

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RECEIVED

DEC 19 2011

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

FEDERAL TRADE COMMISSION,)

Plaintiff,)

v.)

1:11-cv-02239-RLW

GRACO INC.,)

ILLINOIS TOOL WORKS INC., and)

ITW FINISHING LLC,)

Defendants.)

**MOTION FOR ENTRY OF
INTERIM PROTECTIVE ORDER**

Plaintiff Federal Trade Commission respectfully moves the Court for the entry of the Interim Protective Order, a copy of which is attached, that shall be in effect until such time as the Court enters a final protective order. The Interim Protective Order is essentially identical as the protective order that Federal Trade Commission Rule 3.31(d), 16 C.F.R. § 3.31(d), requires in this matter's administrative proceeding. Pursuant to Rule 3.31(d), Administrative Law Judge D. Michael Chappell issued a protective order on December 16, 2011. *See* Exhibit 1.

Defendants Graco, Inc., Illinois Tool Works Inc., and ITW Finishing LLC neither oppose nor join this motion. Counsel for each of the defendants, on behalf of their clients, agreed to be bound by the protective order required by Rule 3.31(b) "in any jurisdiction that the FTC may bring substantially the same matter." *See* Exhibits 2-3. The Interim Protective Order shall not prejudice any party seeking modification of any of the provisions for purposes of the permanent protective order.

Dated: December 19, 2011

Respectfully submitted,

By:


PHILLIP L. BROYLES

Assistant Director

PETER RICHMAN

MARC W. SCHNEIDER

BRIAN TELPNER (D.C. Bar No. 462812)

ROBERT FRIEDMAN

AMANDA HAMILTON (D.C. Bar No. 499646)

CATHLIN TULLY

ANNA CHEHTOVA

Attorneys

Federal Trade Commission

600 Pennsylvania Avenue, N.W.

Washington, DC 20580

(202) 326-2805

Richard A. Feinstein

Director

Norman A. Armstrong, Jr.

Deputy Director

Federal Trade Commission

Bureau of Competition

Willard K. Tom

General Counsel

Federal Trade Commission

Attorneys for the Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of December 2011, I served the attached on the following counsel by electronic mail (PDF):

Richard G. Parker
O'Melveny & Myers LLP
1625 Eye Street, NW
Washington, DC 20006
RParker@omm.com

Counsel for Defendant Graco Inc.

J. Robert Robertson
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
Robby.Robertson@hoganlovells.com

Logan Breed
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
Logan.Breed@hoganlovells.com

Counsel for Defendants Illinois Tool Works Inc. and
ITW Finishing LLC

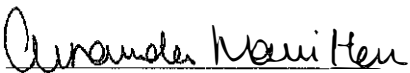

Amanda Hamilton (DCBN 499646)
Counsel for Plaintiff
Federal Trade Commission

EXHIBIT 1

**Motion for Entry of Interim Protective Order
Case No. 1:11-CV-02239-RLW**

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)
)
)

GRACO INC.,)
a corporation, and)
)

ILLINOIS TOOL WORKS INC.,)
a corporation, and)
)

ITW FINISHING LLC,)
a limited liability company,)
Respondents.)
_____)

DOCKET NO. 9350

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

Dm Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: December 16, 2011

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL-FTC Docket No. 9350" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL-FTC Docket No. 9350" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order 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 material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant 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 designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

EXHIBIT 2

**Motion for Entry of Interim Protective Order
Case No. 1:11-CV-02239-RLW**

Hamilton, Amanda

From: Parker, Richard <Rparker@OMM.com>
Sent: Thursday, December 15, 2011 4:58 PM
To: Broyles, Phillip L.
Cc: Robertson, J. Robert (robby.robertson@hoganlovells.com); Antalics, Michael; Robson, Katrina
Subject: Protective Order
Attachments: Interim Protective Order_signed.pdf

Phil:

I am attaching a protective order that I have signed along with counsel for ITW. On behalf of my client and without waiving any rights that my client may have, we agree to the attached protective order and also agree to be bound by it in any other jurisdiction in which the FTC may bring substantially the same matter. By signing the protective order, however, I am not intending by that document to be filing an appearance in either the part 3 case or in any related federal case.

You also asked whether I could sign a motion for federal court. I do not have authority to sign any motion in federal court at this point. However, I believe that Complaint Counsel must serve us with the federal complaint and all the pleadings filed therein. You may mark them provisionally outside counsel only for now, which would mean, as I have agreed to the terms of the protective order, that I would not disclose these documents to any other party, including my client.

As for accepting service of pleadings by email, without waiving any rights that we may have in answering or otherwise pleading in the federal or administrative action, we can accept email service.

One more administrative point, please add Kati Robson (krobson@omm.com) as a cc: on your emails to me.

Thanks,

Rich

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)
)
GRACO INC.,)
a corporation,)
)
ILLINOIS TOOL WORKS INC.)
a corporation, and)
)
ITW FINISHING LLC)
a limited liability company.)
_____)

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material (“Protective Order”) shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, “confidential material” shall refer to any document or portion thereof that contains privileged information, competitively sensitive information, or sensitive personal information. “Sensitive personal information” shall refer to, but shall not be limited to, an individual's Social

Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.

2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any other federal statute or regulation, or under any federal court or Commission precedent interpreting such statute or regulation, as well as any information that discloses the substance of the contents of any confidential materials derived from a document subject to this Order, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.

3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to

discovery or as otherwise obtained.

4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.

5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL—FTC Docket No. XXXX" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL—FTC Docket No. XXXX" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions masked or redacted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been masked or redacted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera* . To the extent that such material was

originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order 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 material deleted therefrom may be placed on the public record.

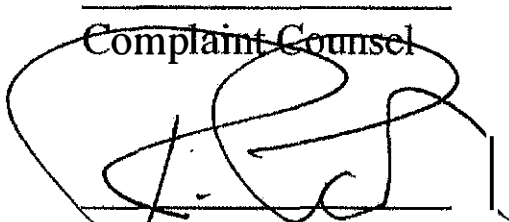
11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or

third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

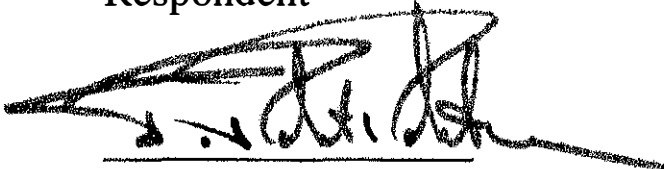
12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

~~Complaint Counsel~~

A handwritten signature in black ink, appearing to be 'R. Parker', written over a horizontal line.

Richard Parker
O'Melveny & Myers LLP
Attorney for
GRACO INC.
Respondent

A handwritten signature in black ink, appearing to be 'J. Robert Robertson', written over a horizontal line.

J. Robert Robertson
Hogan Lovells US LLP
Attorney for
ILLINOIS TOOL WORKS INC. and
ITW FINISHING LLC
Respondents

EXHIBIT 3

**Motion for Entry of Interim Protective Order
Case No. 1:11-CV-02239-RLW**

Hamilton, Amanda

From: Robertson, J. Robert <robby.robertson@hoganlovells.com>
Sent: Thursday, December 15, 2011 3:50 PM
To: Broyles, Phillip L.; 'Richard (Rich) Parker'
Cc: Richman, Peter; Breed, Logan M.; Edwards-Ford, Meghan C.; 'Torain, Ernest'
Subject: RE: Interim Protective Order
Attachments: DOC059.PDF

Phil:

Attached is a signed protective order that I scanned directly from the part 3 rules. Judge Chappell typically does not sign them but usually puts a cover order on top of the protective order. On behalf of my client and without waiving any rights that my client may have, we agree to the attached protective order and also agree to be bound by it in any other jurisdiction that the FTC may bring substantially the same matter. This is all that defendants typically do at this point, and is all that I did in LabCorp. In fact, I merely sent an email that I agreed to be bound by the protective order in the part 3 rules. By signing the protective order, however, I am not intending by that document to be filing an appearance in either the part 3 case or in any related federal case.

You asked whether I could sign a motion for federal court. I do not have authority to sign any motion in federal court at this point, and did not do so in LabCorp at this point. However, I believe that Complaint Counsel must serve us with the federal complaint and all the pleadings filed therein. You may mark them provisionally outside counsel only for now, as I have agreed to the terms of the protective order not to disclose them to any other party, including my client. We can then proceed from there.

As for accepting service of pleadings by email, without waiving any rights that we may have in answering or otherwise pleading in the federal or administrative action, we can accept email service. You will likely have to break up the transmissions, because they are likely to jam your system. You may also want to include the court's waiver of process form with the pleadings, so I can send that document to my client for approval.

I believe that those are the immediate items that you asked me about. If you need anything else, please let me know.

Robby

J. Robert Robertson
Partner

Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004

Tel: +1 202 637 5600
Direct: +1 202 637 5774
iPhone: +1 773 844 6024
Email: robby.robertson@hoganlovells.com
www.hoganlovells.com

Please consider the environment before printing this e-mail.

From: Broyles, Phillip L. [mailto:PBROYLES@ftc.gov]
Sent: Thursday, December 15, 2011 2:39 PM
To: 'Richard (Rich) Parker'; Robertson, J. Robert
Cc: Richman, Peter
Subject: Interim Protective Order

Gentlemen,

As discussed with Rich, please find attached a Joint Motion for Interim Stipulated Protective Order and a Proposed Protective Order. We must have a protective order in place before I can share with the complaint, brief, and exhibits, all of which we intend to file under seal. Please contact me if you have any questions. Thanks.

Phill Broyles
Assistant Director
Mergers III
202-326-2805
202-460-8715 (M)

About Hogan Lovells

Hogan Lovells is an international legal practice that includes Hogan Lovells US LLP and Hogan Lovells International LLP. For more information, see www.hoganlovells.com.

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)
)
GRACO INC.,)
 a corporation,)
)
ILLINOIS TOOL WORKS INC.)
 a corporation, and)
)
ITW FINISHING LLC)
 a limited liability company.)

)

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Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.

2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any other federal statute or regulation, or under any federal court or Commission precedent interpreting such statute or regulation, as well as any information that discloses the substance of the contents of any confidential materials derived from a document subject to this Order, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.

3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to

discovery or as otherwise obtained.

4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.

5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

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7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

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originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order 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 material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or

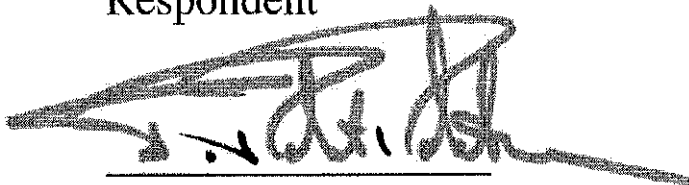
third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant 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 designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

Complaint Counsel

Richard Parker
O'Melveny & Myers LLP
Attorney for
GRACO INC.
Respondent

A handwritten signature in black ink, appearing to read "J. Robert Robertson", written over a horizontal line.

J. Robert Robertson
Hogan Lovells US LLP
Attorney for
ILLINOIS TOOL WORKS INC. and
ITW FINISHING LLC
Respondents