UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:	)	
MANAGEMENT OF HIGHLY SENSITIVE	)	OPERATING ORDER 21-03
DOCUMENTS	)	
	)	
	)	

WHEREAS, in response to recent disclosures of widespread breaches of both private sector and government computer systems, federal courts are immediately adding new security procedures to protect Highly Sensitive Documents (as defined herein) filed with the courts.

THEREFORE, IT IS HEREBY ORDERED that, effective as of the date of this Operating Order and until such time as the Court orders otherwise, the filing of Highly Sensitive Documents shall be subject to the procedures and requirements set forth below.

1. **Documents Subject to this Order.** The filing procedures set forth below may apply to documents that contain highly sensitive information.

    (a) *Highly Sensitive Documents.* Highly Sensitive Documents (HSDs) are documents a party determines are likely to be targeted in breaches of judiciary computer systems for which the protections provided by 11 U.S.C. § 107 and Fed. R. Bankr. P. 9037 are not adequate.

    (b) *Examples of HSDs.* The following types of documents may be considered HSDs: classified documents; documents relating to matters of national security, foreign sovereign interests, terrorism, cybersecurity, the investigation of public officials, or which concern the reputational interests of the United States; and documents containing sensitive commercial information, intellectual property, or trade secrets likely to be of interest to foreign powers or the disclosure of which would cause significant external damage.

    (c) *Documents Not Considered HSDs.* The following types of documents generally are not considered HSDs: bank records; business records; financial records; tax records; documents reporting settlements; Social Security records and other documents containing Social Security numbers or taxpayer identification numbers; health records; criminal records; documents containing information about minors; sealed filings in civil and administrative cases; documents sealed to protect the reputation of parties or counsel; documents that originally contained highly sensitive information but which can still fulfill their purpose after highly sensitive information has been redacted; documents containing unredacted personal identifiers listed in Fed. R. Bankr. P. 9037; and documents to which public access is routinely restricted to protect privacy and prevent identity theft, including sealed

filings that are not sufficiently sensitive to require HSD treatment and that may continue to be sealed in CM/ECF as necessary.

    (d) ***Resolution of Disputes.*** Any dispute as to whether a document is an HSD shall be resolved by the presiding judge or, when no presiding judge is assigned, the chief judge.

2. **Filing of Motions to Treat a Document as an HSD.**

    (a) ***Responsibility.*** Each party that files or has filed a document bears the responsibility for determining whether it is an HSD and for any disclosure of highly sensitive information on the Court's electronic filing system and any consequences as a result thereof.

    (b) ***Represented Parties.*** A represented party shall file electronically a motion to treat a document as an HSD and a proposed order under current procedures as required by SC LBR 5005-4, except that the represented party shall not file electronically a copy of the proposed HSD.

    (c) ***Pro Se Parties.*** A party who is not represented by an attorney shall submit to the Clerk's Office for filing a motion to treat a document as an HSD and proposed order according to current procedures as required by SC LBR 5005-4(c)(1). The *pro se* party shall not file a copy of the proposed HSD with the motion.

    (d) ***Contents of Motion for HSD Designation.*** The motion shall explain why the proposed document constitutes an HSD under criteria set forth in Paragraph 1 above or why it should otherwise be subject to the heightened protection for HSDs. The motion should include a description of the proposed HSD sufficient for the Court to consider the motion, but should not include details of the proposed HSD that would require the motion itself to be treated as an HSD. The motion should also set forth the movant's desired treatment of the proposed HSD in the event the motion is denied (e.g., withdrawal from the record, redaction, or file electronically under seal). The motion may be considered and ruled upon by the Court on an *ex parte* basis or scheduled for a hearing.

    (e) ***Delivery of the Proposed HSD to the Court.*** Prior to the filing of the Motion, the party shall contact the Clerk of Court for instructions regarding delivery of the HSD to the Court.

    (f) ***Notice and Service.*** The movant shall serve the motion and proposed order on all parties affected by the relief sought in the manner provided in SC LBR 9013-1, Fed. R. Bankr. P. 2002, or Fed. R. Bankr. P. 7004 and 7005, as applicable, and file a certificate of service in accordance with SC LBR 9013-3. Nothing contained in this Operating Order shall prohibit a party from seeking to limit notice of the motion.

3. **Removal of Existing HSDs from the Court's Electronic Filing System.**

   (a) ***Responsibility.*** Each party that files or has filed a document bears the responsibility for determining whether it is an HSD, any disclosure of highly sensitive information on the Court's electronic filing system, and any consequences as a result thereof.

   (b) ***Removal of HSDs.*** A party may file a motion to remove an HSD from the Court's electronic filing system, which shall explain why such document is highly sensitive or why it should otherwise be subject to the heightened protection for HSDs. Nothing herein shall prevent the Court, on its own motion, from determining that a document, case, or any portion thereof that has been filed is highly sensitive, and directing that the HSD or case be removed from the Court's electronic filing system and maintained by the Clerk's Office in another manner.

4. **Questions about HSD Filing Procedures.** Any questions about how an HSD should be filed with the Court pursuant to this Operating Order should be directed to the Clerk's Office at 803-765-5436.

IT IS SO ORDERED, this 26th day of April 2021.

/s/ Helen Elizabeth Burris
Chief United States Bankruptcy Judge
District of South Carolina