

**In the United States Court of Appeals
FOR THE SEVENTH CIRCUIT**

ONE WISCONSIN INSTITUTE, INC., ET AL.,
PLAINTIFFS-APPELLEES, CROSS-APPELLANTS,

v.

MARK L. THOMSEN, ET AL.,
DEFENDANTS-APPELLANTS, CROSS-APPELLEES.

On Appeal From The United States District Court
For The Western District of Wisconsin, No. 3:15-cv-324
The Honorable James D. Peterson, Presiding

JOINT RESPONSE TO ORDER AND MOTION FOR ADDITIONAL RELIEF

This Court's Order dated November 16, 2016, regarding the parties' Joint Motion to Maintain Documents Under Seal directs the parties to submit redacted versions of sealed documents by November 23, 2016, but to redact "only individuals' dates of birth and social security numbers." Case Nos. 16-3983 & 16-3091, Dkt. 55. In response, the parties respectfully request that this Court, in addition, (1) permit the parties also to redact photographs, names, and addresses, which are federally protected "personal information" and "highly restricted personal information," (2) permit the parties to redact lines protected by attorney-client privilege in two record items, *see* Joint Mot. to Maintain Docs. Under Seal at 7, and (3) return the two CDs containing only pre-trial exhibits to the district court, excluding them from the appellate record.

1. The parties respectfully request that this Court permit them also to redact photographs of individuals obtained from DMV. Under 18 U.S.C. § 2725(4), photographs of individuals in DMV's materials constitute "highly restricted personal information." The parties also respectfully request that this Court permit them to redact names and addresses in the sealed documents, which are "personal information" protected under federal law. *See* 18 U.S.C. § 2725(3).

Redacting this information will help prevent use of other information in the documents that this Court has ordered unredacted (such as mother's maiden name, place of birth, and other personal identifying information) from being used to identify or harm the individuals. Furthermore, this information is not necessary for the public "to know who's using the courts, to understand [the] judicial decisions, and to monitor the judiciary's performance of its duties." *Goesel v. Boley Int'l (H.K.) Ltd.*, 738 F.3d 831, 833 (7th Cir. 2013). Thus, allowing these additional redactions will still ensure broad public disclosure while protecting the privacy of the individuals whose personal information is contained in the sealed documents, in accordance with federal law. *See also* Joint Mot. to Maintain Docs. Under Seal at 2–5.

2. The parties also respectfully request permission to redact the attorney-client privileged information from the two record items that contain such information (R.283 and R.303). *See* Joint Mot. to Maintain Docs. Under Seal at 7.

3. Finally, in light of this Court's Order, the parties agree that two CDs containing only pre-trial exhibits may properly be excluded from the appellate

record and returned to the district court (CD labeled “Plaintiffs’ Trial Exhibits” and CD labeled “Defendants’ Exhibits, May 16, 2016”). These pre-trial exhibits are not necessary to the resolution of the appeal, and the exhibits actually admitted into evidence will remain part of the appellate record (*see* CD labeled “CONFIDENTIAL, Filed Under Seal, Plaintiffs’ Admitted Exhibits,” CD marked “CONFIDENTIAL” and labeled “Defendants’ Admitted Exhibits, Disc No. 1,” CD labeled “Defendants’ Admitted Exhibits, Disc No. 2”). Additionally, the pre-trial exhibits are voluminous and contain a significant amount of protected personal information. *See Baxter Int’l, Inc. v. Abbott Labs.*, 297 F.3d 544, 548 (7th Cir. 2002). Therefore, the parties respectfully ask this Court to exclude these items from the appellate record and return them to the district court, rather than require the submission of public-record versions that are only limitedly redacted.

Dated: November 17, 2016

Respectfully Submitted,

/s/ Bruce V. Spiva

BRUCE V. SPIVA (Counsel of Record)
MARC E. ELIAS
ELISABETH C. FROST
RHETT P. MARTIN
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
Telephone: (202) 654-6200
BSpiva@perkinscoie.com
MElias@perkinscoie.com
EFrost@perkinscoie.com
RMartin@perkinscoie.com

JOSHUA L. KAUL
CHARLES G. CURTIS, JR.
One East Main Street, Suite 201
Madison, WI 53703
Telephone: (608) 663-7460
JKaul@perkinscoie.com
CCurtis@perkinscoie.com

BOBBIE J. WILSON
505 Howard Street, Suite 1000
San Francisco, CA 94105
Telephone: (415) 344-7000
BWilson@perkinscoie.com

Attorneys for Plaintiffs-Appellees, Cross-Appellants

BRAD D. SCHIMEL
Attorney General

MISHA TSEYTLIN
Solicitor General
Counsel of Record

/s/ Ryan J. Walsh
RYAN J. WALSH
Chief Deputy Solicitor General

LUKE N. BERG
DANIEL P. LENNINGTON
Deputy Solicitors General

S. MICHAEL MURPHY
GABE JOHNSON-KARP
Assistant Attorneys General

Wisconsin Department of Justice
17 West Main Street
P.O. Box 7857
Madison, Wisconsin 53707-7857
(608) 267-9323
(608) 261-7206 (Fax)
tseytlinm@doj.state.wi.us

Attorneys for Defendants-Appellants, Cross-Appellees

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2016 I filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

Dated: November 17, 2016

/s/ Ryan J. Walsh

RYAN J. WALSH