

Defendant.

A. Background

¶2 The underlying lawsuit involves opposing claims for misappropriation of trade secrets. The parties are rival companies involved in the manufacturing and sale of transformers. The Plaintiffs/Counter-Defendants are Unimacts Global, LLC; Zetworks Manufacturing USA, Inc.; and Zetwerk Manufacturing Businesses Limited (hereinafter, “Plaintiffs”). The Defendant/Counter-Plaintiff is Ayr Energy Inc. (hereinafter, “Defendant”).

¶3 On March 18, 2026, the court signed a protective order that creates two categories of protected discovery material—Confidential Information (CI) and Attorney’s Eyes Only (AEO) information. During discovery, a dispute arose about whether it was permissible for Plaintiffs’ attorneys of record to disseminate Defendant’s protected discovery materials to attorneys working at BTG Advaya, an India-based law firm that represents Plaintiffs in litigation matters. BTG Advaya attorneys are not counsel of record in this lawsuit.

¶4 The parties filed letter briefs and submitted affidavits in support of their respective positions, and the court set the matter for hearing. At the hearing, Plaintiffs urged the court to allow dissemination of the protected discovery materials to BTG Advaya’s attorneys based on the plain language of the protective order. On the other hand, Defendant urged the court to deny access to BTG Advaya’s attorneys based on the balancing test typically used when issuing or modifying protective orders in trade secret cases. After the hearing, the court issued an order ruling that Plaintiffs’ counsel of record are not permitted to share CI and AEO discovery materials with BTG Advaya’s attorneys.

B. Analysis

1. The Purpose of Protective Orders in Trade Secret Cases

¶5 In Texas, trial courts are obligated to preserve the secrecy of alleged trade secrets by reasonable means. *In re K & L Auto Crushers, LLC*, 627 S.W.3d 239, 256 (Tex. 2021) (orig. proceeding). Section 134A.006 of the Texas Uniform Trade Secrets Act authorizes a trial court to issue protective orders in lawsuits involving trade secrets. TEX. CIV. PRAC. & REM. CODE § 134A.006(a) (“There is a presumption in favor of granting protective orders to preserve the secrecy of trade secrets.”). As a trade secret lawsuit progresses, the trial court has an ongoing obligation to preserve the secrecy of trade secrets. *Id.* § 134A.006(b) (“At any stage of the action, the court may exclude a party and the party’s representative or limit a party’s access to the alleged trade secret of another party.”).

¶6 Typically, when deciding whether to issue a protective order limiting access to trade secret, proprietary, financial, sensitive, or other highly confidential discovery materials, courts weigh the risks of inadvertent disclosure or misuse against the potential that barring access will impair a party’s ability to prosecute or defend its claims. *ST Sales Tech Holdings, LLC v. Daimler Chrysler Co., LLC*, No. 6:07-CV-346, 2008 WL 5634214, at *2 (E.D. Tex. Mar. 14, 2008). In weighing these factors, courts consider the factual circumstances surrounding each individual attorney’s activities, association, and relationship with a party. *Id.*; accord *U.S. Steel Corp. v. U.S.*, 730 F.2d 1465, 1468 (Fed. Cir. 1985) (noting existence of unacceptable risk of inadvertent disclosure is determined by facts on “counsel-by-counsel” basis). Among the factors courts take into account are:

(1) whether the individual attorney receiving confidential information is involved in the company's competitive decision-making; (2) the level of risk of inadvertent disclosure; and (3) the hardship imposed by restricting disclosure. *ST Sales Tech*, 2008 WL 5634214, at *2. The weighing of these factors guides the court in deciding if a particular attorney's access to trade secret, proprietary, financial, sensitive, or other highly confidential information creates an unacceptable opportunity for inadvertent disclosure. *Id.*

¶7 In deciding to limit an attorney's access to trade secret or other highly confidential materials, courts often distinguish between "in-house" and "outside" counsel. See *SafeLease Ins. Servs. LLC v. Storable, Inc.*, No. 25-BC03A-0001, 2025 Tex. Bus. 28, ¶41, 2025 WL 2018465, at *11 (3rd Div. 2025); *Westlake Longview Corp. v. Eastman Chem. Co.*, No. 24-BC11B-0023, 2025 Tex. Bus. 19, ¶ 14-20, 712 S.W.3d 103, 110-13 (11th Div. 2025). In deciding whether to limit in-house counsel's access to such information, courts have focused on: (1) the attorney's actual (not nominal) role in the company's affairs; (2) the attorney's relationship with individuals in the corporate hierarchy; (3) the attorney's role in advising the company's business leaders on litigation strategies in similar cases; and (4) any other factor that increases the risk of inadvertent disclosure. *Westlake*, 2025 Tex. Bus. 19, ¶ 16-17, 712 S.W.3d at 110-112. "If in-house counsel's knowledge of confidential information could put her in the 'untenable position' of choosing between providing legal advice to her client and abiding by the court's protective order, she should not have access to such information." *Ecolab, Inc. v. IBA, Inc.*, No. 22-CV-479, 2024 WL 3650464, at *2 (D. Minn. 2024).

2. The Protective Order Entered in this Lawsuit

¶8 The protective order entered in this case creates two tiers of protected materials—Confidential Information (CI) and Attorney’s Eyes Only (AEO) materials. *See Blanchard and Co., Inc. v. Barrick Gold Corp.*, No. 02-3271, 2004 WL 737485, at *8 (E.D. La. 2004) (noting “dual tier designation . . . restrictions are commonplace where parties are competitors”); *see also Westlake*, 2025 Tex. Bus. 19, ¶ 7, 712 S.W.3d at 107 (acknowledging purpose of AEO designations is to prevent parties from viewing commercially sensitive information while nevertheless permitting their attorneys to litigate based on such information). The protective order defines CI material as “information that a [p]roducing [p]arty determines in good faith is a trade secret or reveals confidential, proprietary, sensitive, financial or other information.” *See* Protective Order, ¶ 6. Additionally, the protective order defines AEO material as any “CI that a [p]roducing [p]arty in good faith determines is especially sensitive and entitled to highly confidential treatment.” *See* Protective Order, ¶ 7.

¶9 The protective order entered in this case allows “Limited Disclosure” of CI, expressly stating the categories of individuals permitted to access these materials. It also allows for “More Limited Disclosure” of AEO materials, expressly stating the categories of individuals permitted to access these more highly confidential materials. *See Westlake*, 2025 Tex. Bus. 19, ¶6, 712 S.W.3d at 106 (stating “key difference” between CI and AEO designations is that AEO information may not be shared with parties, including their in-house counsel).

¶10 Paragraph 26 of the protective order grants access of first tier CI materials to: “Attorneys working on this Lawsuit on a Party’s behalf and those attorneys’ employees,

agents, and signing contractors who provide assistance in this lawsuit.” Paragraph 27 grants access of second tier AEO materials to: “Outside Counsel Working on this Lawsuit on a Party’s behalf and those attorneys’ employees and agents assisting Outside Counsel in this Lawsuit.”

¶11 Practically speaking, Paragraph 27 “tightens the circle” of those who may have access to highly confidential discovery materials by further narrowing the categories of individuals who have access to them.

¶12 Plaintiffs argue the instant dispute about access by BTG Advaya attorneys is resolved by construing the plain language of the protective order. According to Plaintiffs, Paragraph 27’s “Outside Counsel Working on this Lawsuit” means any and all outside attorneys working on this case, regardless of whether they are counsel of record. To support this argument, Plaintiffs point out that Paragraph 27 does not use the terms “attorneys of record” or “counsel making an appearance.”

¶13 In effect, Plaintiffs argue that because BTG Advaya’s attorneys are not in-house counsel and because they are working on this lawsuit, they should necessarily have access to the trade secret and highly sensitive discovery materials produced by the Defendant.

¶14 However, the court concludes the plain language of the protective order is not definitive on this point.

¶15 The same rules of construction apply in ascertaining the meaning of orders as in ascertaining the meaning of other written instruments. *Treadway v. Shanks*, 110 S.W.3d 1, 6 (Tex. App.—Dallas 2000), *aff’d*, 110 S.W.3d 444 (Tex. 2003) “[C]ourts should

examine and consider the entire writing in an effort to harmonize and give effect to all the provisions of the [order] so that none will be rendered meaningless.” *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 662 (Tex. 2005). Courts do not read provisions of a written instrument in isolation; rather, they consider them with reference to the whole. *See In re Ford Motor Co.*, 211 S.W.3d 295, 298 (Tex. 2006) (orig. proceeding).

¶16 Contrary to Plaintiffs’ argument, the protective order is not entirely devoid of any reference to counsel of record in this lawsuit. Paragraph 26 limits access to “Attorneys Working on this Lawsuit on a Party’s behalf and those attorneys’ . . . *signing* contractors.” (emphasis added). “Signing contractors” connotes “attorneys of record” or “attorneys making an appearance in the lawsuit.”

¶17 As previously stated, Paragraphs 26 and 27 are part of the protective order’s overall scheme and, thus, they must be read together. Paragraph 27 narrows the scope of individuals who are permitted access to highly confidential materials.

¶18 When Paragraphs 26 and 27 are read together and in the context of the entire protective order, one plausible construction is that the “Outside Counsel” referenced in Paragraph 27 corresponds to or substitutes for the “signing contractors” referenced in Paragraph 26. *See SafeLease*, 2025 Tex. Bus. 28, ¶41, 2025 WL 2018465, at *11 (noting “Outside Counsel’s Eyes Only” designation limited access to experts and attorneys of record in the case). Such a construction means that the “Outside Counsel” referred to in Paragraph 27 must also be attorneys of record in this lawsuit.

¶19 After examining the protective order as a whole and considering all its language in context, the court finds that its plain language does not resolve the instant

dispute. Because the protective order is not definitive, the court will apply the well-established balancing test previously discussed in this opinion.

3. Applying the Balancing Test

¶20 In *Westlake*, the business court employed a balancing test to determine whether to grant in-house counsel access to AEO-designated material in a case involving a business contract dispute.¹ Under that test, the court balanced the risk that counsel would inadvertently disclose the protected information or misuse it for competitive decision-making against the need for counsel to have access to the information. *Westlake*, 2025 Tex. Bus. 19, ¶14, 712 S.W.3d at 110. While the business court did not have any reason to question the integrity and credibility of the counsel in question, it nevertheless determined the risk of inadvertent disclosure of protected material still existed. *Id.* The court explained that even if in-house counsel did not actually disclose the protected material, “they may still unconsciously take it into account when providing legal advice on matters outside of this litigation.” *Id.*

¶21 In *Ecolab*, the federal court analyzed whether the parties’ protective order should be modified to exclude the plaintiff’s in-house counsel from viewing certain sensitive documents produced by the defendant in a trade-secret lawsuit. 2024 WL 3650464, at *1. The court recognized that when in-house counsel is involved in her employer’s competitive decision-making to any degree, the risk of inadvertent disclosure weighs against granting counsel access to such sensitive documents. *Id.* at *2. Even when

¹The court considers *Westlake*, which is the only case cited in the protective order in this case, relevant to the resolution of the instant dispute.

counsel is not directly involved in making decisions about pricing, sales, marketing, or distribution, the information she gains as in-house counsel could influence her in advising her client about whether, when, and who to sue. *Id.* at *2-3. The court expressed concern about whether counsel in such a position “could adequately ‘lock up’ the confidential information in her mind, safe from inadvertent disclosure.” *Id.* at *2.

¶22 Following the guidance of *Westlake* and *Ecolab*, the court must weigh the risk that the protected discovery information in this case will be inadvertently disclosed or misused against the need for BTG Advaya’s attorneys to have access to this information. *See Westlake*, 2025 Tex. Bus. 19, ¶14, 712 S.W.3d at 110; *Ecolab*, 2024 WL 3650464, at *3; *see also M-Edge Accessories LLC v. Amazon.com, Inc.*, No. MJG-11-3332, 2013 WL 12241898, at *3 (D. Md. 2013) (recognizing courts, when determining if certain individuals should have access to highly confidential materials, must balance the risk of inadvertent disclosure of trade secrets to competitors with risk that protection of trade secrets will prejudice opposing party’s ability to prosecute or defend the action).

a. Risk of Inadvertent Disclosure or Misuse

¶23 The risk of inadvertent disclosure or misuse is not determined solely by considering the classification of counsel as in-house or retained. *Ecolab*, 2024 WL 3650464, at *2. Instead, the inquiry is made on a counsel-by-counsel basis. *Id.*

¶24 Turning to the evidence, the record contains four declarations signed by BTG Advaya attorneys. Each declaration states: (1) the declarant is an attorney associated with the law firm BTG Advaya, which is located in India; (2) one of the law firm’s clients is a Plaintiff in this lawsuit—Zetwerk Manufacturing Business Private Limited; and (3) the

declarant/attorney provides Zetwerk “legal advice on litigation, including on this matter against Ayr Energy, Inc.”

¶25 Additionally, in one of the declarations, the declarant/attorney describes an instance in which she mistakenly received AEO-designated information in this case and discussed it with a corporate decision-maker, specifically, Zetwerk’s Director of Marketing and Sales. This declarant/attorney further states she will not disclose or use any of the previously seen AEO-designated information.

¶26 The fact that a BTG Advaya attorney discussed AEO-designated materials with a corporate decisionmaker for one of the Plaintiffs means that improper disclosure has already occurred in this case. Accordingly, the risk that protected information will be shared with Plaintiffs’ corporate decision makers is not theoretical.

¶27 A past infraction by a BTG Advaya attorney may foreshadow inadvertent disclosure and misuse by BTG Advaya’s attorneys in the future. At a minimum, the incident demonstrates the inability of one of BTG Advaya’s attorneys to compartmentalize protected information received in this case and shield it from a corporate decision maker.

¶28 The evidence also shows that BTG Advaya’s attorneys are currently prosecuting a separate case in India against one of Defendant’s principals and that BTG Advaya’s attorneys are advising Plaintiffs on other litigation matters.

¶29 BTG Advaya’s attorneys’ involvement in a separate lawsuit against one of Defendant’s principals and in other litigation matters further increases the likelihood of future inadvertent disclosure and misuse of protected information from this lawsuit.

¶30 Based on the evidence, the court has serious concerns that BTG Advaya’s attorneys will not be able to adequately “lock up” any confidential information in their minds and keep it safe from any additional disclosure. *See Ecolab*, 2024 WL 3650464, at *2.

¶31 BTG Advaya’s attorneys are based in India, which is well beyond the subpoena power and control of the court. This fact reduces the remedies the court could implement in the event of future disclosure or misuse of protected information.

¶32 The court finds that permitting access to protected discovery materials by BTG Advaya’s attorneys creates a risk of inadvertent disclosure or misuse of those protected materials.

b. Need for Access

¶33 Plaintiffs contend that if BTG Advaya’s attorneys are denied access to the protected discovery materials, Plaintiffs will be “deprived of the legal assistance they need and chose to engage in understanding Texas law and its implications for an Indian Company.” *See* Plaintiffs’ Letter, July 24, 2026, p.2.

¶34 To establish the need for access to trade secret and other highly confidential materials, the evidence must be specific and concrete; “vague, conclusory allegations” are insufficient. *Westlake*, 2025 Tex. Bus. 19, ¶ 11-12, 712 S.W.3d at 109. “Typically, the party must show that the denial of access will actually prejudice its presentation of the case, rather than merely increase the difficulty of managing the litigation.” *Westlake*, 2025 Tex. Bus. 19, ¶ 12, 712 S.W.3d at 109.

¶35 Plaintiffs have not shown that denying BTG Advaya's attorneys access to protected materials will actually prejudice the presentation of their case. *See id.*

¶36 Plaintiffs' contention that barring access to BTG Advaya's attorneys will deprive them of legal assistance is unconvincing. Multiple attorneys have appeared in this lawsuit on Plaintiffs' behalf. These attorneys—who have filed pleadings, motions, and responses, and have appeared at numerous hearings—are well-versed in Texas law and highly competent. *See ST Sales Tech*, 2008 WL 5634214, at *8 (concluding that because plaintiff was represented by other highly competent attorneys, screening off attorney from certain highly sensitive information did not cause significant harm).

¶37 The court finds Plaintiffs have not established a significant need for BTG Advaya's attorneys to have access to CI- and AEO-designated materials in this lawsuit.

C. Conclusion

¶38 The court concludes that allowing BTG Advaya's attorneys to have access to CI- and AEO-designated materials presents a significant risk of inadvertent disclosure or misuse that could harm Defendant. The court further concludes that the need for BTG Advaya's attorneys to have access to the protected discovery materials is nominal. Accordingly, BTG Advaya's attorneys are denied access to CI- and AEO-designated materials produced by the Defendant in this lawsuit.

SO ORDERED.


MARIALYN BARNARD
Judge of the Texas Business Court

SIGNED ON: August 17, 2026

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 118716962

Filing Code Description: No Fee Documents

Filing Description: Memorandum Opinion

Status as of 8/17/2026 2:08 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
R. Paul Yetter		pyetter@yettercoleman.com	8/17/2026 2:02:20 PM	SENT
Craig Smyser	18777575	csmyser@steptoe.com	8/17/2026 2:02:20 PM	SENT
Andrew K. Meade		ameade@mnblp.com	8/17/2026 2:02:20 PM	SENT
Leann Pinkerton		lpinkerton@mnblp.com	8/17/2026 2:02:20 PM	SENT
Drew Padley	24111325	dpadley@steptoe.com	8/17/2026 2:02:20 PM	SENT
Paul Stancil	797488	pstancil@steptoe.com	8/17/2026 2:02:20 PM	ERROR
Alexander Ades		aades@yettercoleman.com	8/17/2026 2:02:20 PM	SENT
Samuel Haren		sharen@mnblp.com	8/17/2026 2:02:20 PM	SENT
Alyssa Smith		asmith@yettercoleman.com	8/17/2026 2:02:20 PM	SENT
Julia C. Risley		jrisley@yettercoleman.com	8/17/2026 2:02:20 PM	SENT
Sue Csizmadia		scsizmadia@yettercoleman.com	8/17/2026 2:02:20 PM	SENT
Natalie Gonzales		ngonzales@yettercoleman.com	8/17/2026 2:02:20 PM	SENT
Karima Maloney		kmaloney@steptoe.com	8/17/2026 2:02:20 PM	SENT
Edwynna Adams		eadams@steptoe.com	8/17/2026 2:02:20 PM	SENT
Heather Padron		hpadron@steptoe.com	8/17/2026 2:02:20 PM	SENT
Brent Hanson		bhanson@steptoe.com	8/17/2026 2:02:20 PM	SENT
Christine Sama		CSama@goodwinlaw.com	8/17/2026 2:02:20 PM	SENT
Huiya Wu		hwu@goodwinlaw.com	8/17/2026 2:02:20 PM	SENT
David Isaak		disaak@steptoe.com	8/17/2026 2:02:20 PM	SENT
Linda Casas		lcasas@steptoe.com	8/17/2026 2:02:20 PM	SENT
Timothy Keegan		TKeegan@goodwinlaw.com	8/17/2026 2:02:20 PM	SENT
Christine Sama		DG-AyrZetwerkLit@goodwinlaw.com	8/17/2026 2:02:20 PM	SENT

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 118716962

Filing Code Description: No Fee Documents

Filing Description: Memorandum Opinion

Status as of 8/17/2026 2:08 PM CST

Case Contacts

Christine Sama		DG-AyrZetwerkLit@goodwinlaw.com	8/17/2026 2:02:20 PM	SENT
Arshjit Raince		araince@goodwinlaw.com	8/17/2026 2:02:20 PM	SENT
Alison Siedor		ASiedor@goodwinlaw.com	8/17/2026 2:02:20 PM	SENT
Conor Tucker		ctucker@steptoe.com	8/17/2026 2:02:20 PM	SENT
Joaquin Diaz		jodiaz@steptoe.com	8/17/2026 2:02:20 PM	SENT