



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

MICROSEMI CORPORATION,
Defendant.

Civil Action No. 1:08-cv-01311 AJT-JFA

PROPOSED ORDER

Before the Court is the parties' Consent Motion to Seal Plaintiff's Exhibits 7, 10 and 24.

Exhibit 7 is the Asset Purchase Agreement for the acquisition of certain Semicoa assets. Exhibit 10 is a Preliminary Draft of Semicoa's Financial Statements, Years Ended December 31, 2007 and 2006, With Independent Accountants' Review Report, which provides detailed, confidential financial data about the Semicoa assets. The information contained in Exhibits 7 and 10 was not previously made publicly available. Microsemi provided Exhibits 7 and 10 in confidence to the Antitrust Division of the United States Department of Justice (the "Division") during the Division's investigation of the acquisition of the Semicoa assets. Exhibit 24 is the Declaration of Dorothy B. Fountain, Esq., an attorney for the Division, which reveals commercially sensitive communications between the parties.

Public disclosure of the commercially sensitive information contained in Exhibits 7, 10, and 24 could place Microsemi, as well as any company that may acquire assets divested as a result of this action, at a disadvantage with respect to its existing and potential competitors, who would gain access to sensitive business decisions and financial data. Accordingly, Microsemi

asserts that these exhibits should be sealed pending this Court's entry of a protective order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and the Division does not oppose such relief. For the reasons identified herein, the Court finds that it is appropriate to enter an order sealing Exhibits 7, 10 and 24.

Before sealing a court document, a district court must: "(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives." *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000).

The first criterion is met by "[n]otifying the persons present in the courtroom of the request to seal or docketing it reasonably in advance of deciding the issue is appropriate." *In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984). The parties filed this motion and noticed it for a January 16, 2009 hearing on the Court's docket, which is available to the public. The parties have therefore satisfied the first criterion.

Second, there are no less drastic alternatives to sealing these exhibits. Redacting the competitively sensitive information from these exhibits is not an option. The entirety of Exhibit 7 contains detailed information about the acquisition of the Semicoa assets and the entirety of Exhibit 10 discloses a preliminary draft of sensitive financial information about Semicoa. To the extent these exhibits will be relevant to the Court's assessment of the Division's claims and Microsemi's defenses, then the exhibits should be reviewed in their entirety. Redaction also is inadequate for Exhibit 24 because its entire content concerns commercially sensitive communications between the parties.

For the aforementioned reasons, and for good cause shown, the Consent Motion to Seal Plaintiff's Exhibits 7, 10 and 24 is GRANTED. It is hereby ORDERED that Exhibits 7, 10 and 24 shall be SEALED until further order of this Court.

SO ORDERED, this 16th day of January, 2009.

John F. Anderson JFA
United States Magistrate Judge