

Azurix Corp. seeks a protective order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure concerning documents produced by the rating agency Standard & Poor's ("S&P"). Azurix's motion is deficient. Azurix fails to carry its burden of proof and seeks a protective order much too broad to be granted pursuant to the Rule.

As this Court previously held:

The Rule 26(c), by its own language, and the case law, provide that the burden is on the party wishing to obtain a protective order to show that good cause exists for the order. To establish that good cause exists that "party must show that a specific prejudice or harm will result if no protective order is granted."

In re Enron Corp. Sec. Litig., No. 01-3624, 2002 U.S. Dist. LEXIS 25309, at *6-*7 (S.D. Tex. Dec. 18, 2002) (quoting *Phillips v. GMC*, 307 F.3d 1206, 1210-11 (9th Cir. 2002)). Further, the Court noted that a "party seeking protection must in good faith describe a 'properly demarcated category of legitimately confidential information.'" *Id.* at *8 (quoting *Citizens First Nat'l Bank v. Cincinnati Ins. Co.*, 178 F.3d 943, 946 (7th Cir. 1999)). Here, Azurix describes no "specific prejudice or harm" and cannot describe or identify the purportedly confidential information that *might* be contained in the production at issue.

At the most, Azurix asserts that the S&P document production "may in fact include confidential information that is ... relevant to" pending litigation and/or arbitration in which Azurix is involved. Azurix Motion at 4. What kind of documents? How are they confidential? How would disclosure harm Azurix? What facts substantiate Azurix's stated beliefs? All of the preceding questions remain unanswered. Moreover, Azurix fails to provide the Court an affidavit attesting to the veracity of its stated beliefs. The Fifth Circuit has found this to be a critical defect:

[Movant] did not support its motion for protective order with any affidavits or other evidence that might provide support for this simple assertion. The district court's entry of the protective order requested by [the movant] was therefore unsupported by a "particular and specific demonstration of fact" and therefore constituted a clear abuse of discretion.

In re Terra Int'l, 134 F.3d 302, 306 (5th Cir. 1998) (citation omitted). The motion here is similarly unsupported by any evidentiary support.¹

Accordingly, Azurix's motion for a protective order should be denied because Azurix has failed to demonstrate what "specific prejudice or harm" it would suffer from disclosure of the unidentified, and unknown, documents that purportedly might contain confidential information. If the Court grants the motion, Lead Plaintiff requests that Azurix be allowed no more than 30 days to review the documents and file a motion for protective order with the appropriate self-supporting affidavit.

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¹ Indeed, on its face, Azurix's motion appears to be more concerned with secreting relevant discovery from its adversaries in other legal proceedings than in protecting Azurix's legitimately confidential information. This is improper. *Bell v. Chrysler Corp.*, No. 3:99-CV-0139-M, 2002 U.S. Dist. LEXIS 1651, at *5 (N.D. Tex. Feb. 1, 2002).

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing LEAD PLAINTIFF'S OPPOSITION TO THE MOTION OF AZURIX CORP. FOR TEMPORARY PROTECTIVE ORDER REGARDING S&P DOCUMENTS document has been served by sending a copy via electronic mail to serve@ESL3624.com on this March 8, 2004.

I further certify that a copy of the foregoing LEAD PLAINTIFF'S OPPOSITION TO THE MOTION OF AZURIX CORP. FOR TEMPORARY PROTECTIVE ORDER REGARDING S&P DOCUMENTS document has been served via overnight mail on the following parties, who do not accept service by electronic mail on this March 8, 2004.

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