

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

NATIONAL RIFLE ASSOCIATION OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 ACKERMAN MCQUEEN, INC., )  
 )  
 and )  
 )  
 MERCURY GROUP, INC., )  
 )  
 Defendants. )

Case Nos. CL19001757;  
CL19002067

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 CITY OF ALEXANDRIA  
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MEMORANDUM IN SUPPORT OF  
MOTION FOR PROTECTIVE ORDER

The Defendants have sought to reach an agreement on the scope of the protective order necessary for the production of confidential information in this consolidated litigation. The parties have agreed that “Disclosure and discovery activity in this Action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this Action may be warranted.” Proposed Protective Order, p. 1. Consequently, counsel for the parties have reached an agreement with respect to all aspects of the concurrently-filed Protective Order except one clause discussed in this Memorandum.

Defendants seek to ensure that their proprietary and confidential information does not fall into the hands of a competing public relations business, especially a business that is in direct competition with the Defendants’ businesses for work for the NRA. An ordinary Protective Order would routinely ensure that such proprietary information would not be

disclosed to a competing business. However, because Plaintiff has retained the law firm of Brewer, Attorneys and Counselors, (“Brewer law firm”) and this Court has approved the *pro hac vice* participation of Michael Collins of the Brewer law firm – over the objection of the Defendants, Michael Collins and members of his law firm will have access to proprietary information of Ackerman McQueen and the Mercury Group. This would not typically be problematic, except that the Brewer law firm also has a “Public Relations Unit” that not only directly competes with the Defendants in the field of Public Relations, but the Brewer unit has already poached substantial portions of the NRA Public Relations Work from the Defendants.

As stated during the June 12 *pro hac vice* hearing: “They have an in-house public relations unit in the firm that is siphoning away business from Ackerman McQueen for the NRA work, and that's -- that's, a key factor in this case, what's happening to the work that's being taken away from AMc.” June 12 Transcript, p. 15. Therefore, if documents are produced by the Defendants that are deemed confidential, or even designated “Attorneys Eyes Only,” Plaintiff’s counsel has insisted that anyone at the Brewer law firm is still entitled to see such documents, since Michael Collins of the Brewer law firm is counsel for the NRA in this case.

At the hearing addressing the *pro hac vice* application of Michael Collins on June 12, 2019, this Court expressed the common sense views that a virtual wall could be constructed between Attorney Collins and the rest of the Brewer law firm:

- (i) THE COURT: Is there a wall? You know, the old -- the old -- the old saying? It's "I'm going to put up a wall." I'm not going to use the first part, but I'm going to put -- saying that I'm going to put up a wall. You know what the old saying is -- is that -- that's a little racist to say, to use the entire term but -- the entire term, but he's going to put up a wall, and Mr. Brewer -- I mean, Mr.

Collins will never have access to any information that relates to the NRA? Is that correct?

June 12 Transcript, p. 16, 17.

Secondly, the NRA's attorney, Robert Cox argued the following that is now untrue:

We dispute the allegations in the counterclaim that somehow the -- the firm is benefitting financially from -- from media relations. They have a staff of four people. They cannot undertake the work that Ackerman performs for the NRA as a media relations department that they use strictly for pending cases. So we dispute the factual allegations that Mr. Collins would be financially benefitting from any diversion of -- of marketing from business from Ackerman. June 12, Transcript p.

The Defendants' Services Agreement has now been terminated, approximately 50 employees of Ackerman McQueen and Mercury Group have been terminated or furloughed. Some of the public relations and crisis response work has been absorbed by William Brewer and his staff in the Public Relations Unit of his law firm. William Brewer himself appears to be leading the NRA public relations effort during the crisis response days following the mass shootings in El Paso and Dayton and has been quoted in many publications since those events.

The concerns that Defendants had when they objected to the *pro hac vice* motions filed by two attorneys of the Brewer law firm have proven true. William Brewer's litigation strategy was to end AMc's contract with the NRA and pick up the public relations work for his own law firm. Michael Collins is a partner in that law firm who not only benefits from the profits earned by the public relations work done for the NRA, but has failed to construct any "wall" between himself and the other persons in his law firm who are in direct competition with the Defendants.

Defendants' counsel has proposed that certain proprietary documents may be turned over to NRA's counsel at Briglia & Hundley, but that such sensitive documents be screened from any person at the Brewer law firm, to ensure that Brewer and his public relations unit

are not misusing the information to the competitive disadvantage of the Defendants. NRA's counsel has objected to this screening – making the Defendants all the more concerned about how their proprietary information will be protected from being used by a competitor. This Court granted the *pro hac vice* motion for Mr. Collins, but it was made clear at the hearing that the Defendants could return to the Court if the participation of Mr. Collins created problems in the case. As stated by NRA's attorney Cox: "if someone has got a disqualification issue, they can raise it. And yes, we'll take it seriously, your Honor. If they've got grounds for us and they explain those grounds for us, we'll take them very seriously." Michael Collins at June 12 hearing.

Unfortunately, at the first sign that Mr. Collins partnership with the Brewer law firm could create a problem, NRA's attorneys have not been willing to address the need for any restrictions on Mr. Collins access to proprietary documents that could aid his law firm's competition with Ackerman McQueen. The issue has been further elevated in importance when the NRA failed to provide responsive documents to discovery requests that sought information about the Brewer law firm's public relations work for the NRA.<sup>1</sup>

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<sup>1</sup> Specifically, the NRA has failed to provide documents in response to the following document production requests that specifically target the public relations work that the Brewer law firm is doing for the NRA:

3. All documents relating or referring to any public relations work performed by any entity owned by William Brewer and performed on behalf of the NRA.

4. All documents relating or referring to discussions between William Brewer and any employee of the NRA that pertain to payment for public relations services.

It is inequitable for the Brewer law firm to refuse to disclose the work that its public relations unit is doing for the NRA and at the same time to allow the Brewer law firm unfettered access to the proprietary information of its competitors at Ackerman McQueen.

The clause that is at issue in the Protective Order is Section 7.3.

7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

\* \* \* \*

7.3 NRA's Restrictions on Use of Highly Confidential Information.

Unless otherwise ordered by the Court or permitted in writing by Counsel for AMc and Mercury Group, Lead Counsel for the NRA (Briglia Hundley, P.C.) may disclose any information or item designated "HIGHLY CONFIDENTIAL" by Defendants only to the law firm Briglia Hundley, P.C. Information or items designated "HIGHLY CONFIDENTIAL" may, however, be provided to one representative of the NRA who is responsible for making decisions concerning the Action, to the extent deemed necessary by the NRA's counsel of record for the purpose of assisting in the prosecution, defense, or attempted settlement of the Action; provided, however, that such representative shall not discuss, disclose, summarize, describe, characterize, or otherwise communicate or make available such Discovery Material to any person or entity other than the law firm Briglia Hundley, P.C. The representative selected by the NRA shall make this affirmation in writing and shall be subject to the approval of AMc and Mercury Group, which approval shall not unreasonably be withheld.

Defendants maintain that this clause is necessary to limit certain confidential information to designated Virginia counsel for the NRA, and to preclude access by anyone affiliated with the Brewer law firm and its public relations unit.

August 14, 2019

Respectfully submitted,



/s/ David H. Dickieson

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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2019, the foregoing pleading was served via electronic mail on the following counsel:

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A black rectangular redaction box covers the signature area. Above the box, there are some faint handwritten marks that appear to be initials or a checkmark.

/s/ David H. Dickieson  
David H. Dickieson.