

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
CIVIL DIVISION, ROOM NO. 7
CAUSE NO. 49D07-0804-CC-018081

JASON BOND,)
DAVID LEAR, and)
LESLIE BRIDGES,)
individually and as)
class representatives of all those)
similarly situated,)
Plaintiffs,)

v.)

VEOLIA WATER NORTH AMERICA)
OPERATING SERVICE, LLC,)
VEOLIA WATER INDIANAPOLIS, LLC,)
and)
THE CITY OF INDIANAPOLIS,)
DEPARTMENT OF WATERWORKS,)
Defendants.)

FILED

121 APR 30 2010

Elizabeth J. White
CLERK OF THE MARION CIRCUIT COURT

MOTION TO UNSEAL
PLAINTIFFS' DESIGNATED EVIDENCE
AND BRIEF IN RESPONSE TO
VEOLIA'S MOTION FOR SUMMARY JUDGMENT

Plaintiffs, by counsel, respectfully move this Court to grant their motion to unseal *Plaintiffs' Designated Evidence* and *Brief in Response to Veolia's Motion for Summary Judgment*, and in support, states as follows:

1. Contemporaneously herewith Plaintiffs are filing, under seal, *Plaintiffs' Brief in Response to Veolia's Motion for Summary Judgment* and *Plaintiffs' Designated Evidence*.

2. The Brief and Designated Materials are being filed under seal due to the fact that they contain and refer to information designated as confidential by Veolia. As such, the Designated Evidence and Brief must be filed under seal pursuant to the *Stipulated Protective Order* approved by the Court. A true and correct copy of the *Stipulated Protective Order* is attached hereto as Exhibit A.

3. Although designated confidential by Veolia, Plaintiffs assert that the materials do not

deserve confidential treatment and thereby, should be unsealed and available for public inspection. For the most part, the materials in question are internal memoranda and communications which refer to the subject matter that is embraced by the Second Amended Complaint in this case. These documents and internal communications do not divulge any trade secret or completely sensitive information, nor personal customer information.

4. Moreover, the documents and internal communications address matters of great public interest co-extensive with the subject matter of this lawsuit. These materials address directly the allegations related to Veolia's failure to read meters at least once every two months in late 2007 and early 2008. They also refer to Veolia's failure to implement a tariffed estimation methodology. Both of these matters impacted tens of thousands of water utility customers. The public deserves to be able to review these documents and internal communications involving the operation of their water utility.

5. If the Court does not grant this Motion, then presumably the hearing which is scheduled for May 14, 2010 in this matter will necessarily not be open to the public due to the fact that counsel must refer to the subject matter which is the topic of this motion. It would be in the public interest to permit the public to attend the hearing.

6. The information which Plaintiffs wish to have unsealed and which has been designated confidential by Veolia is found in the following exhibits of *Plaintiffs' Designated Evidence*: Exhibits C, D, G, H, K, L, M, N, O, P, Q, R, S and T.

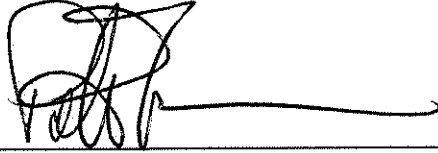
7. For the Court's convenience, a sealed *Plaintiffs' Designated Evidence* binder is included with this Motion.

8. Pursuant to the *Stipulated Protective Order*, the burden to show that the designation of "confidential" is appropriate is on Veolia.

WHEREFORE, Plaintiffs respectfully request the Court grant their Motion to unseal the above-referenced exhibits and for all other appropriate relief.

Respectfully submitted,

STEWART & IRWIN, P.C.

By 

Peter S. Kovacs (Attorney # 16771-49)
251 East Ohio Street, Suite 1100
Indianapolis, Indiana 46204
Phone: (317) 639-5454
Fax: (317) 632-1319


Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon the following counsel of record, via hand delivery, on the 30th day of April, 2010:

Robert D. MacGill
T. Joseph Wendt
Matthew S. Winings
Scott E. Murray
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204

Brian W. Welch
J. Neal Bowling
BINGHAM MCHALE LLP
2700 Market Tower
10 West Market Street
Indianapolis, Indiana 46204-4900



Peter S. Kovacs

STEWART & IRWIN, P.C.
251 East Ohio Street
Suite 1100
Indianapolis, IN 46204
Phone: (317) 639-5454
Fax: (317) 632-1319
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STIPULATED PROTECTIVE ORDER

Pursuant to Ind. Trial Rule 26(C), the parties believe that certain information that is or may be sought by discovery requests, including discovery sought from non-parties to this matter, may constitute trade secrets or other confidential or proprietary information, and/or may be information otherwise protected from disclosure under Indiana Code § 5-14-3-4 and Administrative Rule 9 governing access to Court records. This Stipulation is entered into by the parties through their respective undersigned counsel to facilitate the prompt resolution of disputes over confidentiality, to provide adequate protection to materials which the parties are entitled or legally required to be keep confidential, and to expedite the exchange of discovery materials.

Subject to the approval of the Court, it is hereby stipulated that:

1. "Confidential Information" shall mean all information so designated by counsel in good faith which a party reasonably believes to be:

EXHIBIT A

- (a) trade secret or other confidential business information, including information regarding business operations, billing records and financial data, and any other confidential, proprietary, and trade secret information not specifically identified in this paragraph; and
- (b) information which a party, or a private contractor of a party, is prohibited from disclosing or may withhold under any statute, regulation or other law of the United States or of the State of Indiana, including that information excepted from disclosure under Indiana Code § 5-14-3-4.

2. A disclosing party desiring to have information protected by this Order must designate such information by placing the label "CONFIDENTIAL" on the original. Prior to the date of this Order, certain private contractors to the City of Indianapolis, Department of Waterworks (the "Department"), *to-wit*, Malcolm-Pirnie, Inc. and Shewsberry & Associates, LLC, provided documents to plaintiffs in response to plaintiffs' nonparty subpoenas and requests for production. The Department shall have twenty (20) days from the date of this Order to designate as confidential any such information that has been previously provided by those contractors, and may so designate other information produced in this matter after the date hereof by other private contractors. In the event that the Department desires to designate other documents produced by other contractors prior to this date hereof, the Department shall notify the other parties promptly.

3. Nothing contained herein shall prevent a party from objecting to a designation of certain information as Confidential Information and seeking by way of motion or otherwise the Court's ruling on such objection. A party shall not be obligated to challenge the propriety of a designation under paragraph 3 at the time made, and the failure to do so shall not preclude a subsequent challenge thereto. Any party may request in writing to the party who designated the information as confidential that the designation be modified or withdrawn. If the designating party does not agree to redesignation within ten (10) days of receipt of the written request, the requesting

party may apply to the Court for relief. Upon any such application to the Court for relief, the burden shall be on the designating party to show why its classification is proper. Agreement of the parties to this Order shall not be construed as an agreement or admission by one party that any designation under paragraph 2 by the other party is in any way proper or correct.

4. Any Confidential Information disclosed by a party, by Malcolm-Pimmie, Inc., by Shewsberry & Associates, LLC, or by any other private contractor to the Department, which is subject to this Protective Order shall be held in strict confidence by the receiving party and shall be used solely for the purposes of this lawsuit and may not be used or disclosed for any other purpose.

5. Confidential Information may be disclosed only to:

- (a) The named parties.
- (b) Subject to the requirement of paragraph 8 below, the Court and its staff.
- (c) Counsel for the undersigned parties assisting with this case and their respective staffs.
- (d) Experts retained by or on behalf of any undersigned party to provide assistance or testimony in connection with this case.
- (e) Employees, officers, or directors of the undersigned parties responsible for the conduct of this case.
- (f) Court reporters and/or stenographers, as reasonably necessary.
- (g) A non-expert deponent or witness in this case.
- (h) A mediator.
- (i) Such other persons as the undersigned parties may agree to in writing.

A person, other than the Court and its staff and court reporters, receiving Confidential Information shall be advised of the terms of this Stipulated Protective Order and sign the acknowledgement attached as Exhibit A.

6. Confidential Information disclosed during a deposition shall be so designated on the record, and, unless otherwise agreed by counsel, the court reporter shall be instructed to transcribe such testimony under separate cover with each page thereof clearly marked as "CONFIDENTIAL."

7. If a party receives a subpoena or legally enforceable order requiring disclosure of any Confidential Information, the receiving party shall promptly provide notice thereof to the disclosing party. Nothing in this Order shall be construed to in any way prohibit a party from complying with a lawful subpoena or court order for such disclosure, and compliance with such subpoena or court order shall not be deemed a violation of this Order.

8. In the event that any designated Confidential Information subject to the terms of this Protective Order is used in motions, briefs, or other documents to be filed with the Court, the filing party will take any action necessary to comply with Indiana Administrative Rule 9. Until the Court orders otherwise, any Confidential Information filed with the Court shall be filed under seal with the following legend:

THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION
SEALED BY COURT ORDER; THE CONTENTS OF THIS
DOCUMENT MAY NOT BE DISCLOSED WITHOUT EXPRESS
ORDER OF THE COURT.

By agreeing to this Order, the parties do not waive their respective rights to object, on any basis other than this Order, to any disclosure or admission into evidence of Confidential Information at any hearing, trial, or proceeding in this matter.

9. All documents and information provided or produced by the parties subject to this Stipulated Protective Order shall be kept in a secure and protected area not amenable to being seen or read by anyone other than individuals authorized under the present Order.

10. Any failure to designate information as Confidential Information which was the result of mistake or oversight may be cured after the date of production by providing notice to the opposing party and, to the extent reasonably possible, all others bound by the terms of this Order. Upon receipt of such notice, such individuals shall take such action as necessary to maintain and restrict the use of such Confidential Information in accordance with the terms of this Order.

11. The exchange of documents and information pursuant to this Stipulated Protective Order shall not diminish the confidentiality of such document or information.

12. Nothing herein shall be construed as a waiver of any party's right to object to the production or admissibility of any evidence or testimony produced or based upon any grounds other than confidentiality. Moreover, nothing herein shall be construed as a limitation on the disclosing party's right to use or disclose its own information as it sees fit without the prior consent of the opposing party or this Court notwithstanding its designation as Confidential Information for purposes of this matter.

13. The inadvertent production of any document during discovery in the litigation shall be without prejudice to any claim that such material is privileged under the attorney-client or other privilege, or protected from discovery as work product. No Party or entity shall be held to have waived any rights by such inadvertent production so long as the recipient Party is notified within thirty (30) days of the discovery of such inadvertent production. Upon written request by the inadvertently producing Party or entity, the recipient Party shall (even if the recipient Party disagrees that the document is privileged) return all copies of the document and not use the information in the document for any purpose until further order of the Court. The inadvertently producing Party or entity shall identify the document on a privilege log after the

document is returned. A Party who returns a document pursuant to this provision retains the right to challenge any claim of privilege or protection asserted by the producing Party or entity, and may seek to have the document submitted for *in camera* review to resolve any dispute regarding its privileged or protected status.

14. Within forty-five (45) days of the termination of this litigation, whether by final judgment and appeal, or by settlement, all materials and documents designated as Confidential Information, as well as all copies, summaries, and abstracts thereof, shall be returned to the disclosing party or destroyed at the sole discretion of such party with written confirmation of such destruction.

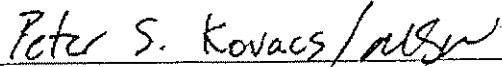
15. This Stipulated Protective Order may be modified or amended by further written stipulation between the parties and/or order of the Court for good cause shown.

IT IS SO ORDERED this _____ day of _____, 2009.

JUDGE,
MARION SUPERIOR COURT

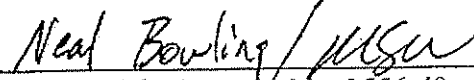
APPROVED:

Plaintiffs, Jason Bond, David Lear, Leslie
Bridges



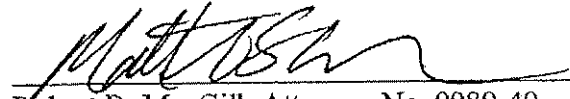
Peter S. Kovacs, Attorney No. 16771-49
STEWART & IRWIN, p.c.
251 E. Ohio Street
Suite 1100
Indianapolis, Indiana 46204

Defendant, City of Indianapolis,
Department of Public Works



Brian Welch, Attorney No. 1556-49
Neal Bowling, Attorney No. 19278-41
BINGHAM MCHALE LLP
2700 Market Tower
10 West Market Street
Indianapolis, Indiana 46204

Defendant, Veolia Water North America
Operating Service, LLC,
Veolia Water Indianapolis, LLC



Robert D. MacGill, Attorney No. 9989-49
T. Joseph Wendt, Attorney No. 19622-49
Matthew S. Winings, Attorney No. 25878-49
Scott E. Murray, Attorney No. 26885-49
BARNES & THORNBURG LLP
11 South Meridian Street
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EXHIBIT A TO STIPULATED PROTECTIVE ORDER

The undersigned acknowledges receiving a copy of the Stipulated Protective Order, agrees to be bound by its provisions and agrees to use any Confidential Information received by the undersigned only for the purposes of the above captioned matter.

Signature

Printed Name