




J. Craig Whitley
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division**

In re:

TSI Holdings, LLC¹ et al.,

DEBTORS.

CASE NO. 17-30132

CHAPTER 7

Jointly Administered

PROTECTIVE ORDER BY CONSENT

This matter came on for hearing on July 24, 2017 on the *Joint Motion of Trustee and Metropolitan Life Insurance Company and MSI Financial Services, Inc. for Protective Order* (the “Motion”) (D.E.79) brought by Joseph W. Grier, III (the “Trustee”), the Trustee for TSI Holdings, LLC, WSC Holdings, LLC, Sharon Road Properties, LLC, and SouthPark Partners, LLC (collectively the “Debtors”), through counsel, and Metropolitan Life Insurance Company (“MetLife”) and MSI Financial Services, Inc. (“MSI”) (collectively, the “Producing Non-parties”), through counsel. The Motion seeks, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, a protective order as to certain information to be provided in this action pursuant to subpoenas issued to non-parties, MetLife and MSI, on behalf of the Trustee (the “Protective Order”). At the hearing the Trustee was represented by Anna S. Gorman, and

¹ These jointly administered cases are those of the following debtors: TSI Holdings, LLC, Case No. 17-30132, WSC Holdings, LLC Case No. 17-30338, SouthPark Partners, LLC Case No. 17-30339 and Sharon Road Properties, LLC Case No. 17-30363.

MetLife and MSI were represented by Charles Raynal, IV. The Court, finding notice and service proper, and having reviewed the Motion and considered the arguments of counsel and the record in this case, finds and concludes as follows:

1. (a) Any document, or portion thereof, and any other form of evidence or discovery produced pursuant to Rule 45 of the Federal Rules of Civil Procedure which, in the good faith opinion of either or both of the Producing Non-parties contains any (i) customer account information for former or current customers of the Producing Non-parties, (ii) sensitive financial information for former or current customers or employees of the Producing Non-parties, or (iii) confidential, proprietary or otherwise commercially sensitive information of the Producing Non-parties may be designated by the Producing Non-parties as “Confidential Information.”

(b) Except as otherwise provided by this Protective Order, Confidential Information designated as such in accordance with this Order may be disclosed or made available only to persons specified in paragraphs 3 and 4 herein.

(c) Confidential Information designated as such may include, without limitation: (i) all documents, and all extracts from and summaries thereof, that contain or reflect Confidential Information; (ii) deposition, hearing or trial testimony and the portions of transcripts and exhibits that contain or reflect Confidential Information; and (iii) the portions of briefs, memoranda, or other writings filed with the Court and exhibits thereto that contain or reflect Confidential Information.

(d) Confidential Information that is made available to the Trustee pursuant to this Protective Order may be received and used by the Trustee and his counsel, agents, and employees only for the purpose of carrying out the Trustee’s responsibilities with regard to the

Chapter 7 cases that are being administered jointly in connection with the above-captioned proceeding and for no other purpose, and said persons and entities shall thereafter safeguard and retain custody and/or control of all documents and things that contain, embody or reflect the Confidential Information.

2. Confidential Information as defined in paragraph 1(a) above may be designated by one or more of the Producing Non-parties as subject to this Protective Order as follows:

(a) With respect to documents or copies provided by the Producing Non-parties to the Trustee, by marking the initial page with the legend “CONFIDENTIAL UNDER METLIFE/MSI PROTECTIVE ORDER in A.P. 17-301132 (W.D.N.C. Bankr.)”

(b) Transcripts, if any, containing testimony or exhibits designated as containing Confidential Information shall be designated as Confidential Information by either indicating on the record at any deposition, hearing or other court proceeding the specific testimony which contains Confidential Information that is to be made subject to the provisions of this Order or by marking the initial page of the deposition with the legend “CONFIDENTIAL UNDER METLIFE/MSI PROTECTIVE ORDER in A.P. 17-301132 (W.D.N.C. Bankr.)”.

(c) Notwithstanding the foregoing, if any person who is not qualified to receive Confidential Information under paragraphs 3 and 4 herein attends a deposition, hearing or other court proceeding at which such Confidential Information is disclosed, then in such event the Trustee and/or Producing Non-party must designate the specific testimony or information containing Confidential Information by indicating on the record at the deposition, hearing or other court proceeding that such Confidential Information is subject to the provisions of this Order. In accordance with the procedures provided in paragraphs 5 and 6 below, the Trustee and/or Producing Non-parties may seek a ruling from the Court as to whether disclosure may be

made to any third party, whether the Confidential Information should be filed under seal, or whether some other protection of the Confidential Information is warranted or necessary. The Producing Non-Parties shall have a reasonable opportunity to be heard before any disclosure or filing of the Confidential Information is made. If, after a hearing, the Court rules that Confidential Information may not be disclosed to third parties or the Court places some other limitation on the disclosure or use of Confidential Information, the Trustee and the Producing Non-Parties shall have the right to exclude such persons from the deposition, hearing or court proceeding during the period any Confidential Information is disclosed or discussed to give effect to the Court's ruling.

(d) If affidavits, briefs, memoranda or other papers are expected to be filed with this Court containing Confidential Information, the Trustee shall notify the Producing Non-parties as provided in Paragraph 5 below and the Producing Non-parties shall receive the opportunity to object to the disclosure and to be heard before any such papers are filed. Upon any filing of papers that may occur, such information contained therein must be designated Confidential Information by prominently marking such paper "CONFIDENTIAL UNDER METLIFE/MSI PROTECTIVE ORDER in A.P. 17-301132 (W.D.N.C. Bankr.)."

3. Except as otherwise provided by this Protective Order, Confidential Information shall not be made available to, or be disclosed to, any person except:

(a) the Court, which includes judges and associated judicial officers and personnel;

(b) the Trustee and his counsel in this action;

(c) certified court reporters taking testimony involving Confidential Information and their support personnel;

(d) independent experts and their support personnel, in accordance with the provisions of paragraph 4 of this Protective Order;

(e) such other persons as the Producing Non-parties consent to in writing; and

(f) third-parties shown on the face of such documents to be senders or recipients of the document.

4. (a) Confidential Information may be disclosed to independent experts who are retained by the Court and/or by the Trustee to furnish expert services or to give expert testimony with regard to this action.

(b) Upon disclosure of Confidential Information to such independent experts, the Trustee, or counsel for the Trustee shall inform the expert that the information is subject to this Protective Order, shall inform the expert that such information is not to be disclosed except for purposes of this litigation, shall use their best efforts to prevent the information from being disclosed by said expert, and shall use their best efforts to require all information, subject to this Protective Order, is returned by said expert to counsel for the producing party in accordance with paragraph 14 of this Protective Order.

5. In the event that the Trustee deems it necessary to disclose any Confidential Information of either of the Producing Non-parties to any person not specified in paragraph 3 herein as qualified to receive such information or not covered by paragraph 4 herein, the Trustee shall notify counsel for the Producing Non-parties in writing of (a) the information or documents to be disclosed, and (b) the person(s) to whom such disclosure is to be made, and shall attempt to reach agreement regarding such disclosure. If agreement cannot be reached, the Trustee shall make an appropriate motion with this Court, and the Producing Non-Parties shall be provided with a reasonable opportunity to object to the disclosure and to be heard before any Confidential

Information is produced or ordered to be produced. In the event of such motion, this Court shall rule as to whether such disclosure may be made and whether any restrictions or limitations should be placed on such disclosure.

6. If any document or thing containing or embodying Confidential Information is to be filed with the Court, the Trustee shall notify counsel for the Producing Non-parties in writing of the information or documents to be filed with the Court and shall attempt to reach agreement with the Producing Non-parties regarding such filing. If agreement cannot be reached, the Trustee must make an appropriate motion with this Court, and the Producing Non-Parties shall be provided with a reasonable opportunity to object to the filing and to be heard before any Confidential Information is filed. In the event of such motion, this Court shall rule as to whether such filing may be made and whether any restrictions or limitations should be placed on such filing, including whether such filing must be made under seal.

7. Nothing in this Protective Order shall prevent the Trustee from discovering documents or Confidential Information or from using any such Confidential Information at trial, during a hearing, or on appeal, subject to the Federal Rules of Evidence and Federal Rules of Civil Procedure.

8. Confidential Information obtained from the Producing Non-parties pursuant to a subpoena in this action may be used, disclosed or filed only for purposes of the Trustee carrying out the Trustee's responsibilities with regard to this action, A.P. 17-301132 (W.D.N.C. Bankr.). No party or any other person or entity shall make any other use of any such Confidential Information except as permitted by Order of the Court.

9. The Producing Non-parties may redact from documents they produce any confidential information consisting of personal identifying information of third parties, including

social security numbers, tax identification numbers, account numbers, telephone numbers and addresses. Should the Trustee require access to redacted personal identifying information for purposes of the Trustee carrying out the Trustee's responsibilities with regard to this action, the Trustee may, upon request, review such information in the offices of counsel for the Producing Non-parties or in such other manner as the Trustee and the Producing Non-parties agree.

10. (a) The restrictions set forth in this Protective Order shall not apply to Confidential Information that:

(i) is lawfully acquired by the Trustee from a third party having the right to disclose such information, or

(ii) was lawfully possessed by the Trustee prior to the entry of this Order.

(b) Should a dispute arise as to whether any specific Confidential Information is within paragraph 10(a) of this Protective Order;

(i) the Trustee and the Producing Non-parties shall first attempt to dispose of such dispute in good faith on an informal basis;

(ii) if the dispute cannot be resolved on an informal basis, counsel for the Trustee or counsel for the Producing Non-parties may seek appropriate relief from this Court.

11. Nothing in this Protective Order shall be construed as an agreement or admission: (a) that any information or document designated as Confidential Information is in fact confidential; or (b) with respect to the competency, relevance, admissibility or materiality of any such information or document.

12. The Trustee shall not be obliged to challenge the propriety of a Confidential Information designation at the time made, and a failure to do so shall not preclude a subsequent

challenge thereto. In the event that the Trustee disagrees at any point in these proceedings with the designation by the Producing Non-parties of any information as Confidential Information, the Trustee shall first attempt to dispose of such dispute in good faith on an informal basis with counsel for the Producing Non-parties. If the dispute cannot be resolved, the Trustee may seek appropriate relief from this Court, and the Producing Non-parties asserting confidentiality shall have a reasonable opportunity to be heard and shall have the burden of proving the same.

13. The inadvertent or unintentional failure by the Producing Non-parties to designate specific documents or materials as containing Confidential Information shall not be deemed a waiver in whole or in part of the Producing Non-parties' claim of confidentiality as to such documents or materials. Upon notice to the receiving party of such failure to designate, the receiving party shall cooperate to restore the confidentiality of any inadvertently disclosed Confidential Information.

14. Nothing in the Protective Order shall prevent disclosure of Confidential Information beyond the terms of this Order if the Producing Non-parties of Confidential Information consents in writing to such disclosure, or if the Court, after notice to all affected parties and an opportunity for the Producing Non-parties to be heard, orders such disclosure.

15. (a) Within sixty (60) days of the Court's closure of the above-referenced matter all Confidential Information designated as such, and all reproductions thereof, shall be returned to the Producing Non-parties or shall be destroyed, at the option of the Producing Non-parties; except counsel for the Producing Non-parties and counsel for the Trustee may retain copies of such documents or information, provided all documents and other materials produced or designated as Confidential Information shall remain subject to the conditions of this Order. This requirement of returning or destroying Confidential Information shall not obligate the Court

to destroy or return any copies of Confidential Information within the possession of the Court to the Producing Non-parties. To the extent any Confidential remains in the possession of the Court following closure of this matter, any such information that has been ordered to be filed under seal shall remain under seal and otherwise shall remain protected in accordance with any order of the Court.

(b) Insofar as the provisions of this and any other Protective Order entered in this proceeding restrict the communication and use of information produced thereunder, such Order shall continue to be binding after the conclusion of this action, except that a party may seek the written permission of the Producing Non-parties or further Order of the Court with respect to dissolution or modification of any such Protective Order.

(c) Confidential Information that is used during a hearing, trial, and/or appeal does not become part of the public domain. Rather, the protections of paragraph 8 of this Order shall continue to apply thereto. After such hearing, trial, or appeal, or at the conclusion of this action, the Producing Non-parties and/or Trustee may work with the Clerk of Court to seal any exhibit or other evidence containing Confidential Information under the provisions of paragraph 6 of this Order.

16. Neither the entry of this Protective Order nor the designation of any information or document as Confidential Information, nor the failure to make such designation, shall constitute evidence with respect to any issue in this proceeding.

17. If a party in other litigation, another court, or an administrative agency, issues a discovery request, a subpoena or process or order for the production of any Confidential Information that the Trustee or persons designated in Paragraph 3 obtained under the terms of this Protective Order, such party or person shall promptly notify counsel for the Producing Non-

parties of the pendency of such discovery request, subpoena or Order, shall furnish counsel for the Producing Non-parties with a copy of said discovery request, subpoena or order, and shall cooperate with respect to any procedure sought to be pursued by the Producing Non-parties. Before the Trustee or other persons designated in Paragraph 3 may produce Confidential Information to any third party, the Producing Non-parties shall receive at least fourteen (14) days in which to object to such production and/or to seek other protection from this Court or other appropriate court. The person or party receiving the discovery request, subpoena, process or order shall be entitled to comply with it except to the extent that the Producing Non-parties are successful in obtaining an order modifying or quashing it.

18. This Protective Order is without prejudice to the rights of the Trustee or the Producing Non-parties to seek relief from the Court, upon good cause shown, from any of the restrictions provided above or to impose additional restrictions on the disclosure of any information or material produced.

19. Notices under this Protective Order shall be provided as follows, unless this paragraph 17 is modified by the Trustee or the Producing Non-parties in writing and filed with this Court: notice to the Producing Non-parties shall be to Charles Raynal of Parker Poe Adams & Bernstein, LLP and notice to the Trustee shall be to Joseph Grier of Grier Furr & Crisp, P.A., at their respective addresses of record filed with the Court for this action.

20. The Court retains jurisdiction even after termination of this action to enforce this Protective Order and to make such amendments, modifications, deletions and additions to it as the Court from time to time deem appropriate.

This Order has been signed Electronically. The judge's signature and court's seal appear at the top of the Order.

United States Bankruptcy Court

CONSENTED AND AGREED TO:

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