

RULING NO. C2008-3/8

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

Complaint of Capital One Services, Inc.

Docket No. C2008-3

RULING CONCERNING PROCEDURAL MATTERS  
FOR THE DEPOSITION OF JESSICA DAUER LOWRANCE

(Issued August 28, 2008)

Capital One previously requested a ruling specifying that objections based on material subject to a nondisclosure agreement (NDA) will not prevent Ms. Lowrance from answering questions.<sup>1</sup> Capital One indicated that it has a NDA with the Postal Service, and that the Postal Service also has a separate NDA with Bank of America. Because the request asks for a ruling and not a clarification, P.O. Ruling No. C2008-3/5 provided the Postal Service, Bank of America, and other interested parties an opportunity to respond as if this were a request made orally during a hearing prior to the consideration of the request.

Capital One filed a third request for clarification.<sup>2</sup> This request asks for a ruling specifying that Postal Service counsel can not instruct the witness not to answer questions based on relevance or out of scope objections.

The Postal Service does not oppose questioning in closed session that pertains to material covered by the NDA with Bank of America, if directed to do so pursuant to a

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<sup>1</sup> Second Emergency Motion to Clarify Ruling Establishing Procedures for the Deposition of Jessica Dauer Lowrance, August 27, 2008.

<sup>2</sup> Third Emergency Motion to Clarify Ruling Establishing Procedures for the Deposition of Jessica Dauer Lowrance, August 27, 2008.

Commission order.<sup>3</sup> It does oppose questioning on the obligations of third parties included in multi-party NDAs because the third parties have not been provided reasonable notice. The Postal Service acknowledges that it will heed the Commission's rulings as they pertain to answering questions based on relevance. However, it reserves the right to make objections based on questions that are out of the scope of the intended deposition.

Bank of America argues that issues subject to the NDA between the Postal Service and Bank of America fall outside the scope of the application to depose Ms. Lowrance.<sup>4</sup> It objects to Capital One's argument that because Capital One has a NDA with the Postal Service, Ms. Lowrance should be unimpeded from answering questions related to the Bank of America NDA. Bank of America contends that the existence of a NDA between the Postal Service and Capital One is not relevant to this issue.

*Analysis.* The negotiations between Capital One and the Postal Service are germane to the resolution of this case. To the extent that Ms. Lowrance has information, possesses documentation, or has had discussions concerning how the Postal Service interprets the Bank of America contract provisions, or what type of subsequent agreement the Postal Service would find functionally equivalent to the Bank of America agreement, Ms. Lowrance shall answer questions designed to shed light on these issues or lead to the production of evidence concerning them. Questions related to specific conversations that Ms. Lowrance directly had with representatives of Capital One also are relevant. Ms. Lowrance shall answer these questions.

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<sup>3</sup> Response of the United States Postal Service to P.O. Ruling No. C2008-3/5, Second Clarification of Ruling Establishing Procedures for the Deposition of Jessica Dauer Lowrance, August 28, 2008.

<sup>4</sup> Opposition of Bank of America Corporation to Capital One Services, Inc.'s Second Emergency Motion to Clarify Ruling Establishing Procedures for the Deposition of Jessica Dauer Lowrance, August 27, 2008.

The existence of a NDA between the Postal Service and Capital One is not relevant to the materials covered by the NDA between the Postal Service and Bank of America. Questions concerning the negotiations or the negotiation process between Bank of America and the Postal Service prior to the signing of the Bank of America agreement are not properly addressed to Ms. Lowrance during this deposition. Similarly questions relating to other existing or potential agreements between Bank of America and the Postal Service are not appropriate. Questions concerning procedures utilized by Bank of America that the Postal Service accepts as fulfilling the obligations of their negotiated service agreement are relevant, however, such matters do not appear to be within the responsibilities of Ms. Lowrance, and should not be pursued at this deposition.

P.O. Ruling No. C2008-3/5 addresses objections based on relevance. There may be considerable overlap in objections based on relevance and objections based on out of scope material. To avoid further emergency motions practice, objections based on out of scope may be made and noted by the reporter, but the witness shall answer the question. See P.O. Ruling C2008-3/7.

#### RULING

1. 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.
2. Postal Service shall respond to questions involving material subject to nondisclosure agreements consistent with the body of this ruling.

3. Objections based on out of scope shall be answered, with the objection noted by the reporter.