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June 12, 1992

BY FACSIMILE: (503) 274-9457

Henry Kantor, Esq.
Pozzi, Wilson, Atchison,
O'Leary & Conboy
1400 Standard Plaza
1100 S.W. Sixth Avenue
Portland, Oregon 97204-1087

Re: Changes to ORCP 36C - Proposed Senate Bill 579

Dear Henry:

The subject amendments are on the agenda of the Council on Court Procedures for its meeting in Ashland tomorrow. I am a member of the Executive Board of the Oregon Association of Defense Counsel and as I only became aware of the timing of your meeting yesterday, I apologize for the lateness of this letter. I have been asked to advise the Council that the OADC opposes provisions that would shift the burden of maintaining the secrecy of information in sealed filings to the party claiming confidentiality.

We believe that there are three important reasons that militate against shifting the burden. The first is fundamental fairness to litigants. A party to litigation must often disgorge a great deal of confidential and sensitive business information because it has been sued and because our system provides for wide-ranging discovery. In most cases, this information is disclosed only because of the suit and the discovery orders of court. In this context, we do not believe that the mere filing of a suit and compliance with discovery demands is sufficient reason to burden a person or corporation with the threat that its secrets will thereafter be made public unless it can be shown to the satisfaction of an unknown judge that the documents should be kept private. We believe that a party seeking to open sealed files should be the appropriate party to show why they should be opened and why private information should be made public. If there really is a good reason for doing this, a court, though possibly reluctant, can be expected to do the right thing.

[09901-0001/PA921640.009]

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Our second reason for opposing these provisions impacts both the plaintiffs' and the defense bars. We believe such a provision may have the effect of adding to the expense of every litigation in which there is confidential and proprietary business information because parties with such secrets will be more aware that their documents may be made public and, thus, increase the intensity of "discovery wars" in the first instance. While this may seem unlikely, I can assure you that I have had a number of clients who are extremely militant in protection of their trade secrets and other confidential business information. Sometimes, such information is the very reason a business is doing well, and disclosure without protection is unthinkable to such clients. In that event, they will see the discovery process as a struggle for their continued existence and litigate accordingly.

A final reason for our opposition is that we believe there is a significant potential that settlements will be discouraged because litigants' arrangements with the approval of the court for maintaining confidentiality will be undermined. I have had numerous lawsuits in which the maintenance of confidentiality was a fundamental basis upon which settlement was reached. If there is a real risk of disclosure of confidential information, it may well be that settlements will not be concluded and litigation will be made to drag on because litigants will perceive that the trial judge in a pending case would be more reluctant to open current files than inactive files.

It is a hackneyed, but appropriate expression that "if it ain't broke, don't fix it!" We are simply unaware that the current system for obtaining relief from protective orders has enough problems that it should be changed.

Very truly yours,

Paul T. Fortino

PTF:jlp

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July 13, 1992

Mr. Henry Kantor, Chair
Counsel on Court Procedures
1400 Standard Plaza
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Professor Maurice Holland
Acting Executive Director
Council on Court Procedures
School of Law
University of Oregon, Room 275A
1101 Kincaid Street
Eugene, Oregon 97403-3720

Gentlemen:

Enclosed is a copy of the proposed amendment to ORCP 36C(2) which we understand to be that proposed by Justice Graber pursuant to the minutes of March 14, 1992, of the Counsel on Court Procedures.

Please let us know if for any reason the enclosed does not accurately reflect the proposal before the Counsel, which we understand may be brought up at the August 1 meeting.

Thank you very much.

Very truly yours,

Charles R. Williamson

CRW/rw

Enclosure

AMENDMENT TO ORCP 36 C.(2)

C.(2). A party may disclose materials or other information covered by a protective order issued under subsection (1) above to a lawyer representing a client in a similar or related matter if the party first obtains a court order, after notice and an opportunity to be heard is afforded to the parties or persons for whose benefit the protective order has been issued. Disclosure shall be allowed by the court except for good cause shown by the parties or persons for whose benefit the protective order has been issued. No order shall be issued allowing disclosure unless the attorney receiving the material or information agrees in writing to be bound by the terms of the protective order.

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September 28, 1992

Mr. Maurice J. Holland
Acting Executive Director
Counsel on Court Procedures
University of Oregon
School of Law
Eugene, OR 97403

Dear Maurice:

Re: Proposed revision to ORCP 36
Our File No. : 100000

I am concerned about proposed ORCP 36C(2). If the predicate for obtaining a rule 36C order is, as stated in the rule, "to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense," a party unrelated to the case at hand should not have access to the protected materials without an appropriate showing of need in their particular case. There is no judicial or other economy served by relitigating the protection issues in the case subject to the order versus requiring the parties to raise the issues appropriate to protection in the new case.

The genesis of the proposed rule is not a procedural issue, but a substantive or policy concern of some as to the scope which should be afforded materials a court has deemed subject to protection. As such, this does not appear appropriate to be included in the rules.

Thank you for your consideration.

Very truly yours,

PAUL R. DUDEN

PRD/klv

October 9, 1992

ATLA'S EFFORTS TO WIN LEGISLATION AND COURT RULES RESTRICTING PROTECTIVE ORDERS HAVE BEEN OVERWHELMINGLY REJECTED ACROSS THE COUNTRY

Since 1989, the Association of Trial Lawyers of America ("ATLA") has promoted legislation, and court rules, to curtail the power of courts to issue "protective orders" ensuring the confidentiality of information produced in discovery, and the confidentiality of settlement agreements, in civil lawsuits. ATLA claims the courts "often" abuse their existing powers to protect the confidentiality of such materials. ATLA Board of Governors, Resolution adopted May 6, 1989.

Proponents of the protective order restrictions sought by ATLA frequently claim that several states already have acted to curtail judicial power to enter protective orders. The states cited typically include one or more of the following–Florida, Texas, New York, New Jersey, North Carolina, Iowa, Arkansas and Virginia. In fact, only Florida and Texas have imposed the restrictions on protective orders advocated by ATLA, and those restrictions are being challenged in court in both states.

Florida, by statute, generally prohibits protective orders that would have the effect of concealing a "public hazard", a term defined so broadly as to make the prohibition arguably applicable in every case. Fla. Stat. Ann. § 69.081 (1990).

Texas, by court rule, establishes a presumption–extremely difficult to overcome under the rule–that all "court records", including unfiled discovery materials and settlement agreements, are open to the public. Tex. R. Civ. P. Rule 76a (1990).

The other states mentioned above have not enacted ATLA protective order legislation. The actions taken by these other states are not precedents for such legislation or court rules elsewhere.

New York and **New Jersey** have adopted court rules addressed to "court records" that essentially restate the preexisting rule that such records should not be sealed except upon a showing of "good cause." 22 NYCRR § 216.1 (1991); N.J. Court Rule 1:2-1 (1992). These new rules do not apply to unfiled discovery material or settlement agreements. Such unfiled materials remain subject to the preexisting protective order rules in each state.

North Carolina, Iowa, and **Arkansas** have enacted laws that merely limit the ability of state agencies to settle lawsuits on a confidential basis. They do not speak to materials produced in discovery. N.C. Gen. Stat. § 132-1.3 (1989); Iowa Code § 22.13 (1991); Ark. Stat. Ann. § 25-18-401 (1991). In addition, Arkansas forbids settlement agreements that purport to prohibit a party from disclosing the existence or harmfulness of an "environmental hazard". Ark. Stat. Ann. § 16-55-122 (1991).

Virginia merely allows a lawyer in a personal injury case to seek permission from the court to share information produced in that case with a lawyer in a similar or related matter, if the other lawyer agrees to be bound by the protective order. Va. Code § 8.01-420.01 (1989).

The fact is that the ATLA protective order legislation has been rejected everywhere it has been introduced since the Florida statute was enacted in 1990. In 1991, the ATLA legislation was defeated in 29 states. Thus far in 1992, the legislation has been defeated in 16 states. In three states where the trial lawyers' lobby is particularly strong–Rhode Island (1990), Louisiana (1991) and California (1992)–protective order legislation passed but was vetoed by the governor in each case.

In short, there is no "trend" toward legislation and court rules restricting protective orders in the states. To the contrary, all efforts to enact such legislation have failed since Texas and Florida acted in 1990.

GOVERNOR'S OFFICE

September 10, 1992

To the Members of the California Senate:

I am returning Senate Bill 711 without my signature.

This bill provides that confidential settlements or agreements are not enforceable in certain actions alleging fraud, environmental hazard, or personal injury, unless issued by a court as a final protective order.

Although I agree with the need for public disclosure and discussion of potentially defective products and environmental hazards, there are ample laws, regulations, and opportunities for such disclosure to official agencies and private parties. Rather than promoting public safety, this bill would add to California's litigation nightmare and increase the cost of doing business in this state. It will ultimately diminish our ability to compete with other states, most of whom have already rejected attempts to enact similar anti-business laws.

The California Competitiveness Council identified the legal system as one of the key impediments to improving our jobs climate. This bill would send California several steps backward in reforming its burdensome legal system. Mandatory public disclosure of settlements would in fact encourage and prolong litigation, without any demonstrated improvement in public disclosure or safety.

This bill would also have a chilling effect on research and development in California, discouraging this enterprise out of fear of mandatory disclosure of confidential information and trade secrets, even in cases where no legal liability has ever been found.

Finally, this bill would give its sponsors -- the contingency fee lawyers -- yet another tool to generate lawsuits and extort large settlements from businesses, by threatening to disclose confidential information.

Cordially,

Pete Wilson

PETE WILSON

BUDDY ROEMER
GOVERNOR

State of Louisiana
OFFICE OF THE GOVERNOR
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July 26, 1991

Honorable Alfred Speer
Clerk of the House of Representatives
State Capitol
Baton Rouge, Louisiana 70804

RE: HOUSE BILL 301 BY REPRESENTATIVE LANDRIEU AND SENATOR NELSON

TO amend and reenact Code of Civil Procedure Art. 1426, relative to discovery; to prohibit the issuance of protective orders and preclude enforcement of nondisclosure clauses in certain cases involving a public hazard; and to provide for related matters.

Dear Mr. Speer:

Article 1426 of the Louisiana Code of Civil Procedure, pertaining to protective orders in litigation, provides that a judge may, for good cause shown, issue any protective order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense. House Bill 301 would retain present law but also preclude a judge from issuing a protective order preventing discovery or ordering records sealed "if the information or materials sought to be protected relates to a public hazard which would result in injury or death or relates to information which may be useful to members of the public in protecting themselves from injury that might result from such public hazard, unless such information or material sought to be protected is a trade secret or other confidential research, development, or commercial information." "Public hazard" is not defined in the bill.

The most persuasive argument advanced by the proponents of House Bill 301 is that the public has the right to know about public hazards. I agree wholeheartedly and have consistently supported full and adequate public disclosure throughout my administration in a variety of contexts and actions.

However, I am not persuaded that House Bill 301 achieves its objective or is even necessary. Current law in the form of Code of Civil Procedure Article 1426 already provides that a judge may issue a protective order only "for good cause shown" when "justice requires." In other words, our judiciary already has the authority and discretion to decline to issue a protective order in a lawsuit if the information and material sought to be

protected relates to a public hazard, or for any other reason that the court deems to be in the public or private interest. These decisions are made on a case-by-case basis. What those who favor placing limitations on judicial discretion in this regard seem to be saying, therefore, is that our courts are not vigorously evaluating the need for confidentiality. I have seen no evidence of this and am understandably reluctant to interfere with the judicial process and the discretion of our courts as to whether or not and to what extent a protective order should be issued in the absence of such evidence. Moreover, should such evidence exist, it would not necessarily mean that a new rule is needed; it would only mean that our courts should be evaluating the need for protective orders more earnestly and with greater consistency, which would be a problem to be addressed within our court system between and among our district courts, our courts of appeal and our supreme court.

I am further troubled by the fact that the legislature declined to define "public hazard" in House Bill 301, despite a number of attempts to do so.

This legislation is not unique to Louisiana. In 1991, the concept of House Bill 301 was considered in the form of legislation or rule by at least 22 states. It was defeated in 19 of those states, adopted in 1 (by court rule) and not acted upon in the other 2. Prior to 1991, it was considered in 11 states and adopted in only 2.

In short, I agree with the perspective of the Governor of Rhode Island, who in vetoing similar legislation in that state, explained that "I believe that the decisions with respect to protective orders concerning matters discovered in litigation should be left to the court which is familiar with the individual case which stands before that court."

For the foregoing reasons I am vetoing House Bill 301 and returning it to you.

Sincerely,

Buddy Roemer
Governor

BR:gmo

Enclosure

State of Rhode Island and Providence Plantations
EXECUTIVE CHAMBER, PROVIDENCE

Edward D. DiPrete
Governor

July 11, 1990

TO THE HONORABLE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES:

In accordance with the provisions of Section 43-1-4 of the General Laws, I am transmitting herewith, with my disapproval, 90-H-8522, as amended, "An Act Relating to Causes of Actions."

This bill would prohibit courts from entering protective orders and in product liability litigation involving documents and other materials subject to discovery in that litigation.

I am opposed to this legislation because it interferes with the judicial process and the discretion of the courts as to whether or not and to what extent protective orders should be issued in product liability actions.

I believe that the decisions with respect to protective orders concerning matters discovered in litigation should be left to the court which is familiar with the individual case which stands before that court.

Discovery materials obtained in litigation contain proprietary information. The courts should be in the position to protect the confidentiality of that information as well as to set rules and regulations for access to that information. Thus the court is in the position to balance the interest of both parties in the litigation, those interests being the need for the information as opposed to the right to keep proprietary information confidential.

This administration has worked to improve the state's business climate; legislation such as this would create an adverse business climate.

For the foregoing reasons I disapprove of this legislation and respectfully urge your support of this veto.

Sincerely,

Edward D. DiPrete

Edward D. DiPrete
Governor

JUL 31 '92 16:08

Dennis J. Hubel

Admitted in Oregon and Washington

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Noteboom, Hubel
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Rule 31

July 30, 1992

VIA FACSIMILE AND REGULAR MAIL

Mr. Henry Kantor
Chair, Council on Court Procedures
Attorney at Law
14th Floor Standard Plaza
1100 S W Sixth Avenue
Portland OR 97204

Re: Council on Court Procedures 6-13 Meeting

Dear Mr. Kantor:

You asked for the input of the OSB Committee on Procedure & Practice to the Council on two topics at the Ashland meeting. Those topics were:

1. The issues with ORCP 55 regarding production of hospital records and other records which the Procedure & Practice Committee felt should be addressed in any review of ORCP 55 by the Council. In addition, I believe you inquired whether the Procedure & Practice Committee favored piecemeal revisions of portions of ORCP 55, or preferred that the entire rule be considered for changes with respect to any and all issues at one time.

2. Secrecy in personal injury actions - Rule 36 C(2) and and Justice Graber's proposal. Neither I nor our Committee have a copy of Justice Graber's proposal.

I'll start with ORCP 55. Our Committee is unanimous in its belief that the rule should not be reviewed and revised piecemeal. Rather, our concern is that the Rule, to the greatest extent practical, be viewed as a whole and that all records be treated and governed by the same procedures. As it stands now, there are some

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differences, apparently slight on the surface, but probably significant in practice, in how one obtains hospital records versus any other records with this rule.

Issues that our Committee would like to see addressed upon the Council's consideration of Rule 55 include, at a minimum, the following:

1. Avoid making hospital records more difficult to obtain either for parties to litigation or, more difficult to produce, for the hospital's records custodians. While no formal position has been taken by the Committee, there has certainly been sentiment expressed that, as it stands now, that a deposition should not required to obtain hospital records, and actual appearance by the records custodian and/or attorneys should not be required and that the scope of the records available for discovery should not be changed.

2. The Council should address whether other records should also be made available without a required appearance by the records custodian, without a required deposition and via a mail in procedure as with hospital records, with the same notice and opportunity to object as currently provided in ORCP 55, both for non-hospital records and for hospital records.

3. The Committee is in general agreement with the concepts expressed by Art Johnson that it would be desirable to develop a procedure that would require hospital records to be produced only once in litigation (with an appropriate opportunity to require subsequently generated hospital records to be produced as well) with an obligation on the party obtaining them to make them available to other parties in the case for a reasonable charge (probably the normal copy cost charge plus a reasonable share of the expense of getting the records in the first instance).

4. An issue which may or may not be appropriate for consideration by the Council, but is certainly faced by practitioners is the cost charged by records custodians for hospital records and, in some instances, other records as well. Some facilities provide the records for the subpoena fee only. Others supply the records for a subpoena fee and reasonable [something less than $.50 per page] copy costs. Others charge a rather arbitrary fee for the production of the records in addition to whatever is supplied as a subpoena fee. Some clarification in

this as to what the charges can and/or should be made would be helpful to all.

5. Lastly, the most recent discussion by the Committee suggests that perhaps some of the issues raised to date by Art Johnson and others can be simplified if we consider the produce-ability of the records versus the admissibility of the records in evidence.

Our Committee is anxious to work with the Council on any and all of these Rule 55 issues in the future, but we agree with Karen Creason's most recent correspondence of June 8, 1992, in which she suggests that all of these issues be considered simultaneously and after the next Legislative session by the Council, with an opportunity for input by all concerned parties.

With respect to confidentiality, as indicated above, the Committee does not have a copy of and has not, therefore, had an opportunity to review Justice Graber's proposal. However, the topic of confidentiality and/or secrecy in personal injury actions has been discussed both with respect to protective orders for materials obtained in discovery in such actions and secrecy/confidentiality of settlement agreements. There is no agreement on our Committee with respect to either topic. There are strong feelings on both sides of each issue that seem to be split along "party lines" between plaintiff's trial lawyers and defense trial lawyers. It's the Committee's feeling that this needs to be studied in more detail and that no action should be taken until that occurs.

Very truly yours,

DENNIS JAMES HUBEL

DJH:sb

cc: Karen Creason
Stephen Thompson
Maurice J. Holland

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** RESIDENT, BEND OFFICE

October 12, 1992

Mr. Maurice J. Holland
Executive Director
Council on Court Procedures
University of Oregon School of Law
Eugene, OR 97403

Re: Proposed Revision to ORCP 36

Dear Mr. Holland:

It is my understanding that the Oregon Council on Court Procedures will, at its October 17, 1992 meeting, consider a proposal that would create a new subsection ORCP 36C.(2). There are numerous serious concerns to this proposal which should be seriously considered by the Council.

As I understand the original proposal, confidential documents subject to a protective order can nonetheless be disclosed from one lawyer to another, unless the party or person for whose benefit the protective order was issued could show "good cause" for not so disclosing. The shifting of the burden of proof in this regard is unjustified. Certainly a party seeking to obtain documents subject to a protective order should bear the burden of establishing a particularized need and the inability to access such documents through other means. There is simply no justification for a person or corporation being compelled to convince a court that further disclosure of confidential and proprietary documentation is not appropriate.

Further, the potential for such downstream disclosure will result in an understandably decreased level of cooperation between counsel at the documentary

production stage. Under current Rule 36, most lawyers are not hesitant to divulge documents, provided that an appropriate protective order is in place. However, the likelihood of further disclosure by opposing counsel would seriously circumscribe and frustrate the underlying purposes of a protective order. As a result, minor skirmishes over production of documents will inevitably be escalated into full scale battles.

In short, the proposed revision to ORCP 36 is unnecessary and unwarranted. Under current practice, protective orders enhance full and complete pre-trial discovery and enable matters to more expeditiously be resolved. The promulgation of the proposal would be quite counterproductive to the underlying spirit and intent of Rule 36.

I appreciate the opportunity to present the above views to the Council for its consideration.

Very truly yours,

Charles D. Ruttan

CDR:spb
(GJC\DCA9-9.L11)

Georgia-Pacific Corporation

Law Department
William E. Craig
Western Regional Counsel

900 S.W. Fifth Avenue
Portland, Oregon 97204
Telephone (503) 248-7284

VIA FACSIMILE

October 16, 1992

Maurice J. Holland
Acting Executive Director
Council on Court Procedures
University of Oregon School of Law
Eugene, OR 97403

Re: Comments on Proposed Amendment to Rule 36C(2)

Dear Mr. Holland:

Georgia-Pacific Corporation is concerned about the proposed amendment to Rule 36C(2) for 2 important reasons. First, the possibility of later disclosure of information provided pursuant to a protective order will adversely impact settlement negotiations. Georgia-Pacific is often willing to disclose commercially sensitive information under the terms of an appropriate protective order in order to settle cases which otherwise might result in protracted litigation. If the amendment to the rule as proposed is adopted, Georgia-Pacific would be considerably less willing to make such disclosures.

Secondly, the proposed rule amendment would further complicate discovery proceedings. The inability to rely on a negotiated protective order will result in many more trips to the presiding judge for rulings on specific objections which heretofore have been easily resolved with an appropriate protective order.

Thank you very much for the opportunity to provide these comments.

Very truly yours,

William E. Craig
Western Regional Counsel

WEC:gls

Georgia-Pacific Corporation

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VIA FACSIMILE

October 16, 1992

Maurice J. Holland
Acting Executive Director
Council on Court Procedures
University of Oregon School of Law
Eugene, OR 97403

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Thank you very much for the opportunity to provide these comments.

Very truly yours,

William E. Craig
Western Regional Counsel

WEC:gls

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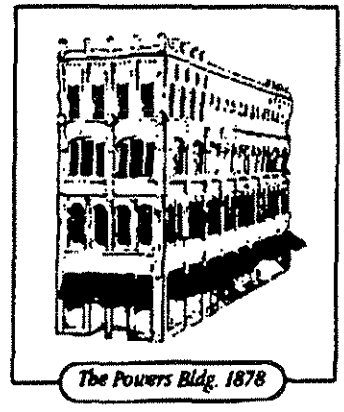

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October 16, 1992

VIA FAX NO. 346-1564

Maurice J. Holland
Acting Executive Director
Council on Court Procedures
University of Oregon School of Law
Eugene, OR 97403

Dear Mr. Holland:

Re: Proposed Change to ORCP 36C(2)

In the September 14, 1992 Advance Sheets, there were proposed amendments to the Oregon Rules of Civil Procedure which we understand the Council is considering. We have been informed that the Council will also consider at its October 17th meeting a proposed change to ORCP 36C(2). We would like to express our opposition to that proposed amendment. In our view, the proposed amendment is a bad idea for Oregon for several reasons.

The argument for this proposal proceeds from several faulty assumptions. One of these is that protective orders are being abused because they are obtained without any real need being demonstrated. That may or may not have once been the situation, but it definitely is not the case now. With the national campaign being waged by the American Trial Lawyers Association and the various state organizations, it has become increasingly more difficult to obtain a protective order in any case. In the past, plaintiffs' attorneys were primarily interested in the welfare of their own client. They made decisions based upon how they could best prosecute that client's case, including how they could most easily, efficiently and least expensively obtain the discovery necessary to prove that client's case. Plaintiffs' attorneys now seem inclined to view themselves as prosecutors for the public at large and therefore less willing to make decisions based upon a

single client's best interest. As a result, more and more protective orders are only obtained after a court is convinced of the need for and the proper breadth of the proposed order.

The Council should also consider that this proposal is certain to increase the litigation and trial court involvement surrounding the original protective order. Whatever may be the situation across the country, in Oregon plaintiff and defense lawyers typically know each other well and defense lawyers know that their counterparts can be trusted to be honest and exercise good faith. Oregon defense counsel can, with comfort, advise their corporate clients of the character of plaintiff's counsel and urge a client to take a less cautious approach to the discovery situation and protective order. This expedites discovery and cuts down trips to the trial court concerning discovery disputes. However, if this proposed amendment were enacted, while Oregon counsel for plaintiffs can be assumed to deal in good faith with the materials obtained under a protective order, defense counsel would not be able to give any such assurances with regard to whoever may obtain subsequent disclosure. Thus, protective order issues which once could have been worked out amicably between Oregon counsel with leeway given for the attitude of Oregon plaintiffs' counsel, will now be litigated to the trial court to the last degree if these protective orders are going to be transformed into a "national protective order." Plaintiff's counsel will think he or she needs to protect the unidentified national client and thus will also not be in a compromising mood. Thus, it can be safely assumed that both on the front end, obtaining the protective order, and, as will be discussed later, on the back end, when some party seeks to have the protective order opened, greater judicial involvement of Oregon judges will be required.

Another faulty premise for this proposed modification is that materials subject to the protective order cannot be obtained directly from the defendant. This premise has two separate aspects which need to be examined. As the Council is well aware, the scope of discovery in ORCP 36B is understandably broad. If a party is unable to obtain discovery of documents produced in another case and subject to a discovery order, because those documents in the current case are not within the scope of discovery, that party should not be able to go back to some other case, where the issues must have been different in order to make the documents there discoverable, and obtain indirectly what that party is not entitled to obtain directly. Shouldn't the decision as to whether something is discoverable or not discoverable be entrusted to the judge monitoring the current litigation, rather than the judge who dealt

with the prior litigation and approved the original protective order? It seems obvious which judge is in the better position to make sound decisions concerning the scope of discovery about the present litigation.

The second aspect of the faulty premise that discovery cannot be obtained directly is the implied or expressed view that the party to whom the discovery request is directed will not be faithful in complying with their obligations under the rules of discovery. In simple language, some plaintiffs' attorneys are paranoid that defendants will hide things that they've turned over in some other litigation. The simple language response is that there is absolutely and utterly no demonstration that such is occurring in Oregon or has occurred. If it has occurred in other jurisdictions, then it is the responsibility of the courts in those jurisdictions to deal with it, not a responsibility which should be imposed upon Oregon trial judges for some out-of-state plaintiff in some out-of-state case. Our judges have enough things to do to keep them busy with Oregon matters.

While there are no doubt several other valid reasons why the proposed amendment should not be adopted, the last one we would raise is the issue of enforcement. This is, of course, tied into the previously discussed issue of the behavior of Oregon counsel. Both defense counsel and the court can comfortably rely upon the good faith of Oregon counsel who receive documents under a protective order. Moreover, enforcement of violations against Oregon counsel can be dealt with easily. In contrast, how is an Oregon Circuit Court judge going to enforce a protective order over a New York, Chicago or Miami attorney? How is anyone going to monitor whether some enforcement action is necessary? Again, the Oregon bench has better things to do with its time than attempting to determine whether John Q. Esquire, New York, New York, has or hasn't abided by the terms of a protective order and how to deal with the issue if he has not.

Discovery can and should be dealt with by the parties and judiciary which are handling a currently pending action. It should not be ruled upon by a judge who is not involved in and probably has no real interest in the current case, nor should it be a burden upon a party who has long since put the issues in a prior case to bed. There is no demonstrated need for the proposed amendment in Oregon.

Thank you for your consideration of our input.

Very truly yours,

Roger K. Stroup

Peter R. Chamberlain

RKS:lme

cc: Henry Kantor