

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Complaint of Capital One Services, Inc.

Docket No. C2008-3

**CLARIFICATION OF RULING ESTABLISHING
PROCEDURES FOR THE DEPOSITION OF JESSICA DAUER LOWRANCE**

(Issued August 27, 2008)

Capital One Services, Inc (Capital One) seeks clarification on two points in the procedures applicable to the deposition of Jessica Dauer Lowrance scheduled for 10 a.m. on August 27, 2008.

First, it asks if the Commission officer assigned to clarify procedures is expected to provide general guidance on privilege claims. Second, it contends that Capital One's counsel must be present at the closed session of the deposition and able to ask follow-up questions for the procedures to provide fair access to Ms. Lowrance.

The Commission expects counsel to act in good faith to assure due process. This involves first and foremost representing the interests of the client, but also recognizing the responsibilities of this Commission and the legitimate interests of other parties. The officer assigned to clarify procedures is expected to attempt to facilitate parties achieving a reasonable balance, but not to make decisions.

The Commission has dealt successfully with highly sensitive commercial information in many cases. Protective conditions have allowed the Postal Service and private corporations to share privileged and sensitive business information for the limited purpose of allowing the Commission to perform its functions. Counsel practicing before the Commission have an exemplary record

of fashioning and adhering to such agreements. There is no apparent reason why Capital One can not be represented at any closed portion of the deposition by skilled counsel able to agree to appropriate protective conditions.

Parties are referred to P.O. Ruling No, MC2005-3/13 establishing protective conditions for obtaining access to a transcript under seal. These conditions were deemed acceptable by all concerned, including participating counsel. Rather than direct that these conditions apply, ruling C2008-3/3 allows counsel to adjust them if necessary to be mutually satisfactory. Attached as "Exhibit A" are presumptively sufficient, illustrative protective conditions that also can be tailored to the mutual satisfaction of the parties.

RULING

The procedures established in P.O. Ruling No. C2008-3/3 are to be understood in light of the discussion in the body of this ruling.

Dan G. Blair
Presiding Officer

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STATEMENT OF COMPLIANCE WITH PROTECTIVE CONDITIONS

The following protective conditions limit access to the August 27, 2008, closed session of the deposition of Jessica Dauer Lowrance in Docket No. C2008-3, and the discussions and materials presented therein. The purpose of the closed session of the deposition is to obtain a sworn copy of written or oral testimony, or cross-examination, of Postal Service employee Lowrance that may be of a confidential nature. Individuals attending the closed session must agree to comply with these conditions, complete the attached certification, and provide the completed certification to Katja Eichinger, the officer assigned for purposes of taking oaths and clarifying procedures in this matter, prior to admittance to the closed session of the deposition.

1. Only a person who is either:
 - (a) an employee of the Commission with a need to know; or
 - (b) a counsel of a participant in Docket No. C2008-3, shall be granted access to the closed session. However, no person involved in competitive decision-making for any entity that might gain competitive advantage from use of this

information shall be granted access to the closed session of the deposition. “Involved in competitive decision-making” includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with a person or entity having a proprietary interest in the protected discussions and materials.

2. The discussions and materials presented in the closed session of the deposition are assumed to be of a confidential nature. No person granted access to the closed session is permitted to disseminate in whole or in part the discussions and materials presented in the closed session of the deposition to any person not authorized to obtain access under these conditions.
3. The duty of nondisclosure of anyone obtaining access to the discussions and materials is continuing, terminable only by specific order of the Commission, or as specified in paragraphs 4 through 6, below.
4. Any written materials — including but not limited to discovery requests and responses, requests for admission and responses, deposition transcripts and exhibits, pleadings, motions, affidavits, written testimony and briefs —that quote, summarize, or contain the discussions or materials protected under these protective

conditions also are covered by the same protective conditions and certification requirements, and shall be filed with the Commission only under seal. Documents submitted to the Commission as confidential shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as confidential documents.

5. A participant may apply to the Commission for a ruling that the discussions and materials presented in the closed session of the deposition, stamped or designated as confidential, are not entitled to such status and protection. The Postal Service and Bank of America shall be given notice of the application and an opportunity to respond.

6. Subpoena by Courts or Other Agencies. If a court or other administrative agency subpoenas or orders production of confidential information which a participant has obtained under the terms of this protective order, the target of the subpoena or order shall promptly (within two business days) notify the Postal Service and Bank of America of the pendency of the subpoena or order to allow the designating party time to object to that production or seek a protective order.

CERTIFICATION

The undersigned represents that:

Access to the August 27, 2008, closed session of the deposition in Docket No. C2008-3, and the discussions and materials presented therein has been authorized by the Commission by compliance with the attached Statement of Compliance with Protective Conditions and completion of this Certification. I agree to use the information ascertained only for purposes of analyzing matters at issue in Docket No. C2008-3. I certify that I have read and understand the above protective conditions and am eligible to attend the August 27, 2008, closed session of the deposition in Docket No. C2008-3 as referred to under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain in strict confidence the information disseminated in accordance with all of the protective conditions set out above.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____