



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LEON GILBERT and MICHAEL)	
MCGARVEY,)	PUBLIC VERSION FILED:
)	April 16, 2024
)	
Plaintiffs,)	
)	
v.)	C.A. No. 2023-0513-PAF
)	
UNISYS CORPORATION,)	
)	
Defendant.)	

**DEFENDANT'S MOTION
FOR CONTINUED CONFIDENTIAL TREATMENT**

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INTRODUCTION

1. Plaintiffs’ rejection of Unisys’ proposed redactions to their Pretrial Brief confirms what Unisys has suspected all along: that Plaintiffs and their new employer, Atos—co-defendants in the underlying trade secrets dispute (*Unisys Corporation v. Gilbert, et al.*, No. 2:23-cv-555-PD, the “Pennsylvania Action”)—are improperly using this advancement proceeding as an additional avenue to obtain discovery for use in the Pennsylvania Action. Just one day after this case was tried, Plaintiffs filed a challenge to the confidential treatment of sensitive business information that Unisys had sought to redact from their Pretrial Brief. The same day, Unisys also received a letter from Atos demanding that all deposition and trial testimony from Unisys in this matter be produced to Atos in the Pennsylvania Action.

2. Such gamesmanship cannot be countenanced. Plaintiffs’ inappropriate and coordinated behavior with Atos—who is not a party to this action—violates the parties’ stipulated protective order in this case, *see* Dkt. 16, and undermines the integrity of both this proceeding and the Pennsylvania Action. In light of Plaintiffs’ suspect motivations for challenging confidential treatment, and the risk that Unisys will suffer commercial harm should the internal workings of its business be exposed, the Court should grant Unisys’ motion for continued confidential treatment, and

permit Unisys to file a revised public version of Plaintiffs' Pretrial Brief with the redactions reflected in the attached Exhibit A.

BACKGROUND

3. On March 30, 2024, Defendant proposed redactions to the public version of Plaintiffs' Pretrial Brief. Plaintiffs publicly filed that version on April 1, 2024. Dkt 96. On April 2, 2024, Plaintiffs filed a challenge to the confidential treatment of the information redacted from Plaintiffs' pretrial brief. Dkt. 99.

4. On April 5, 2024, Defendant proposed revised redactions in light of material made public during trial, which greatly reduced the amount of information subject to confidential treatment. Ex. B. On April 6, 2024, Plaintiffs rejected Unisys' proposal.

5. Plaintiffs' have since further refined their proposed redactions. *See* Ex. A. These revised redactions are discrete and pertain to Unisys' business strategies, including its implementation of advice received from McKinsey & Co. related to the reorganization of the company.

6. Throughout this proceeding, Plaintiffs have continuously sought access to, and use of, documents and information exclusively relevant to the Pennsylvania Action, where the main dispute is over the competitive harm suffered by Unisys as a result of the theft of its trade secrets. *See, e.g.*, Dkt. 37, Pls.' Mot. to Coordinate

Expedited Discovery with the Pennsylvania Action (seeking to obtain access to over 288,000 documents even though only a small fraction hit on the agreed-upon search terms in this action); Dkt. 95, Def's Mem. Concerning Evidentiary Issues related to the Pennsylvania Action; Thomson Dep. Tr. 98:19-21 (Q: "[W]hat trade secrets are at issue in the Pennsylvania action?"), 130:18-22 (Q: "Unisys argued that Atos avoided costs associated with the acquisition of Unify Square due to Plaintiffs' misappropriation of trade secrets?"); Altabef Dep. Tr. 52:17 (Q: "Is Atos a competitor of Unisys?"), 52:19-20 (Q: "Does Atos do business in the digital workplace solution space?"), 54:20-22 (Q: "Unisys operates its DWS business as a business unit, is that the same structure for [Atos'] DWS business?").

7. Unisys has maintained that such documents and attempts to elicit testimony not relevant to the instant action are inappropriate. For example, Unisys objected to Topic 16 from Plaintiffs' Notice of Rule 30(b)(6) Deposition, which sought testimony about "DWS's trade secrets that Unisys alleges Plaintiffs accessed by virtue of their officer-level leadership of DWS." Dkt. 51, Schedule A at 6. Unisys responded that it would not designate a witness to testify about Topic 16 on the basis that it "seeks information not relevant to Plaintiffs' claim." Ex. C at 14.

8. Likewise, after Peter Altabef's deposition, where Plaintiffs engaged in extensive questioning relating to the Pennsylvania Action, Unisys again informed Plaintiffs that lines of questioning relating to the merits of the underlying trade

secrets dispute in the Pennsylvania Action were irrelevant and inappropriate to the parties' claims and defenses here. *See* Ex. D, Letter from E. Selden re Trade Secrets.

9. Defendant subsequently raised this issue in the Pretrial Order, objecting to the use of trial exhibits and testimony relating to the Pennsylvania Action that were not relevant to the advancement case. Dkt. 84 ¶ 67. Following the Pretrial Conference, on March 28, 2024, both parties submitted memoranda to the Court in support of their respective views on the evidentiary issues related to the Pennsylvania Action. *See* Dkts. 94, 95.

10. Despite Defendant's repeated objections to Plaintiffs' attempts to delve into the merits of the Pennsylvania Action, on April 2, 2024, just one day after the trial in this action, Atos' counsel in the Pennsylvania Action sent a letter to Unisys, demanding the production of all deposition and trial testimony from Unisys witnesses in this advancement proceeding. Ex. E, Letter from G. Laufer. Atos is not a party to this advancement case, but it is a party to the Pennsylvania Action. Atos' counsel insisted that "[the Unisys witnesses'] testimony is obviously relevant to the [Pennsylvania] matter and must be produced." *Id.*

11. That same day, Plaintiffs also filed the instant challenge to Unisys' redactions to their Pretrial Brief. Dkt. 99.

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