



News Release

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DRI Seeks High Court Review in Protective Orders Dispute

Issue Is Whether Private Business Information Once Sealed Under A “Good Cause” Standard Can Later Be Unsealed For Failing To Meet More Formidable “Compelling Reasons” Standard.

CHICAGO – (April 26, 2016)— DRI—The Voice of the Defense Bar has filed an amicus brief supporting Chrysler’s petition for U.S. Supreme Court review in *FCA US LLC, f/k/a Chrysler Group LLC v. The Center for Auto Safety*. The brief was filed through DRI’s Center for Law and Public Policy.

Federal Rule of Civil Procedure 26(c) (and similar state court rules) allows trial courts to issue protective orders for “good cause” to prohibit litigants from publicly disclosing discovery documents that contain a company’s trade secrets or other confidential business information. Protective orders commonly require a party that wants to file such confidential documents in court in connection with a motion or pleading to do so under seal.

The issue in the *Chrysler* case—a putative class action involving an allegedly defective automobile component—concerns the proper standard for *unsealing* court-filed discovery documents when a plaintiff or plaintiff-intervenor (such as a public interest group) seeks to disclose publicly a defendant’s confidential business information that was filed under seal in accordance with a protective order. To *prevent* unsealing, does the defendant that produced the documents merely have to show “good cause” for continuing to keep its confidential business information under seal, or does the defendant have to satisfy a much more stringent “compelling reasons” standard? The latter standard requires the defendant to show that the party seeking disclosure intends to use the confidential information for an improper purpose, such as deliberately placing the defendant at a competitive disadvantage. The federal courts of appeals are split on which is the correct standard to apply.

DRI’s amicus brief explains that protective orders that prohibit public disclosure of a company’s confidential business information *throughout* the course of a judicial proceeding are an essential component of the civil justice system. The brief argues that the same “good cause” standard governing issuance of protective

orders should apply when a defendant seeks to avert the unsealing of already-sealed, court-filed discovery documents. It would be fundamentally unfair to require a defendant to meet a more formidable “compelling reasons” standard to prevent the unsealing of confidential business information that it produced during discovery in reliance upon a protective order that was issued for “good cause.” In fact, such a “compelling reasons” standard would undermine protective orders’ purposes and utility, including the free exchange of information needed by litigants to adjudicate or settle a suit.

Amicus brief author [Lawrence S. Ebner](#) of Dentons in Washington, D.C., serves as vice chair of DRI’s Amicus Committee. He is available for interview or expert comment through DRI’s Office of Public Policy.

For the full text of the amicus brief, click [here](#).

About DRI – The Voice of the Defense Bar

For more than fifty-five years, DRI has been the voice of the defense bar, advocating for 22,000 defense attorneys, commercial trial attorneys, and corporate counsel and defending the integrity of the civil judiciary. A thought leader, DRI provides world-class legal education, deep expertise for policy-makers, legal resources, and networking opportunities to facilitate career and law firm growth. For more information, log on to www.dri.org.