

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

_____ )	
UNITED STATES OF AMERICA, )	
Department of Justice )	
Antitrust Division )	
1401 H Street, N.W., Suite 4000 )	
Washington, DC 20530, )	
)	Civil No.: 03 C 2528
Plaintiff, )	
)	Filed: April 15, 2003
v. )	
)	Judge: Hon. James B. Zagel
UPM-KYMMENE, OYJ )	
Etelaasplanadi 2, PL 380 )	Magistrate
FIN-00101 )	Judge: Hon. Michael T. Mason
Helsinki, Finland, )	
)	
RAFLATAC, INC. )	
235 Cane Creek Road )	
Fletcher, NC 28732, )	
)	
BEMIS COMPANY, INC. )	
222 South Ninth Street, Suite 2300 )	
Minneapolis, MN 55402, )	
)	
MORGAN ADHESIVES COMPANY )	
4560 Darrow Road )	
Stow, OH 44224, )	
Defendants. )	
_____ )	

**STIPULATED PROTECTIVE ORDER**

THIS MATTER having come before the Court upon the stipulation of the parties for the entry of a protective order regarding the confidentiality of information that is subject to discovery or testimony in this action and that may contain any trade secret, or other confidential research,

development, or commercial information; and, in the interest of expediting discovery and permitting it to proceed without delay occasioned by possible disputes regarding such claims of confidentiality pertaining to voluminous document productions, the parties have agreed to provide access to and accept such confidential information subject to the provisions set forth below. Good cause having been shown, the Court ORDERS as follows:

**I. DEFINITION OF CONFIDENTIAL INFORMATION AND DOCUMENTS**

1. As used in this Protective Order (“Order”), “confidential information” means any testimony, deposition transcript, affidavit, written responses to discovery requests and documents that contains any trade secret or other confidential research, development, or commercial information, as such terms are used in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and that has been designated confidential in accordance with this Order. The term “document” shall refer to any discoverable writing or recording, as defined in Fed. R. Civ. P. 34(a), or transcript of oral testimony in the possession of a party or a non-party.

**II. DESIGNATION OF CONFIDENTIAL INFORMATION**

2. Any party’s or non-party’s designation of testimony, deposition transcript, affidavit, written responses to discovery requests and documents in this action as confidential information shall constitute a representation to the Court, in good faith and after careful determination, that the information is not reasonably believed to be already in the public domain and that the information so designated constitutes confidential information as defined in Paragraph 1 of this Order. Any submission of a document without its being designated as confidential shall not thereby waive any future claim of confidentiality, and the same may thereafter be designated confidential in accordance with this Paragraph and Paragraph 7 of this

Order. Any such subsequent designation, however, shall not apply retroactively to any previously disclosed information for which disclosure was proper when made.

3. Subject to the exceptions and limitations noted in this paragraph, all information provided by any defendant to the Department of Justice, Antitrust Division (“Division”) pursuant to the Hart-Scott-Rodino Act or during the Division’s investigation of the transaction will be deemed confidential information, subject to all provisions as if the information had been designated confidential in accordance with Paragraph 2. All documents and transcripts of testimony provided by defendants, that are attached as exhibits to the Memorandum of the United States in Support of its Motion for a Temporary Restraining Order and Preliminary Injunction, and all advocacy papers prepared by any defendant’s counsel or economic consultants that have been presented to the Division, shall be subject to designation as confidential consistently with Paragraphs 2 and 7 by 12:00 p.m. EDT on April 25, 2003.

4. Consistently with Paragraph 2 of this Order, any non-party may designate as confidential any information provided previously to the Division by it in connection with the transaction at issue in this action. Non-parties that have provided information to the Division shall have until 12:00 pm EDT on April 25, 2003 to review this Order and designate previously provided information as confidential in accordance with Paragraphs 2 and 7 of this Order. Information designated as confidential shall not be disclosed to any person other than a person allowed to receive it under Paragraphs 11, 12, 17 or 18 of this Order. Any non-party that concludes that this Order does not adequately protect its confidential information shall have until 12:00 pm EDT on April 25, 2003 to seek additional protection from the Court for its confidential information. By 5:00 pm EDT on April 25, 2003, information provided by the non-parties,

except information subject to an application to the Court for additional relief, shall be provided to outside counsel of record for the Defendants. Information subject to an application for additional relief shall be turned over to Defendants as directed by the Court in subsequent orders.

5. The parties, in complying with informal discovery requests or discovery requests served upon them pursuant to the Federal Rules of Civil Procedure, may designate as confidential information, in accordance with Paragraphs 2 and 7 of this Order, any document or portion thereof submitted in response to such discovery requests that contains confidential information, including documents obtained by them from non-parties pursuant to discovery or otherwise.

6. When conducting discovery from non-parties, the parties shall attach to such discovery requests a copy of this Order to apprise non-parties of their rights under this Order. A non-party may designate, in accordance with Paragraphs 2 and 7 of this Order, as confidential information any document or portion thereof containing confidential information that it produces in response to discovery in this proceeding.

7. Documents containing confidential information produced previously to the Division during the investigation of the transaction at issue in this action by any non-party that the producing non-party seeks to designate as confidential in accordance with Paragraph 2 of this Order, shall be designated as confidential by forwarding a letter to all parties listing the confidential information (by ranges of document identification numbers or page and line numbers where applicable) to be so designated. Documents containing confidential information produced during this action by any party or any non-party, that the producing party seeks to designate as confidential in accordance with Paragraph 2 of this Order, shall be designated as confidential by placing on or affixing to the documents containing confidential information (in such manner as

will not interfere with the document's legibility) or, if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL" or any other appropriate notice, together with an indication of the portion or portions of the document considered to be confidential information.

8. All transcripts of depositions taken after the date of this Order shall be treated as if designated as confidential in their entirety for a period of five business days after a full and complete copy of the transcript has been made available to the deponent or deponent's counsel. Any deponent, counsel for the deponent, or counsel for a party may designate during the deposition or during the five-business-day period after the transcript is received from the court reporter any portion of the transcript as confidential by designating, by page and line, and by designating any exhibits, those that are to be treated as confidential. Such designations shall constitute a representation to the Court that such party or protected person (and counsel, if any) in good faith believes that the information so designated constitutes confidential information.

9. This Order shall not apply to information obtained from the public domain or other sources regardless of whether such information is also contained in information designated as confidential pursuant to this Order.

10. This Order shall be without prejudice to the right of any party or non-party (including the general public) to bring before the Court the question of whether any particular information designated as confidential is appropriately designated or whether any information is or is not discoverable or admissible evidence at any evidentiary hearing or trial in this case. No party concedes by complying with the procedures set forth in this Order that any information designated by any other party or any non-party as confidential is in fact confidential as that term

is defined in Paragraph 1 of this Order. If a party to this Order objects to the designation of information as confidential and the parties are unable to resolve this dispute, either party may bring this matter to the Court for decision. The party asserting the confidential status of the information shall bear the burden of establishing that the information qualifies as confidential under Rule 26(c)(7) of the Federal Rules of Civil Procedure. However, no information properly designated as confidential pursuant to this Order shall be disclosed except as provided herein unless and until the Court orders the release of such information from the confidentiality provisions of this Order. Nothing in this Order shall be construed to effect an abrogation, waiver, or limitation of any kind on the right of the parties or non-parties to assert any applicable discovery or trial privilege.

### **III. LIMITATIONS ON DISCLOSURE OF CONFIDENTIAL INFORMATION**

11. Confidential information shall be disclosed only to:

(a) the Court and all persons assisting the Court in this action, including court reporters and stenographic or clerical personnel;

(b) Division attorneys, economists, other employees, and anyone retained to assist the Division in the preparation or trial of this action (including consultants and/or experts and their support staff);

(c) outside counsel of record for Defendants (“outside counsel”), their associated attorneys and other employees of their law firm(s), provided they are not employees of a Defendant;

(d) anyone retained to assist Defendants’ outside counsel in the preparation or

trial of this action (including consultants and/or experts), provided they are not employed by or affiliated with a Defendant;

(e) authors, addressees and recipients of particular information designated as confidential solely to the extent that they have previously had lawful access to the particular information disclosed or to be disclosed;

(f) persons (and their counsel) whom counsel for a party believes in good faith to have, or had, prior access to confidential information, or who have been participants in a communication that is the subject of the confidential information and from whom verification of or other information about that access or participation is sought, solely to the extent of disclosing such information to which they have or may have had access or that is the subject of the communication in which they have or may have participated; provided that, unless and until counsel confirms that any such persons have had access or were participants, only as much of the information may be disclosed as may be necessary to confirm the person's access or participation.

12. Before disclosure of confidential information is made to any person or persons not authorized to receive the information under the provisions of Paragraph 11 of this Order, other than an employee of the party or non-party designating such information as confidential, the party wishing to make such a disclosure shall give at least three business day's advance notice in writing, via facsimile, to the party or non-party who provided the confidential information, stating the names, addresses, and employers of the person(s) to whom the disclosure will be made. The notice shall identify with particularity the documents or specific parts of the information to be disclosed, including the production number of the documents. If, within the three-business-day period, an objection is made regarding a disclosure, disclosure of the

confidential information shall not be made pending a ruling by the Court. The Court will grant the motion and permit access upon such terms as it deems proper, unless the party or non-party objecting to the proposed disclosure shows good cause why the proposed disclosure should not be permitted. Before any information designated as confidential may be disclosed to any person described in this paragraph, he or she shall have first read this Order or shall have otherwise been instructed in his or her obligations under the Order by counsel for a party. Additionally, before any information designated as confidential may be disclosed to any person (and their counsel) described in this paragraph, he or she shall have executed the certification included as annexed hereto. Counsel for the party making the disclosure shall retain the original of such executed agreement for a period of at least six months following the final resolution of this action.

13. Disclosure of confidential information to any person described in Paragraph 11 of this Order shall be only for the purpose of this litigation (including any appeals), and for no other purpose except as otherwise provided in this Order. Each individual described in Paragraph 11 to whom information designated as confidential is disclosed shall not disclose that confidential information to any other individual, except as provided in this Order, or use it for any purpose other than in connection with this action. Any consultants or experts retained by any party shall be required to read this Order and sign the attached certification acknowledging the terms of this Order and their agreement to be bound by those terms prior to their receipt or further use of any information designated as confidential. The party who retained each consultant shall maintain the original executed certification for a period of six months after the completion of this litigation. At the time that any consultant, expert or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof produced in this action

designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information.

#### **IV. USE OF CONFIDENTIAL INFORMATION IN LITIGATION**

14. If any confidential information is contained in any pleading, motion, exhibit or other paper (collectively the “papers”) filed or to be filed with the Clerk of the Court, the Clerk shall be so informed by the party filing such papers, and such papers shall be filed under seal with the appropriate cover sheet pursuant to Local Rules 5.8 and 26.2. Confidential information contained in the papers (including confidential information from both parties and non-parties) shall remain under seal until further order of this Court, provided, however, that such papers may be furnished to persons or entities who may receive confidential information pursuant to Paragraph 11. Upon or after the filing of any paper containing confidential information, the filing party will file on the public record a duplicate copy of the paper that does not reveal confidential information. Further, if the protection for any such information expires, a party may file on the public record a duplicate copy which also contains the formerly protected information.

15. The parties’ exhibits containing confidential information that has been produced by any Defendant shall not be treated as confidential information at any evidentiary hearing or trial unless redesignated by the Defendant consistently with Paragraph 2 of this Order when exchanging their exhibits or exchanging their objections to Plaintiff’s exhibits.

16. If counsel for a Defendant or the Division plans to introduce into evidence during their case-in-chief any document or transcript containing confidential information produced by a non-party (or indirectly by a non-party through the Division), they shall provide advance notice to the non-party for purposes of allowing that party at least five (5) days, or less by order of this Court, to seek an order that the document or transcript be granted in camera treatment. If counsel

for a party plans to use any document or transcript containing confidential information during cross-examination or rebuttal, that party need only provide notice to the producing party or non-party immediately prior to the use of such information. Except where an order requesting in camera treatment is granted, all documents and transcripts shall be part of the public record.

Where in camera treatment is granted, a duplicate copy of such document or transcript with the confidential information deleted therefrom may be placed on the public record.

#### **V. PROCEDURES UPON TERMINATION OF THIS ACTION**

17. Within 90 days after receiving notice of the entry of an order, judgment or decree terminating this action, all persons having received confidential information shall, at the election of the designating party or non-party that produced the information, either return such information and all copies thereof to counsel for the party or non-party that produced it, or destroy all such confidential information and certify that fact in writing. The Department of Justice and outside counsel for any defendant shall be entitled to retain court papers, deposition and trial transcripts and exhibits, and attorney-work product (including discovery information containing confidential information); provided that Department of Justice employees, and defendants' outside counsel, and employees of such outside counsel shall not disclose the portions of court papers, deposition transcripts, exhibits or attorney-work product containing confidential information to any person except pursuant to court order or agreement with the designating party or non-party that produced the confidential information. All confidential information returned to the parties or their counsel by the Court likewise shall be disposed of in accordance with this Paragraph. Nothing in this provision, however, shall restrict any rights of the plaintiff to retain and use confidential information for law enforcement purposes, in accordance with the statutory provisions of the Hart Scott Rodino Act, insofar as applicable, or as

otherwise authorized by law.

18. Nothing in this Order shall:

- (a) limit a designating party's or non-party's use or disclosure of its own confidential information;
- (b) prevent disclosure of confidential information with the consent of counsel for the party or non-party that designated the confidential information; and
- (c) prevent plaintiff from disclosing information designated as confidential: (i) to duly-authorized representatives of the Executive Branch of the United States Government; (ii) in the course of legal proceedings to which the United States is a party; (iii) for the purpose of securing compliance with any Final Judgment in this action; or (iv) for law enforcement purposes, in accordance with the statutory provisions of the Hart Scott Rodino Act, insofar as applicable, or as otherwise authorized by law. Except when used for law enforcement purposes or where prohibited by law or regulation, the plaintiff will promptly inform the party or person who designated the information as confidential at least 10 days before disclosure is made if plaintiff intends to make disclosure pursuant to this paragraph. When disclosing confidential information as authorized by this provision, plaintiff shall seek to preserve confidentiality beyond the authorized disclosure.

**VI. RIGHT TO SEEK MODIFICATION OF THIS ORDER**

19. Nothing in this Order shall prevent either party or any non-party from seeking modification of this Order upon a motion duly made pursuant to the Federal Rules of Civil Procedure and the rules of this Court.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

DATED: \_\_\_\_\_

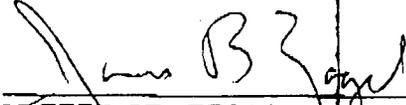
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- b) prevent disclosure of confidential information with the consent of counsel for the party or non-party that designated the confidential information; and
- c) prevent plaintiff from disclosing information designated as confidential: (i) to duly-authorized representatives of the Executive Branch of the United States Government; (ii) in the course of legal proceedings to which the United States is a party; (iii) for the purpose of securing compliance with any Final Judgment in this action; or (iv) for law enforcement purposes, in accordance with the statutory provisions of the Hart Scott Rodino Act, insofar as applicable, or as otherwise authorized by law. Except when used for law enforcement purposes or where prohibited by law or regulation, the plaintiff will promptly inform the party or person who designated the information as confidential at least 10 days before disclosure is made if plaintiff intends to make disclosure pursuant to this paragraph. When disclosing confidential information as authorized by this provision, plaintiff shall seek to preserve confidentiality beyond the authorized disclosure.

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UNITED STATES DISTRICT JUDGE

DATED: 21 April 2003

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FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

\_\_\_\_\_  
UNITED STATES OF AMERICA,  
Department of Justice  
Antitrust Division  
1401 H Street, N.W., Suite 4000  
Washington, DC 20530,

Plaintiff,

v.

UPM-KYMMENE, OYJ  
Etelaasplanadi 2, PL 380  
FIN-00101  
Helsinki, Finland,

RAFLATAC, INC.  
235 Cane Creek Road  
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BEMIS COMPANY, INC.  
222 South Ninth Street, Suite 2300  
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Defendants.  
\_\_\_\_\_

Civil No.: 03 C 2528

Filed: April 15, 2003

Judge: Hon. James B. Zagel

Magistrate

Judge: Hon. Michael T. Mason

**CERTIFICATION**

I, \_\_\_\_\_, hereby certify that I am not an employee of or affiliated with any party to the above referenced litigation. I further certify that I have read the Stipulated Protective Order entered by the Court on April \_\_, 2003 and agree to be bound by its terms.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature