

SUPREME COURT OF NEW JERSEY
September Term 2005
Docket No. 58,879

STATE OF NEW JERSEY, :
Plaintiff-Appellant, :
: **PROTECTIVE ORDER**
JANE H. CHUN, et al :
Defendants-Respondents. :

This court has been designated by the Supreme Court as Special Master in the above matter for the purpose of conducting "a plenary hearing on the reliability of the Alcotest breath instruments."

The parties to this matter are engaged in discovery pertaining to the scientific reliability of the Alcotest® 7110 MKIII-C (styled as 3.11) evidential breath test instrument (the instrument) which has been designed, manufactured, and sold by Dräger Safety Diagnostics, Inc.;

This Court on February 3, 2006 entered a Discovery Order ordering the State to give defendants certain information, documents, and material pertaining to the firmware, software, algorithms, electronic schematics, and source codes for the instrument, which Dräger Safety Diagnostics, Inc. asserts include the trade secrets,

confidential information, and proprietary information of Dräger Safety Diagnostics, Inc.;

The defendants have engaged or will engage consultants or experts to examine, inspect, analyze, operate, test, and use one or more of the instruments and the discovery information which the State has been ordered to provide to the defendants;

Dräger Safety Diagnostics, Inc. contends that if certain portions of the source code or the software/firmware or its other trade secrets, confidential information, or proprietary information would be disclosed to any of Dräger Safety Diagnostics, Inc.'s competitors or potential competitors, or to any entities or person who might provide the source code or other trade secrets, confidential information, or proprietary information to any of Dräger Safety Diagnostics, Inc.'s competitors or potential competitors, Dräger Safety Diagnostics, Inc. would suffer harm;

Upon consideration of the contentions of all parties, including Dräger,

IT IS ORDERED THAT:

1. All portions of "the discovery information" (as set forth in paragraphs 9 and 17 through 21 of the Discovery Order dated February 3, 2006) in which Dräger

asserts an intellectual property right shall be appropriately marked as such when provided and shall not be disclosed by the parties or the amici curiae, their attorneys, consultants, experts, agents, representatives or others having access to said information for as long as the discovery information remains a trade secret, confidential information, or proprietary information of Dräger Safety Diagnostics, Inc. or its successors or assigns, or as otherwise hereinafter set forth.

2. Access to the "marked discovery information" and instruments provided to the defendants shall be limited to persons who are not present employees, consultants, agents or representatives of any competitors of Dräger Safety Diagnostics, Inc., which competitors are listed in Exhibit A attached hereto.

3. Before any consultant or expert engaged by any party is given access to any of the "marked discovery information" or instruments, each such consultant or expert shall sign an undertaking in the form attached hereto as Exhibit B, the signed original of which will be retained in the file of counsel retaining the consultant or expert.

4. Following the conclusion of the subject litigation and any appeals, any "marked discovery information" provided in accordance with the Discovery Order is to be

destroyed, without copying or otherwise reproducing any part or portion of said "marked discovery information," and every defense counsel and amici curiae counsel involved shall file a certification with this Court attesting to the compliance with this provision of the Protective Order.

5. Any and all "marked discovery information" provided to the parties or the amici curiae under the terms of this Protective Order is for the limited and exclusive use by the defendants, defense counsel, amici curiae or amici curiae counsel, or authorized representatives of defendants, defense counsel, amici curiae or amici curiae counsel in the course of this litigation.

6. Unless otherwise expressly provided in this Protective Order, any violation or breach of the Terms and Conditions set forth in this Protective Order will be grounds for court contempt action, civil damages, and other appropriate sanctions, after a hearing, where the accused will be afforded due process. See R. 1:10.

7. The defendants, defense counsel, amici curiae and amici curiae counsel, and any authorized representative of the defendants, defense counsel, amici curiae or amici curiae counsel shall not disseminate or communicate any "marked discovery information" to any other person, persons, parties or entities who are not participants in

this litigation, except for the preparation of reports, as required by Court Rules, and for the giving of testimony in the plenary hearing in this case.

8. The terms and restrictions of the Protective Order shall survive for a period of three years from the termination of this litigation, or until such time as the "marked discovery information" falls into the public domain, whichever occurs first.

9. This Protective Order shall not be modified or terminated except by an Order entered by this Court or another Court of competent jurisdiction. Any agreements or understandings of any or all of the parties designated herein as to the terms of the Protective Order have been included herein and to the extent that they have not been so integrated, they are not a part of this Protective Order.

10. The illegality, invalidity or unenforceability of any particular provision of this Protective Order shall not affect the other provisions hereof, and this Protective Order shall be construed in all respects as if such illegal, invalid, or unenforceable provision was omitted.

11. If Dräger does not cooperate with discovery and this Protective Order, this Court will feel free to draw any appropriate negative inferences from this unwillingness

in its decision on the reliability of its product, the 3.11 version.

IT IS SO ORDERED this 26th day of April, 2006.

/s
MICHAEL PATRICK KING, P.J.A.D.
retired and Special Master

EXHIBIT A

COMPETITORS OF DRÄGER SAFETY DIAGNOSTICS, INC.

CMI, Inc. Owensboro, Kentucky & related Distributors and Agents	Intoximeter, Inc. St. Louis, Missouri & related Distributors and Agents
National Patent Analytical System, Inc. Mansfield, Ohio & related Distributors & Agents	Alcohol Countermeasures System, Inc. Aurora, Colorado & related Distributors and Agents
Lifeloc Technologies, Inc. Wheat Ridge, Colorado & related Distributors and Agents	Guth Laboratories Harrisburg, Pennsylvania & related Distributors and Agents
PAS Systems International Fredericksburg, Virginia & related Distributors and Agents	

EXHIBIT B

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UNDERTAKING

1. The undersigned hereby acknowledges reading the attached Protective Order (the Order) which has been entered by the Supreme Court of New Jersey in the above-captioned quasi-criminal action and understands the terms thereof.

2. Pursuant to the Order, the undersigned may be given access to the Alcotest® 7110 MK-III-C instrument (the instrument) and "the marked discovery information" referred to in the Order and in paragraphs 9 and 17 through 21, inclusive, of the Discovery Order entered by the Court on February 3, 2006. As a condition of obtaining access to

the discovery information and the instrument, and in consideration of that access,

a) the undersigned agrees, upon threat of penalty for contempt and civil damages, to be bound by and to comply with all terms of the Order,

b) the undersigned agrees to limit their use of any and all of the "marked discovery information" solely for the purposes of this litigation,

c) the undersigned states that they are not a present employee, agent, consultant or representative of and competitors of Dräger Safety Diagnostics, Inc.,

d) the undersigned agrees that they will not become an employee, consultant, agent or representative of any competitor of Dräger Safety Diagnostics, Inc. for at least three (3) years from the date that they sign this Undertaking, and

e) the undersigned submits to the jurisdiction of the Supreme Court of New Jersey for the enforcement of the Order.

Date:

By:

Name: