

## **Use of Protective and Sealing Orders in Litigation Policy**

The Use of Protective and Sealing Orders in Litigation Policy (the “Policy”) sets forth the position of the West Virginia Investment Management Board (“WVIMB”) concerning the agreement of counsel representing the WVIMB in entering into the use of such orders during the litigation process.

### **Representation of the Public**

The Legislature of the State of West Virginia, when it created and established the WVIMB, found that the WVIMB “is acting in all respects for the benefit of the state’s public employees and ultimately the citizens of the State of West Virginia...” [12-6-12(f)]. The WVIMB recognizes that being a shareholder or a lender creates certain responsibilities.

### **Confidential Information**

The WVIMB recognizes that there is a distinction between documents filed in court and materials exchanged in discovery. It is further recognized by the WVIMB that parties in litigation may be possessed of legitimate trade or business secrets and other information that is privileged or private and should not be disclosed publicly, except in exceptional circumstances or for good cause shown.

### **Appropriateness of Protective or Sealing Orders**

The WVIMB has determined that the public interest is well served by it and other institutional investors engaging in securities litigation and that, in further advancing the public interest, WVIMB has determined that its willingness to agree to protective or sealing orders should be limited. The WVIMB has determined that discouraging the use of protective and sealing orders except for good cause is in the best interest of the state’s public employees, the citizens of West Virginia and the public interest.

First, it is recognized that the WVIMB, as an “arm” or “alter ego” of the State of West Virginia, may not agree to any order that “seals” or makes non-public any settlement of a civil action as to which the WVIMB is a settling party. It is further the position of the WVIMB, in meeting its duty to the state’s public employees, the citizens of the State of West Virginia, the public good and its responsibilities as a shareholder and lender, that it state its policy that counsel for the WVIMB are discouraged from agreeing to enter into protective orders that are designed to avoid making public illegal or unethical behavior by companies, their directors, officers, employees and/or agents or other information that is not truly of a proprietary nature or protected by a recognized privilege or law.

The WVIMB recognizes that protective orders may at times be invaluable and legitimate litigation tools. WVIMB further recognizes that the decision whether or not to enter into a protective sealing order may not be clear-cut. In such instances, counsel representing the WVIMB should confer with the Executive Director and General Counsel.

**Recognized Limitation of Law**

Nothing in this Policy is intended to or should be used to circumvent or not comply with applicable law, foreign or domestic.

*Adopted by the Legal Committee November 29, 2011.*