

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS
Houston Division

HOUSTON INDUSTRIES INCORPORATED,)

Plaintiff—Cross-Respondent,)

vs.)

DANIEL C. KAUFMAN, *et al.*,)

Defendants—Cross-Petitioner.)

Civil Action No. H-95-5237

4/19/96

**GOVERNMENT'S OBJECTIONS TO TERMS
OF PROPOSED PROTECTIVE ORDER**

Without waiver of its opposition to entry of any protective order, the government respectfully states its objections to the terms of HII's proposed protective order. More specifically:

1. In its motion papers and arguments, HII delineated the materials to be protected as highly sensitive and confidential trade secret information within the ambit of FED. R. CIV. P. 26(c)(7) and paragraph 1(a) of the proposed order is explicit in allowing HII the latitude to designate in good faith, and thereby protect, "sensitive, commercial and proprietary" documents, and data. However, paragraph 1(a) is equally explicit in introducing that specification by saying that HII's discretion to designate materials for protection shall "not be limited to" such trade secrets. In addition, paragraph 1(a) goes on to broadly (and without temporal scope) include other materials, presumably not trade secrets, also eligible for designation by HII. No order entered by this Court should authorize designation beyond materials protectible under FED. R. CIV. P. 26(c)(7).

2. Paragraph 4(a) of HII's proposed order recites that, when notifying HII of an intention to disclose designated materials in a manner permitted by the Antitrust Civil Process Act, the government must "identify with specificity . . . the third party to whom

it intends to disclose" protected materials. The government objects to this provision, because it prevents the government from preserving the anonymity of its potential witnesses. Ordering the government to disclose its witnesses at the investigative pre-complaint stage, as HII proposes, violates the statutory directive to apply civil discovery standards in a manner "consistent with the provisions and purposes of" the Antitrust Civil Process Act, 15 U.S.C. §1312(c)(2)(B). The most that HII arguably needs to know is the category of witness to whom disclosure is intended. *See Aluminum Co. of America v. United States*, 444 F. Supp. 1342, 1347 (D.D.C. 1978).

This Court should reject the terms objected to by the government.

Respectfully submitted,




Daniel C. Kaufman
D.C. Bar No. 118422
U.S. Department of Justice, Antitrust Division
Transportation, Energy & Agriculture Section
325 Seventh Street, N.W. — Suite 500
Washington, D.C. 20530
(202) 307-6627
(202) 307-2784 (fax)

Certificate of Service

The undersigned hereby certifies that true and correct copies of the foregoing document were, on this 19th day of April, 1996, served by overnight courier for next business day delivery to the counsel of record listed below.

J. Gregory Copeland
Rufus W. Oliver III
BAKER & BOTTS, L.L.P.
910 Louisiana
One Shell Plaza
Houston, Texas 77002
Phone: (713) 229-1301
Fax: (713) 229-1522

Hugh Rice Kelly, Senior Vice President
and General Counsel
Michael Jines, Senior Counsel
HOUSTON INDUSTRIES INCORPORATED
25th Floor — Electric Tower
Houston, Texas 77002
Phone: (713) 207-7265
Fax: (713) 207-5503


Daniel C. Kaufman