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MISSOULA, MT

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PATRICK E. DUFFY
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

ALVIN K. PHILLIPS, as Personal,)	CV 98-168-M-DWM
Representative of the Estates)	CV 98-169-M-DWM
of Timothy Byrd, Darrell L.)	CV 98-170-M-DWM
Byrd, and Angela Byrd, deceased,)	CV 98-171-M-DWM
and as Guardian of Samuel Byrd,)	
minor child,)	
)	
Plaintiffs,)	
)	
vs.)	ORDER
)	
GENERAL MOTORS CORPORATION,)	
)	
Defendant,)	
)	
and)	
)	
LOS ANGELES TIMES,)	
)	
Intervenor.)	

The 9th Circuit Court of Appeals remanded this matter for a legal determination of whether good cause exists for a protective order covering Exhibit 8, which contains the sum and number of GM's settlements relating to C/K pickups, up to the time of Alvin

Phillips' suit. Oral argument on this remanded issue was heard on March 14, 2003.

The Ninth Circuit's direction to this Court is clear:

If the court, after conducting a good cause analysis, lifts the protective order on the confidential settlement information produced, then this information can be distributed to the public pursuant to its presumptive right of access. Case closed. If, however, the lower court on remand does not modify the protective order already in place, the presumption is rebutted, and the intervenor must then provide sufficiently compelling reasons why the sealed discovery information should be released.

Phillips v. General Motors Corp., 307 F.3d 1206, 1214 (9th Cir. 2002).

The first step, then, is to consider whether good cause exists to protect Exhibit 8. Federal Rule of Civil Procedure 26(c) governs protective orders and requires good cause for a protective order to issue. "For good cause to exist, the party seeking protection bears the burden of showing specific prejudice or harm will result if no protective order is granted."

Phillips, at 1210-1211. "Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test." Beckman Indus., Inc. v. International Ins. Co., 966 F.2d 470, 476 (9th Cir. 1992). In order to obtain a protective order covering Exhibit 8, GM must make a "particularized showing of good cause." San Jose Mercury News, Inc. v. U.S. District Court-Northern District (San Jose), 187 F.3d 1096, 1102 (9th Cir. 1999).

At oral argument, counsel for GM argued for a number of

harms that would result from disclosure. First, there would be a harm to prior plaintiffs in suits with GM whose private settlement information would now be known. GM also argued that this disclosure would be an ex post, ex parte violation of confidential settlement agreements. This argument is a non-starter. The settlement information of no prior plaintiff would be known by disclosing this aggregate sum. By dividing the total amount of money by the number of settlements, one might arrive at an average, but there is no potential harm that an individual plaintiff's private settlement could be determined in any way by these aggregate figures. The specific details of an individual settlement are not deducible by these two numbers.¹ Second, this is not a harm particularized to GM.

GM also argued that it would be more difficult for it to reach settlements in the future, because Plaintiffs would fixate on "artificial benchmarks" and refuse to settle for less. Parties might also be reluctant to settle, because the information would not, apparently, be confidential. Following oral argument, GM offered affidavits of Gordon Bennet, John Mudd, John Schulte, and Dennis Lind, each of whom emphasized the

¹GM worries about future disclosures and their effects on future settlements. However, I am considering only Exhibit 8 as it appeared in the trial before me, and whether there is good cause today to protect it from disclosure. I do not need to consider what may happen if other documents are disclosed in the future.

importance of confidentiality in reaching a settlement.

The job of negotiating lawyers on both sides of a case is to determine whether a case is better settled or better tried. The existence of hypothetical average figures will not impede most attorneys from making an independent analysis of the appropriate settlement of a case, nor will a hypothetical average somehow force parties to settle when it is against their interests. A particularized harm to GM would have to be a particular obstacle to GM settling its cases. The evidence and testimony here do not persuade that GM will face a real, particular impediment to its ability to settle cases.

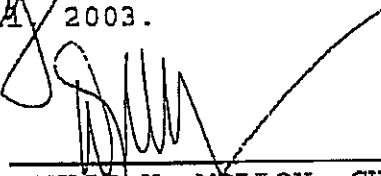
There is no doubt that confidentiality is crucial to settlement negotiations, as explained in GM's persuasive affidavits. However, again, no one's settlement information is disclosed, and GM was unable to produce evidence of a particularized harm that the disclosure of these two numbers in Exhibit 8 will bring settlement negotiations to a halt.

Finally, GM has argued that its reputation and goodwill would be damaged by the public's access to these numbers. General Motors Corporation certainly has the market presence and financial wherewithal to play the media game as well as anyone. The numbers themselves reveal no culpable or damaging information regarding GM. Therefore, disclosure of those numbers will cause no undue embarrassment of or damage to GM.

Because I conclude there is no good cause to issue a protective order, I do not need to consider the second issue in the Ninth Circuit's remand, the common law right of access.

It is therefore HEREBY ORDERED Exhibit 8 be unsealed.

Dated this 5 day of ~~April~~ May 2003.



DONALD W. MOLLOY, CHIEF JUDGE
UNITED STATES DISTRICT COURT

