UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

[FILED 4/26/95]

UNITED STATES OF AMERICA; Plaintiff

v. Civil No.: 95-5048

NAT, L.C. AND D.R. PARTNERS
d/b/a DONREY MEDIA GROUP; Defendants

COMMUNITY PUBLISHERS, INC.; and
SHEARIN INC., d/b/a SHEARIN & COMPANY REALTORS; Plaintiffs

v. Civil No.: 95-5026

DONREY CORP. d/b/a DONREY MEDIA GROUP,
NAT, L.C.; THOMSON NEWSPAPERS, INC., and
THE NORTHWEST ARKANSAS TIMES; Defendants

MOTION OF THE UNITED STATES CHALLENGING THE CONFIDENTIALITY OF CERTAIN DOCUMENTS OF THE DEFENDANTS

The United States hereby moves this Court to order that no document contained in the United States' updated exhibit list be designated as confidential. In the alternative, the United States moves this Court to unseal all parts of its response to defendants' motion for summary judgment except for part VII and its related attachments.[1/]

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[1] Part VII and the attachments thereto relate to the business plans of a non-party, WEHCO, and were filed separately.

On this date, the United States has filed with this court, under seal, its response to defendants' motion for summary judgment. Pursuant to the Supplemental Stipulation and Order Regarding Discovery of Confidential Documents (hereinafter "Stipulation and Order"), entered by this Court on April 12, 1995, certain information contained in the United States' response, as well as certain documents attached as exhibits to the United States' response, technically fell under confidentiality provisions of the Stipulation and Order.

The Stipulation and Order provides that only trade secret or other confidential research, development, or commercial information of the type recognized by Rule 26(c)(7) of the Federal Rules of Civil Procedure shall be entitled to confidential treatment. Stipulation and Order ¶2. The Stipulation and Order also provides that the designation of any portion of a document as confidential shall be made in good faith and shall constitute a certification by counsel that the designation is, in counsel's opinion, a trade secret or other confidential research, development, or commercial information within the meaning of Rule 26(c)(7) of the Federal Rules of Civil Procedure. Stipulation and Order ¶6.

In responding to the United States' Civil Investigatory Demand, NAT, L.C. and Donrey, and Stephens Inc. marked the bulk of their documents with a "confidential" stamp. As a result, practically all of the defendants' documents technically fall under the confidentiality provisions of the Stipulation and Order. The United States' review of these documents, however, has revealed that very few, if any, of the documents designated as confidential appear to meet the Stipulation and Order's standard of

confidential. Further, it does not appear that any of the documents contained in the United States' updated exhibit list meet the Stipulation and Order's criteria for confidentiality.

The defendants' overly broad and apparently inadvertent designation of documents as confidential has made compliance with the Court's Stipulation and Order unduly burdensome because the United States must file most, if not all, of its motions, responses and other pleadings under seal. For example, the United States had to file its entire response to defendants' motion for summary judgment under seal. With the exception of part VII of the response, the response did not contain information deserving the confidentiality protection of the Stipulation and Order.

Pursuant to paragraph 7 of the Stipulation and Order, on April 17, 1995, the United States informed counsel of its intention to file this motion. Counsel have had discussions relating to the confidentiality designations, but have not resolved the matter. The United States makes its motion now so that the main part of its reply to defendants' motion for summary judgment may be filed in the public docket.

WHEREFORE, the United States respectfully requests this Court enter an order providing that no document contained in the current exhibit list of the United States be designated as confidential. In the alternative, the United States moves this Court to unseal all parts of its response to defendants' motion for summary judgment except for part VII and its related attachments. A proposed order granting the unsealing of the United States' response to defendants' motion for summary judgment is attached.

Respectfully submitted,

/S/

Craig W. Conrath
Chief, Merger Task Force

Attorney
U.S. Department of Justice
1401 H St., N.W.
Washington, DC 20530
(202) 307-5779
Fayetteville: 521-5083

Dated:

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ORDER GRANTING THE MOTION OF THE UNITED STATES TO UNSEAL ITS RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

This Court hereby grants the Motion of the United States Challenging the Confidentiality of Certain Documents of the Defendants only to the extent that it requests that its response to defendants' motion for summary judgment be unsealed. Part VII of the United States' response to defendants' motion for summary judgment, along with the attachments to that section, shall remain under seal.

IT IS SO ORDERED this _____ day of April 1995.

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H. Franklin Waters
Chief Judge, United States District Court