

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
VENCO IMTIAZ CONSTRUCTION)	
COMPANY)	
)	
Petitioner,)	Case No. 1:16-CV-1737
)	
v.)	
)	
SYMBION POWER LLC)	
)	
Respondent.)	
_____)	

**STIPULATED PROTECTIVE ORDER REGARDING
DISCOVERY IN AID OF EXECUTION OF JUDGMENT**

WHEREAS, on May 31, 2017, the Court granted judgment (Dkt. 26) in favor of Petitioner Venco Imtiaz Construction Company (“VICC”) on its petition to confirm an arbitral award in its favor (the “ICC Award”) and on May 31, 2017 entered final judgment (Dkt. 27) in Petitioner’s favor and against Respondent Symbion Power LLC in the amount stated in the ICC Award plus interest (the “Judgment”);

WHEREAS, Petitioner has commenced discovery in aid of execution of the Judgment pursuant to Federal Rule of Civil Procedure 69(a)(2);

WHEREAS, Respondent contends that discovery in aid of execution of the Judgment, including that discovery already propounded by Petitioner, may necessitate the disclosure of information (through documents, testimony, or both) that Respondent believes to be private and confidential insofar as it incorporates proprietary or financial information;

WHEREAS, the Parties deem it appropriate to provide for the protection of such information without agreeing that the specific information is, in fact, confidential or proprietary, and to preserve all Parties’ rights to challenge any such designation at a later time;

WHEREAS, the Parties believe that entry of this Protective Order will permit discovery in aid of execution of the Judgment to proceed more expeditiously and with less expense by reducing the need for motions for protective orders and by avoiding disputes over confidential material.

NOW, THEREFORE, IT IS HEREBY AGREED, STIPULATED THAT:

1. This Protective Order shall govern all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, documents, testimony, transcripts, and tangible things) which is designated as containing “Confidential Material” as defined herein, that is produced or generated in disclosures or responses by Respondent to any discovery propounded by Petitioner pursuant to Rule 69.

2. The term “Confidential Material” shall mean material, non-public, proprietary commercial, financial, budgeting, or accounting information that is disclosed to the Petitioner by the Respondent.

3. “Confidential Material” shall expressly not include the following:

- (a) any documents, information, or materials that are in the public domain at the time of disclosure or becomes part of the public domain after its disclosure as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and
- (b) any documents, information, or materials known to Petitioner before the disclosure or obtained by the Petitioner after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to Respondent.

4. Confidential documents shall be so designated affixing the legend “CONFIDENTIAL” to each page that contains protected material at the time the documents, information, or materials are produced. If only a portion or portions of the material on a page qualifies for protection, Respondent must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins). Respondent must take care against indiscriminate designation and limit any such designation to specific material that qualifies under the appropriate standards and must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order. Designations that are shown by Petitioner to the Court to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the efforts to enforce the Judgment in this case or to impose unnecessary expenses and burdens on Petitioner) expose the Respondent to sanctions to the extent permitted under applicable law.

5. Testimony taken at a deposition may be designated as confidential by making a statement to that effect on the record at the deposition. Arrangements shall be made with the court reporter taking and transcribing such deposition to separately bind such portions of the transcript containing information designated as confidential, and to label such portions appropriately. Portions of deposition transcripts that concern material designated as Confidential Material shall automatically be given the same designation.

6. Material or testimony designated as confidential under this Protective Order, the information contained therein, and any summaries, copies, abstracts, or other documents derived in whole or in part from material or testimony designated as Confidential Material shall be used

only for the purposes of this Action. Notwithstanding the foregoing, VICC shall have the right to use Confidential Material in any and all other actions, proceedings, or efforts relating to enforcement of the Judgment or the ICC Award, including collection of amounts owed pursuant to the Judgment or ICC Award, or to discover assets that may be used to satisfy the Judgment or ICC Award. VICC's right to use Confidential Material shall also include, without limitation, any actions or proceedings to freeze or enjoin the transfer or concealment of assets, to obtain further clarification of the beneficial ownership of assets or alleging fraudulent transfers made to conceal beneficial ownership of assets, and/or to avoid enforcement of the Judgment or ICC Award.

7. Confidential Material produced pursuant to this Protective Order may be disclosed or made available only to an appropriate court or tribunal, to counsel for Petitioner (including the paralegal, clerical, and secretarial staff employed by counsel), and to the qualified persons designated below, only in accordance with the purposes set forth in Paragraph 6 above:

- (a) Petitioner, or an officer, director, or employee of Petitioner deemed necessary by counsel to aid in litigation;
- (b) Experts, investigators, or consultants (together with their clerical staff) retained by Petitioner or Petitioner's counsel;
- (c) Court reporter(s);
- (d) A witness at any deposition or other legal proceeding;
- (e) Non-parties to whom Petitioner deems it necessary to disclose such materials, provided they execute a confidentiality agreement in a form substantively similar to that attached as Exhibit 1; and
- (f) Any other person as to whom the Parties in writing agree.

8. Only qualified persons may attend depositions at which Confidential Material is used or discussed.

9. Nothing herein shall impose any restrictions on the use or disclosure by Petitioner of material obtained independent of formal discovery, whether or not such material is also obtained through discovery, *although nothing in this stipulated protective order modifies the terms of or the protections granted under any other confidentiality agreement or protective order to which the parties have previously agreed or that remain in effect.*

10. If Confidential Material, including, without limitation, any portion of a deposition transcript designated as Confidential, is included in any papers to be filed with or provided to any court or tribunal, such papers shall be accompanied by an application to (a) file the confidential portions thereof under seal (if such portions are segregable), or (b) file the papers in their entirety under seal (if the confidential papers are not segregable). The application shall be directed to the court or tribunal to whom the papers are directed. Pending the ruling on the application, the papers or portions thereof subject to the sealing application shall be lodged under seal.

11. If, at any time, any Confidential Material is subpoenaed or requested by any court, administrative or legislative body, or by any other person or entity purporting to have authority to require the production thereof, from a person who received such Confidential Material under this Protective Order, the person to whom the subpoena or request is directed, to the extent permitted by law, shall promptly give notice to the Respondent and include with that notice a copy of the subpoena or request. The person to whom the subpoena or request is directed also shall not produce documents for at least ten (10) days after the notice of the subpoena is provided to the Respondent in order to provide the Respondent a reasonable period of time in which to

quash, limit, or object to the subpoena or request, or to move for any protection for the Confidential Material. In no event shall such Confidential Material subject to this Protective Order be produced by a person receiving a subpoena or request without providing the Respondent an opportunity to quash, limit, or object, absent a court order to do so or as otherwise required by law. In the event that Confidential Material is produced in response to a subpoena or request, the recipient of the subpoena or request shall take commercially reasonable steps to ensure that the protections afforded under this Protective Order shall continue to apply to such Confidential Material.

12. This Protective Order shall be without prejudice to the right of the Parties
 - (a) to bring before any court or tribunal at any time the question of whether any particular document or information is confidential or whether its use should be restricted, or
 - (b) to present a motion to the Court under Fed. R. Civ. P. 26(c) for a separate protective order as to any particular document or information, including restrictions differing from those as specified herein.

13. This Protective Order shall not be deemed to prejudice the Parties in any way in any future application for modification of this Protective Order.

14. Petitioner may challenge a designation of confidentiality at any time. Unless a prompt challenge to a confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, Petitioner does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

15. The Parties shall attempt to resolve any challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient). Petitioner may file a motion challenging a confidentiality designation at any time if there is good cause for doing so, including a challenge to the designation of a deposition transcript or any portions thereof. Respondent shall bear the burden to demonstrate material is appropriately designated as Confidential Material.

16. This Protective Order is solely for the purpose of facilitating the production of documents and disclosure of information from Respondent to Petitioner in response to Rule 69 discovery requests, without involving the Court unnecessarily in the process. Nothing in this Protective Order, nor the production of any information or document under the terms of this Protective Order, nor any proceedings pursuant to this Protective Order, shall be deemed to have the effect of an admission or waiver by any party or of altering the confidentiality or non-confidentiality of any such document or information or altering any existing obligation of any party or the absence thereof.

17. This Protective Order shall survive the final termination of enforcement efforts and proceedings to the extent that the information contained in the Confidential Material is not or does not become known to the public, and the Court shall retain jurisdiction to resolve any dispute concerning the use of information disclosed hereunder. If, upon final reversal (the judgment is reversed, and either rehearing/rehearing en banc and/or cert. are not sought or they are denied, and the time for all appeals have been exhausted), or satisfaction or expiration of the Judgment, counsel for Petitioner shall, upon request by Respondent and at Respondent's expense, payable in advance, assemble and return to Respondent all documents, material, and

deposition transcripts designated as confidential and all copies of same, or shall certify the destruction thereof, at Petitioner's option.

18. The restrictions imposed by this Protective Order may only be modified or terminated by written stipulation of all Parties or by order of the Court.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: 8/4/17

Respectfully submitted,



Edmund M. Amorosi (D.C. Bar No. 482764)

Counsel of Record

Daniel D. Rounds (D.C. Bar No. 498284)

Zachary D. Prince (D.C. Bar No. 1026105)

SMITH PACHTER MCWHORTER PLC

8000 Towers Crescent Drive, Suite 900

Tysons Corner, Virginia 22182

Telephone: 703-847-6300

Facsimile: 703-847-6312

Email: eamorosi@smithpachter.com

drounds@smithpachter.com

zprince@smithpachter.com

Counsel for Petitioner

Venco Intiaz Construction Company

DATED:

8/4/17

Respectfully submitted,



Timothy A. Diemand (D.C. Bar No. 444806)

Jeffrey R. Babbin (D.C. Bar No. 384557)

WIGGIN AND DANA LLP

20 Church Street

Hartford, CT 06103

Tel.: 860-297-3700

Fax: 860-525-9380

E-mail: tdiemand@wiggin.com

jbabbin@wiggin.com

Counsel for Respondent Symbion Power LLC

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED:

Judge, United States District Court for the District
of Columbia

ATTACHMENT A

Non-Disclosure Agreement

I, _____, do solemnly swear that I am fully familiar with the terms of the Protective Order Regarding Discovery in Aid of Execution of Judgment entered in *Venco Imtiaz Construction Company v. Symbion Power LLC*, Case No. 1:16-CV-1737, and hereby agree to comply with and be bound by the terms and conditions of said Protective Order unless and until modified by further Order of the Court. I hereby consent to the jurisdiction of the Court for purposes of enforcing this non-disclosure agreement.

Dated: _____

Signature: _____

Printed/Typed Name: _____