

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

ERAGEN BIOSCIENCES, INC.,

Plaintiff,

v.

STEVEN BENNER and
NUCLEIC ACIDS LICENSING L.L.C.,

Defendants.

ORDER

06-C-305-C

The parties have asked the court to referee their dispute over the scope of the “attorneys’ eyes only” clause of their overarching protective order in this case. Having read and considered all submissions by both sides (except plaintiff’s unbidden reply brief), I am siding with plaintiff and allowing broader protection of the information the parties—or at least the plaintiff—deems most confidential.

The court’s most important role in determining the scope of a protective order is as the public’s fiduciary, assuring as much sunshine and transparency in judicial proceedings as possible. When the dispute simply is over the *level* of protection that the litigants’ materials will receive, the public has no real stake in the outcome and the court is considerably less concerned about “overprotecting” information that the public isn’t going to see in any event.

It is common in business litigation in this court for private companies to assert that they hold their financial and business information in close confidence and that they are chary of divulging this information to business competitors except with AEO protection. This court routinely honors such assertions so long as there is a logical basis them. I conclude that there

is a logical basis for plaintiff's assertions in this case. AEO designations add a cumbersome and annoying procedural layer to the exchange of information, but that is not a basis to provide a business's competitor with an unfiltered look at closely-held information. In this case, I conclude that plaintiff is not gaming defendants or the court in an attempt to increase the burden and cost to defendants in this case. This is a relatively small case by this court's standards, so that we are not talking about tens of thousands of AEO documents and additional weeks' of attorney time. Defendants note that they have shallow pockets compared to plaintiff, but this court already has found that defendants rushed to court without waiting for the conclusion of pre-litigation settlement attempts; therefore, defendants' current complaints about predictable litigation costs fall on unsympathetic ears.

Defendants' attorneys can seek judicial relief from plaintiff's AEO designations on a document-by-document basis. Prior to seeking a court ruling, defendants must run the document(s) past plaintiff to see whether redaction or synopsis will accommodate both sides' needs.

Entered this 30th day of November, 2006.

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