

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BARRY LEE SMALLEY,
Plaintiff,

v.

THE PROCTER & GAMBLE COMPANY,
Defendant.

ORDER
06-C-295-C

In this new pro se civil lawsuit, this court has granted Smalley leave to proceed on his claim that Procter & Gamble was negligent when it failed to warn that its “Joy Dish Soap” should not be used for bathing. See dkt. 5 at 2. The Marshals Service served this complaint on July 25, 2006, so Procter & Gamble has not yet answered, nor has this court scheduled the telephonic preliminary pretrial conference.

On August 2, 2006, plaintiff filed a “Request for an Order” directing his Wisconsin public defender from a different case in Kenosha to file with the court under seal photographs of Smalley’s genitals which allegedly show the injury he suffered from bathing in Joy. See dkt. 9. Although discovery will not begin in this case until following the not-yet-scheduled pretrial conference, there is no logical reason not to allow submission of these photographs so long as certain conditions are met. First, the court agrees that such photos must be filed under seal and maintained in confidence. Second, Smalley must serve accurate copies of these photographs on Procter & Gamble at the time he files them with the court. Obviously, Procter & Gamble must maintain these photographs in confidence as well.

Normally the court waits until the parties have presented a proposed joint protective order to the court before allowing the exchange of confidential information. Here, we can craft a protective order tailored to the situation.

Accordingly, IT IS ORDERED that plaintiff Barry Lee Smalley shall make or cause to be made accurate photocopies of the photographs to which he refers in his request for an order. Plaintiff shall file with the court and serve upon defendant the Procter & Gamble Company, sets of these photographs presented in sealed envelopes marked "Confidential Evidence."

IT IS FURTHER ORDERED that the clerk of court shall maintain these photographs under seal, and that Procter & Gamble shall sedulously maintain the confidence of these photographs, making only such copies as necessary to defend against this lawsuit, and allowing these photographs to be viewed only by its attorneys and persons in the company with an actual need to view these photographs for the purpose of defending against this lawsuit.

Entered this 7th day of August, 2006.

BY THE COURT:
/s/
STEPHEN L. CROCKER
Magistrate Judge