern Pennsylvania	
	Count	Percentage	Count	Percentage	Count	Percentage
Contract	33	16%	38	19%	54	27%
Real Property	1	<1%	2	1%	4	2%
Personal Injury	35	17%	22	11%	38	19%
Personal Property	3	1%	5	3%	11	5%
Civil Rights	48	24%	40	21%	39	19%
Prisoner Petitions	9	4%	24	12%	2	1%
Forfeiture and Penalty	1	<1%	2	1%	2	1%
Labor	8	4%	18	9%	9	4%
Property Rights	8	4%	20	10%	11	5%
Other Statutes	58	28%	24	12%	32	16%
TOTAL NUMBER OF CASES INVOLVING PROTECTIVE ORDER ACTIVITY	204		195		202	

Table 14
Nature of Suit for Cases in which a Protective Order was Entered

NATURE OF SUIT	District of Columbia		Eastern Michigan		Eastern Pennsylvania	
	Count	Percentage	Count	Percentage	Count	Percentage
Contract	19	15%	28	20%	29	22%
Real Property	1	1%	1	1%	3	2%
Personal Injury	20	16%	15	11%	25	19%
Personal Property	2	2%	5	4%	7	5%
Civil Rights	35	28%	32	23%	28	21%
Prisoner Petitions	4	3%	16	11%	1	1%
Forfeiture and Penalty	0	0%	1	1%	1	1%
Labor	4	3%	12	9%	6	5%
Property Rights	7	6%	18	13%	11	8%
Other Statutes	34	27%	12	9%	20	15%
TOTAL NUMBER OF CASES IN WHICH A PROTECTIVE ORDER WAS ENTERED	127		140		131	

8. In the District of Columbia and the Eastern District of Michigan, protective order activity occurred and protective orders were entered most frequently in cases in which the plaintiff was an individual and the defendant was either a business or governmental entity or in which both the plaintiff and defendant were businesses. In the Eastern District of Pennsylvania, protective order activity occurred and protective orders were entered most frequently in cases involving an individual or business as the plaintiff and a business as the defendant.

Tables 15 A-C shows the types of parties in the cases involving protective order activity. All percentages in the tables are of the total number of cases in the given district involving protective order activity. Table 16 A-C presents the same information for cases in which a protective order was entered. All percentages in the tables are of the total number of cases in the given district in which a protective order was entered.

Table 15
Types of Parties in Cases Involving Protective Order Activity

A. District of Columbia

		DEFENDANT											
		Individual		Government		Business		Private Organization		Other			
PLAINTIFF	Individual	18	9%	59	29%	48	24%	7	3%	0	0%	132	65%
	Government	0	0%	3	1%	5	2%	0	0%	0	0%	8	4%
	Business	5	2%	17	8%	30	15%	1	<1%	0	0%	53	26%
	Private Organization	1	<1%	9	4%	1	<1%	0	0%	0	0%	11	5%
		24	12%	88	43%	84	41%	8	4%	0	0%	204	

B. Eastern District of Michigan

		DEFENDANT											
		Individual		Government		Business		Private Organization		Other			
PLAINTIFF	Individual	10	5%	57	29%	63	32%	2	1%	0	0%	132	68%
	Government	1	<1%	1	<1%	2	1%	1	<1%	2	1%	7	4%
	Business	2	1%	2	1%	46	24%	0	0%	0	0%	50	26%
	Private Organization	0	0%	1	<1%	4	2%	1	<1%	0	0%	6	3%
		13	7%	61	31%	115	59%	4	2%	2	1%	195	

C. Eastern District of Pennsylvania

		DEFENDANT											
		Individual		Government		Business		Private Organization		Other			
PLAINTIFF	Individual	15	7%	18	9%	84	42%	6	3%	0	0%	123	61%
	Government	0	0%	1	<1%	8	4%	0	0%	2	1%	11	5%
	Business	19	9%	1	<1%	47	23%	0	0%	0	0%	67	33%
	Private Organization	0	0%	0	0%	1	<1%	0	0%	0	0%	1	<1%
		34	17%	20	10%	140	69%	6	3%	2	1%	202	

Table 16
Types of Parties in Cases in which a Protective Order was Entered

A. District of Columbia

		DEFENDANT											
		Individual		Government		Business		Private Organization		Other			
PLAINTIFF	Individual	10	8%	40	32%	32	25%	3	2%	0	0%	85	67%
	Government	0	0%	2	2%	2	2%	0	0%	0	0%	4	3%
	Business	4	3%	9	7%	21	17%	0	0%	0	0%	34	27%
	Private Organization	0	0%	4	3%	0	0%	0	0%	0	0%	4	3%
		14	11%	55	43%	55	43%	3	2%	0	0%	127	

B. Eastern District of Michigan

		DEFENDANT											
		Individual		Government		Business		Private Organization		Other			
PLAINTIFF	Individual	6	4%	42	30%	44	31%	0	0%	0	0%	92	66%
	Government	1	1%	1	1%	2	1%	0	0%	1	1%	5	4%
	Business	0	0%	1	1%	38	27%	0	0%	0	0%	39	28%
	Private Organization	0	0%	0	0%	3	2%	1	1%	0	0%	4	3%
		7	5%	44	31%	87	62%	1	1%	1	1%	140	

C. Eastern District of Pennsylvania

		DEFENDANT											
		Individual		Government		Business		Private Organization		Other			
PLAINTIFF	Individual	9	7%	10	8%	59	45%	5	4%	0	0%	83	63%
	Government	0	0%	0	0%	6	5%	0	0%	1	1%	7	5%
	Business	12	9%	1	1%	27	21%	0	0%	0	0%	40	31%
	Private Organization	0	0%	0	0%	1	1%	0	0%	0	0%	1	1%
		21	16%	11	8%	93	71%	5	4%	1	1%	131	

9. In the District of Columbia and the Eastern District of Michigan, cases in which protective activity occurred were most frequently resolved by a dismissal under Fed. R. Civ. P. 41(a)(1)(ii), with no explicit mention of settlement. In both districts, a substantial number of the cases were resolved by summary judgment or dispositive motion and in the District of Columbia, a substantial number were resolved by dismissal pursuant to Fed. R. Civ. P. 41(b). In the Eastern District of Pennsylvania, cases with protective order activity were most frequently reported as settled, although a substantial number were resolved by jury decision or by dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(ii). A similar pattern of results was found for cases in which a protective order had been entered.

Table 17 shows the disposition of the cases involving protective order activity. Table 18 presents the same information for cases in which a protective order was entered.

Table 17
Disposition of Cases Involving Protective Order Activity

	District of Columbia		Eastern Michigan		Eastern Pennsylvania	
Summary Judgment	33	16%	41	21%	11	6%
Other dispositive motion	27	13%	18	9%	8	4%
Judicial decision after trial	12	6%	5	3%	13	7%
Jury decision	8	4%	8	4%	24	12%
Dismissal under Rule 41(a)(1)(i)	3	2%	0	0%	0	0%
Dismissal under Rule 41(a)(1)(ii) (with no explicit mention of settlement)	69	34%	62	32%	20	10%
Dismissal under Rule 41(a)(2)	5	3%	4	2%	4	2%
Dismissal under Rule 41(b)	5	3%	3	2%	3	2%
Settled/Consent Judgment	14	7%	32	16%	92	46%
Arbitration/Mediation	1	<1%	4	2%	5	2%
Transferred	9	4%	3	2%	4	2%
Remanded	3	1%	5	3%	3	1%
Other	2	1%	0	0%	7	3%
Case pending	12	6%	9	5%	7	4%
Disposition unknown	1	<1%	1	<1%	1	<1%
	204		195		202	

Table 18
Disposition of Cases in which a Protective Order was Entered

	District of Columbia		Eastern Michigan		Eastern Pennsylvania	
Summary Judgment	19	15%	31	22%	5	4%
Other dispositive motion	13	10%	13	9%	4	3%
Judicial decision after trial	10	8%	4	3%	9	7%
Jury decision	6	5%	6	4%	19	15%
Dismissal under Rule 41(a)(1)(i)	1	1%	0	0%	0	0%
Dismissal under Rule 41(a)(1)(ii) (with no explicit mention of settlement)	46	36%	46	33%	15	12%
Dismissal under Rule 41(a)(2)	2	2%	3	2%	3	2%
Dismissal under Rule 41(b)	2	2%	2	1%	2	2%
Settled	9	7%	23	16%	61	37%
Arbitration/Mediation	1	1%	3	2%	0	0%
Transferred	6	5%	1	1%	2	2%
Remanded	1	1%	1	1%	2	2%
Other	1	1%	0	0%	3	2%
Case pending	9	7%	6	4%	5	4%
Disposition unknown	1	1%	1	1%	1	<1%
	127		140		131	

Appendix A

Nature of Suit for Cases Involving Protective Order Activity

Table B

Nature of Suit for Cases Involving Protective Order Activity

NATURE OF SUIT	District of Columbia		Eastern Michigan		Eastern Pennsylvania	
Contract						
Insurance (110)	2		7		16	
Marine (120)	0		0		1	
Miller Act (130)	0		0		1	
Negotiable Instrument (140)	1		1		1	
Other Contract (190)	29		29		33	
Product Liability (195)	0		1		2	
Recovery of overpayment of Medicare (151)	1		0		0	
	33	16%	38	19%	54	27%
Real Property						
Rent, Lease and Ejectment (230)	1		0		0	
Torts to Land (240)	0		0		3	
All Other Real Property (290)	0		2		1	
	1	<1%	2	1%	4	2%
Personal Injury						
Airplane Personal Injury (310)	0		1		0	
Personal Injury: Assault, Libel and Slander (320)	5		0		1	
Personal Injury: FELA (330)	1		1		4	
Personal Injury: Marine Personal Injury (340)	0		1		2	
Personal Injury: Motor Vehicle (350)	7		4		9	
Personal Injury: Other Personal Injury (360)	12		6		6	
Personal Injury: Medical Malpractice (362)	4		0		2	
Personal Injury: Personal Injury Product Liability (365)	5		9		14	
Asbestos personal injury - product liability (368)	1		0		0	
	35	17%	22	11%	38	19%
Personal Property						
Personal Property Damage: Other Fraud (370)	2		5		6	
Personal Property Damage: Other Personal Property Damage (380)	1		0		3	
Personal Property Damage: Property Damage- Product Liability (385)	0		0		2	
	3	1%	5	3%	11	5%
Civil Rights						
Other (440)	15		27		16	
Jobs (442)	32		13		23	
Accommodations (443)	1		0		0	
	48	24%	40	21%	39	19%
Prisoner Petitions (550)						
	9	4%	24	12%	2	1%

NATURE OF SUIT	District of Columbia	Eastern Michigan	Eastern Pennsylvania
Forfeiture and Penalty			
Food and Drug (620)	0	0	1
Drug Forfeiture (625)	0	1	0
Miscellaneous Forfeiture and Penalty (690)	1	1	1
	1	2	2
	<1%	1%	1%
Labor			
Fair Labor Standards Act (710)	1	1	1
Labor Management Relations (720)	0	1	0
Labor Management Reporting and Disclosure (730)	0	1	0
Railway Labor Act (740)	1	0	0
Other Labor Litigation (790)	2	3	1
ERISA (791)	4	12	7
	8	18	9
	4%	9%	4%
Property Rights			
Copyright (820)	2	5	3
Patent (830)	2	8	6
Trademark (840)	4	7	2
	8	20	11
	4%	10%	5%
Other Statutes			
Antitrust (410)	5	4	4
Withdrawal (423)	0	1	2
Banks and Banking (430)	1	0	2
Racketeer Influenced and Corrupt Organizations (470)	2	2	3
Securities, Commodities, and Exchange (850)	3	7	12
Social Security: SSID (864)	0	0	1
Taxes (870)	0	1	0
Other Statutory Actions (890)	26	9	8
Environmental Matters (893)	4	0	0
Freedom of Information Act (895)	17	0	0
	58	24	32
	28%	12%	16%
TOTAL	204	195	202

Appendix B

Nature of Suit for Cases in which a Protective Order Was Entered

Table B-14

Nature of Suit for Cases in which a Protective Order was Entered

NATURE OF SUIT	District of Columbia		Eastern Michigan		Eastern Pennsylvania	
Contract						
Insurance (110)	0		6		8	
Marine (120)	0		0		0	
Miller Act (130)	0		0		1	
Negotiable Instrument (140)	0		1		1	
Other Contract (190)	19		20		18	
Product Liability (195)	0		1		1	
Recovery of overpayment of Medicare (151)	0		0		0	
	19	15%	28	20%	29	22%
Real Property						
Rent, Lease and Ejectment (230)	1		0		0	
Torts to Land (240)	0		0		3	
All Other Real Property (290)	0		1		0	
	1	1%	1	1%	3	2%
Personal Injury						
Airplane Personal Injury (310)	0		1		0	
Personal Injury: Assault, Libel and Slander (320)	1		0		1	
Personal Injury: FELA (330)	1		1		0	
Personal Injury: Marine Personal Injury (340)	0		0		2	
Personal Injury: Motor Vehicle (350)	4		1		6	
Personal Injury: Other Personal Injury (360)	9		5		4	
Personal Injury: Medical Malpractice (362)	2		0		2	
Personal Injury: Personal Injury Product Liability (365)	2		7		10	
Asbestos personal injury - product liability (368)	1		0		0	
	20	16%	15	11%	25	19%
Personal Property						
Personal Property Damage: Other Fraud (370)	1		5		4	
Personal Property Damage: Other Personal Property Damage (380)	1		0		2	
Personal Property Damage: Property Damage- Product Liability (385)	0		0		1	
	2	2%	5	4%	7	5%
Civil Rights						
Other (440)	6		19		8	
Jobs (442)	28		13		20	
Accommodations (443)	1		0		0	
	35	28%	32	23%	28	21%
Prisoner Petitions (550)						
	4	3%	16	11%	1	1%

NATURE OF SUIT	District of Columbia	Eastern Michigan	Eastern Pennsy lvania		
Forfeiture and Penalty					
Food and Drug (620)	0	0	1		
Drug Forfeiture (625)	0	0	0		
Miscellaneous Forfeiture and Penalty (690)	0	1	0		
	0	0%	1	1%	1
Labor					
Fair Labor Standards Act (710)	1	1	1		
Labor Management Relations (720)	0	0	0		
Labor Management Reporting and Disclosure (730)	0	0	0		
Railway Labor Act (740)	0	0	0		
Other Labor Litigation (790)	1	3	1		
ERISA (791)	2	8	4		
	4	3%	12	9%	6
Property Rights					
Copyright (820)	2	4	3		
Patent (830)	2	7	6		
Trademark (840)	3	7	2		
	7	6%	18	13%	11
Other Statutes					
Antitrust (410)	3	4	2		
Withdrawal (423)	0	1	1		
Banks and Banking (430)	1	0	2		
Racketeer Influenced and Corrupt Organizations (470)	1	0	2		
Securities, Commodities, and Exchange (850)	2	3	9		
Social Security: SSID (864)	0	0	1		
Taxes (870)	0	0	0		
Other Statutory Actions (890)	13	4	4		
Environmental Matters (893)	2	0	0		
Freedom of Information Act (895)	12	0	0		
	34	27%	12	9%	20
TOTAL	127		140		131