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Public Access v. Arbitration Confidentiality: A Balancing Act That Tilts Towards Access

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Introduction

One of the benefits of **arbitration is the confidentiality** of the submissions, discovery and evidence. Global Reinsurance Corp.-U.S. Branch v. Argonaut Insurance Co., No. 07CV8196, 2008 U.S. Dist. LEXIS 32419 (S.D.N.Y. Apr. 18, 2008) ("The federal policy in favor of arbitration is promoted by permitting one of the principle advantages of **arbitration - confidentiality** - to be achieved."). See also Lederman v. Prudential Life Ins. Co. of Am., 897 A.2d 362, 370-71 (N.J. Super. Ct. App. Div. 2006); Laurie Kratky Dore, Public Courts Versus Private Justice: It's Time to Let Some Sun Shine in on Alternative Dispute Resolution, 81 CHI.-KENT. L. REV. 463, 465-66 (2006); 4 Am. Jur. 2d Alternative Dispute Resolution ? 67 (2007). Confidentiality may be imposed by language in the arbitration clause or by an agreement or order in the arbitration.

Reinsurance contracts, particularly contracts for treaty reinsurance, often mandate arbitration.

See Employer Reins. Corp. v. Laurier Indem. Co., No. 8:03CV1650, 2007 U.S. Dist. LEXIS 45670 at *7 (M.D. Fla., June 25, 2007) (noting dearth of case law "because most . . . reinsurance cases end in arbitration"). Indeed, arbitration is so customary in the reinsurance context that courts have mandated arbitration solely because the term "arbitration clause" appears in the reinsurance slip or cover note. See Zurich Am. Ins. Co. v. Cebcor Svcs. Corp., No. 02C2283, 2003 U.S. Dist. LEXIS 10346 at *8 (N.D. Ill. June 16, 2003); Allianz Life Ins. Co. of N. Am. v. Am. Phoenix Life & Reassurance Co., No. 99CV802, 2000 U.S. Dist. LEXIS 7216, at *12 (D. Minn. Mar. 28, 2000); N.C. League of Municipalities v. Clarendon Nat'l Ins. Co., 733 F. Supp., 1009, 1011 (E.D. N.C. 1990).

Unlike arbitration proceedings, court proceedings generally are not confidential. While a court may order confidentiality and seal parts of a record for cause, the presumption favors open evidence and proceedings. Nixon v. Warner Communications, Inc., 435 U.S. 589, 597-99 (1978).

Requests to a court to respect confidentiality agreements and orders arising from arbitrations implicates two competing public policy interests - encouragement of arbitration versus public access to judicial records. On one hand, pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. ? 2, and analogous state statutes, public policy strongly favors respect for valid agreements to arbitrate. See, e.g., Preston v. Ferrer, 128 S. Ct. 978, 981 (2008); Southland Corp. v. Keating, 465 U.S. 1, 10 (1984); Friend v. Friend, 609 A.2d 1137, 1139 (D.C. 1992). The goal of encouraging arbitration logically would include preserving the underlying benefits of the process, including confidentiality. Fireman's Fund Ins. Co. v. Cunningham Lindsey Claims

Mgmt., Inc., No. 03CV0531, 2005 U.S. Dist. LEXIS 32116 at *10-11 (E.D.N.Y. June 28, 2005). However, a countervailing interest is the common law presumption favoring public access to judicial records. See Nixon, 435 U.S. at 597; Lederman, 897 A.2d at 371 ("[T]hough arbitration has the worthy goal of reducing the number of cases filed in court . . . open access to our courts it he bedrock of public confidence in the judicial system.").

This article examines the competing policies of promotion of arbitration and open access to court records and analyzes how courts have resolved disputes when these policies clash. The issue arises most frequently in two circumstances: (1) when one of the parties requests a court to confirm or vacate an arbitration award and requests that the record be placed under seal and (2) when a party in a subsequent matter, either in court or arbitration, seeks discovery of prior arbitration proceedings. In these circumstances, an increasing number of courts refuse to respect contractual agreements of confidentiality and will not seal records simply because the parties have agreed to do so.

Unfortunately for parties seeking confidentiality, when public policy concerns regarding public access conflict with those promoting arbitration, most courts have militated against simply bowing to policies favoring arbitration. Rather, courts appear to favor public access to judicial records by either keeping records unsealed or by narrowly tailoring seal orders to specific documents.

Public Access To Judicial Records

Courts recognize a common law right for the public to access public records and documents, including judicial records and documents. Nixon, 435 U.S. at 597. State "sunshine laws" recognize or expand this right by statute in many states. See, e.g., Mo. Rev. Stat. ?? 610.010-.225; Ohio Rev. Code Ann. ? 149.43; Colo. Rev. Stat. ?? 24-72-201 to 24-72-206; Or. Rev. Stat. ?? 192.410 to 192.505; Tenn. Code Ann. ? 10-7-503; see also Conn. Practice Book ? 11-20A (Connecticut Superior Court rule enunciating the presumption that documents filed with the court shall be available to the public); N.D. Sup. Ct. Admin. Rule 41(North Dakota administrative rule providing framework for public access to court records). The presumption for public access is broad and, unlike English laws, enforcement of the right does not require a proprietary interest in the document or a need for it as evidence in a lawsuit. See Nixon, 435 U.S. at 597-98 (citing Browne v. Cumming, 10 B. & C. 70, 109 Eng. Rep. 377 (K.B. 1829)). Some courts have held that the presumption is "strongest when the document[s] in question . . . ha[ve] been submitted as a basis for judicial decision making." Greater Miami Baseball Club Ltd. P'ship v. Selig, 955 F.Supp. 37, 39 (S.D.N.Y. 1997). The underlying rationale for this presumption is that judicial transparency facilitates accountability and fosters public confidence in the judicial system. See U.S. v. Amodeo, 71 F.3d 1044, 1048 (2d. Cir. 1995) (quoting Leucadia, Inc. v. Applied Extrusion Techs., Inc., 998 F.2d 157, 161 (3d Cir. 1993); SEC v. Van Waeyenberghe, 990 F.2d 845, 849 (5th Cir. 1993) ("'Public access [to judicial records] serves to promote trustworthiness of the judicial process, to curb judicial abuses, and to provide the public with a more complete understanding of the judicial system, including a better perception of its fairness.'"); Lederman, 897 A.2d at 372 ("Open access is the lens through which the public views our government institutions.").

Nevertheless, the presumption favoring public access to judicial records is not boundless. Courts may use its sound discretion to seal records where court files may be used for improper purposes. Nixon, 435 U.S. at 598; see also Press-Enterprise Co. v. Superior Court of Cal., 464 U.S. 501, 510 (1984). The presumption in favor of access has been defeated in instances where divorce cases contain salacious details, the court files could be used as sources of libelous statements for press publication, or the records contain business information that may harm a party's competitive standing. Nixon, 435 U.S. at 598 (citations omitted). The most recognized ground for confidentiality in the commercial context is the need to protect trade secrets and similar information. See Fed. R. Civ. P. 26(c)(1)(G); Std. Inv. Chtd., Inc. v. NASD, No. 07CV2014, 2008 U.S. Dist. LEXIS 4617 at * 27 (S.D.N.Y. Jan. 23, 2008); Green Mt. Chrysler Plymouth Dodge Jeep v. Crombie, No. 2:05CV302, 2007 U.S. Dist. LEXIS 22095 at *20-24 (D. Vt. Mar. 23, 2007); Joint Stock Soc'y v. UDV N. Am., Inc., 104 F. Supp. 2d 390, 396-97 (D. Del. 2000); In re Brand Name Prescription Drugs Antitrust Litig., No. 94C897, 1996 U.S. Dist. LEXIS 9538 at *5-7 (N.D. Ill. July 8, 1996); Glaxo Inc. v. Novopharm Ltd., 931 F. Supp. 1280, 1299 (E.D.N.C. 1996) aff'd, 110 F.3d 1562 (Fed. Cir. 1997). In weighing the presumption in favor of public access to judicial records, a court will exercise its discretion in light of the relevant facts and circumstances of the particular case. Nixon, 435 U.S. at 599.

Confidentiality And Arbitration

In the context of arbitration, courts most frequently address the issue of confidentiality when one of the parties goes to court to confirm or challenge an arbitration award and requests that the record be placed under seal, or a party in a subsequent matter, either in court or arbitration, seeks discovery of prior arbitration proceedings. In such circumstances, protecting **arbitration confidentiality** agreements promotes the federal policy favoring arbitration and encourages arbitration by ensuring parties in such a proceeding receive the protections for which they bargained. See Group Health Plan, Inc. v. BJC Health Systems, Inc., 30 S.W.3d 198, 205 (Mo.App. 2000) ("To permit arbitrators to conduct illimitable discovery that is unrestricted even by a confidentiality agreement signed by an arbitration panel would have a chilling effect on the willingness of parties to arbitrate their disputes."); Fireman's Fund Ins. Co., 2005 U.S. Dist. LEXIS 32116 at *10-12. Despite this policy rationale supporting confidentiality of arbitration documents, the competing policy interest in favor of public access to judicial records often triumphs, and a majority of courts have not sealed records solely on the basis of an existing **arbitration confidentiality** agreement between the parties. See, e.g., Global Reins. Corp., 2008 U.S. Dist. LEXIS 32419 at *2-3; Lederman, 987 A.2d at 369; Travelers Ins. Co. v. Conn. Gen. Life Ins. Co., No. CV030822323, 2003 Conn. Super. LEXIS 2756 at *6-9 (Conn.Super. Oct. 14, 2003) (discussing courts dissuaded from sealing records simply to further public policy favoring arbitration); Universal City Studios, Inc. v. Superior Court of Los Angeles County, 110 Cal.App. 4th 1273, 1283-84 (Cal.App. 2003). However, as discussed below, some courts have shielded specifically identified documents or portions of records upon demonstration of a specific injury or harm or due to a lack of relevance to the subsequent matter. See, e.g., Cohen v. S.A.C. Capital Advisors, LLC, 815 N.Y.S.2d 493, 2006 N.Y. Misc. LEXIS 280 at *9 (N.Y. Sup. Ct. 2006); Fireman's Fund Ins. Co., 2005 U.S. Dist. LEXIS 32116 at *14; Sphere Drake Ins. Ltd. v. All Am. Life Ins. Co., 221 F.Supp.2d 874, 883 (N.D. Ill. 2002).

a. Confirmation Or Challenge Of The Award

Any party to an arbitration may commence proceedings in court to confirm, vacate, or modify an arbitration award. See 9 U.S.C. ?? 9-11. If this occurs and the parties are subject to a confidentiality agreement or order in the arbitration, one or both of the parties may move to seal the file according to the terms of the agreement. Under such circumstances, the burden of demonstrating that the court should seal records rests on the movant requesting such action. See DiRussa v. Dean Witter Reynolds, Inc., 121 F.3d 818, 826 (2d Cir. 1997) aff'd, 121 F.3d 818, (2d Cir. 1997); Lederman., 897 A.2d at 368.

In DiRussa, the Court of Appeals for the Second Circuit affirmed a district court's ruling that abided by the parties' confidentiality agreement and placed an entire file under seal with the exception of the court's orders and opinions. 121 F.3d at 827-28. The plaintiff filed a complaint in district court requesting that the court modify the parties' arbitration award. The defendants alleged that the plaintiff's failure to file the action under seal violated the parties' confidentiality agreement. That agreement provided that materials or information produced in the arbitration could be disclosed to courts as if such materials were filed under seal or partial seal, as necessary to protect the confidentiality of the produced materials or information. Defendants requested that the court seal the entire file. Although the district court initially ordered the parties to confer and determine which documents should be placed under seal, ultimately, the court ruled that the entire file would remain under seal with the exception of the court's orders and opinions in the case because it was "not feasible to attempt to a partial unsealing within the context of the parties' confidentiality agreement." DiRussa v. Dean Witter Reynolds, Inc., 936 F.Supp. 104, 108 (S.D.N.Y. 1996).

Holding that the district court did not abuse its discretion, the Court of Appeals agreed that the parties' confidentiality agreement covered documents submitted to the district court and a partial sealing was impractical since the plaintiff referred to the documents throughout the documents on file with the court. DiRussa, 121 F.3d at 827-28. Moreover, the court held that the publication of the case opinions and arbitration award precluded the sealing order from shielding defendants from public scrutiny for violations of federal discrimination laws. Id. at 827. Thus, in DiRussa, the court recognized the common law right of access to judicial records but balanced the competing interests of public access and **arbitration confidentiality** by sealing the files in accordance with the parties' confidentiality agreement while publishing the courts' opinions for public examination. See also Commercial Union Ins. Co. v. Lines, 239 F.Supp.2d 351, 358 (S.D.N.Y. 2002) (ordering that the court's orders and opinions remain available for public review and that the parties to meet and confer to determine which materials were subject to their confidentiality agreement), vacated on other grounds, 378 F.3d 204 (2d Cir. 2004).

However, most recently, in a reinsurance case, Global Reins. Corp., 2008 U.S. Dist. LEXIS 32419 (S.D.N.Y. April 18, 2008), the same district court rejected a party's request to seal records relating to an arbitration award. Id. at *4-5. The court had previously sealed the arbitration awards on the basis that the disclosure of portions of the arbitration award would harm the plaintiff reinsurer's negotiation position with other reinsurers. Upon rehearing, the court unsealed the record, because the reinsurer did not argue that disclosure would cause direct or immediate harm but

rather that disclosure would impair the exchange of information between parties to a reinsurance agreement. Id. at *2-3. The court found the reinsurer's argument insufficient to outweigh the presumption in favor of access. Id. at *2. Hence, according to Global Re, whereas a showing of harm in a reinsurer's competitive position with other reinsurers is a sufficient ground for sealing court records, but an alleged general chilling effect arising from public disclosure is not.

Nationally, most courts rule consistently with Global Re. Regardless of whether the parties have entered into a confidentiality agreement, courts will generally deny sealing court records unless the party requesting confidentiality can identify a direct or immediate harm or serious injury that will occur if the documents are not sealed. Starling Endeavors Ltd. v. Crescendo Ventures IV, LLC, No. C06-1250, 2006 U.S. Dist. LEXIS 20161 at *37-38 (N.D. Cal. Mar. 31, 2006); Travelers Ins. Co., 2003 Conn. Super. LEXIS 2756 at *7, *9; see also Lederman, 897 A.2d at 368; Liberty Re (Bermuda) Ltd. v. Transamerica Occidental Life Ins. Co., No. 04CV5044, 2005 U.S. Dist. LEXIS 9774 at *19-21 (S.D.N.Y. May 20, 2005). But see Trustmark Ins. Co. v. John Hancock Life Ins. Co., No. 04C2649, 2004 U.S. Dist. LEXIS 11370 at *5 (N.D. Ill. June 17, 2004) (adopting one party's proposed order to confirm arbitration award because, in part, it complied with the confidentiality agreement of the underlying arbitration); Cohen, 2006 N.Y. Misc. LEXIS 280 at *9 (finding parties seeking procedural ruling for arbitration established "good cause" to seal the proceeding because documents include sensitive proprietary and business information).

In an action to vacate certain arbitration orders in Universal City Studios, Inc. v. Superior Court of Los Angeles County, 110 Cal.App. 4th 1273 (Cal.App. 2003), the court held that an order sealing documents pertaining to an arbitration dispute required two elements: (1) the identification of an overriding interest supporting confidentiality and (2) a substantial probability that the party will be prejudiced absent closure or sealing. 110 Cal.App. 4th at 1283. Although the court held that a contractual agreement for confidentiality satisfies the first element, it held that a party must also make a showing of prejudice, which the defendant had failed to do. Id. at 1283-84; see also Lederman, 897 A.2d at 369 ("Mere deprivation of the right to enforce a contractual obligation is not, without an additional showing of serious harm, sufficient to override the public's right of access to courts."). Thus, the court denied defendant's motion to seal arbitration documents that were subject to the confidentiality agreement between the parties. Universal City, 110 Cal.App. 4th at 1284-86. On the other hand, the court suggested that ordinarily the court would seal financial records relating to business operations, but in this case, defendant had filed the same financial data at issue in the case in a separate unsealed document in another case that had been available to the public for over one year. Universal City Studios, Inc., 110 Cal.App. 4th at 1286.

Even when the parties jointly request to file documents under seal, the existence of a mutual confidentiality agreement generally is insufficient grounds to seal the entire file. The parties must specifically show that particular records justify sealing, and the scope of documents sealed must be narrow. Starling Endeavors Ltd., 2006 U.S. Dist. LEXIS 20161 at *37-38 ("It is the extraordinarily unusual case that would require sealing of the entirety of all documents filed in one case, including briefs, and such a broad request is not justified based on the showing made."); Travelers Ins. Co., 2003 Conn. Super. LEXIS 2756 at *7, *9; see also Lederman, 897 A.2d at 368 ("Broad allegations of harm, unsubstantiated by specific examples or articulated

reasoning, are insufficient."); Liberty Re (Bermuda) Ltd., 2005 U.S. Dist. LEXIS 9774 at *19-21 (finding minimal public interest justified sealing submitted documents but court's opinion would remain unsealed because parties failed to cite specific harm from disclosure of confidential information contained therein).

However, some courts have suggested that an arbitration panel's order for confidentiality may receive greater deference than parties' private contractual confidentiality agreements. See Goldstein v. Preisler, 24 A.D.3d 441, 442 (N.Y. Sup.Ct. App. Div. 2005) (holding trial court improperly modified an arbitration award by confirming a stipulation award but denying a portion of the award that recommended expunging all references to the arbitration from public registration records); Group Health Plan, Inc. v. BJC Health Systems, Inc., 30 S.W.3d 198, 205 (Mo.App. 2000) (enforcing confidentiality order of an arbitration panel to deny a subsequent third party from discovering proceedings of a prior unrelated arbitration). The highly deferential standard for judicial review of arbitration awards suggests that a court should be reluctant to disturb an arbitration panel's order for confidentiality. See Odfjell ASA v. Celanese AG, No. 04CV1758, 2005 U.S. Dist. LEXIS 729 at *3 (S.D.N.Y. Jan. 15, 2005) ("The panel's decision is entitled to considerable deference, given the panel's hands-on familiarity with the case and with the confidentiality issues here presented."); Goldstein, 24 A.D.3d at 442 ("Judicial review of an arbitrator's award is extremely limited, and once an issue has been decided by an arbitrator, questions of law and fact are not within the power of the judiciary to review, as they are merged into the award."); Group Health Plan, Inc., 30 S.W.3d at 204 (holding arbitration panel's protective order was due same deference as any other arbitration award). But see City of Newark v. Law Dept. of City of New York, 305 A.D.2d 28, *29-33 (N.Y. Sup. Ct. App. Div. 2003) (holding confidentiality order issued by arbitration panel does not override public right of access to government records under state Freedom of Information Law). These cases support the strategy of having the arbitrators order confidentiality, rather than merely to rely on an agreement.

b. Discoverability In Subsequent Actions

The enforcement of a confidentiality agreement between arbitrating parties also is triggered when a party in a subsequent action seeks discovery of prior arbitration proceedings. Federal Rules of Civil Procedure Rule 26(b)(1) permits discovery if disclosure would be relevant or "reasonably calculated to lead to the discovery of admissible evidence." Because the Federal Rules of Civil Procedure and similar state civil procedure rules govern the scope and limits of discovery, courts have given private confidentiality agreements a varied amount of deference when the requested discovery is within the scope of such agreements.

In Sphere Drake Insurance Limited v. All American Life Insurance Company, 221 F.Supp.2d 874 (N.D. Ill. 2002), the court denied the plaintiff's motion to compel discovery of documents from the defendant's prior arbitration with a third-party. 221 F.Supp.2d at 883. Although the defendant argued that the parties to the arbitration had entered into a confidentiality agreement, the court denied the plaintiff's motion solely because the discovery being sought was too remote from the claim in the litigated case and too unlikely to lead to the discovery of relevant evidence to justify granting the motion to compel. Id.

The court in Fireman's Fund Insurance Company v. Cunningham Lindsey Claims Management, Inc., No. 03CV0531, 2005 U.S. Dist. LEXIS 32116 (E.D.N.Y. June 28, 2005), similarly ruled on the minimal relevance of the discovery sought. WB Music, Corp. v. Big Daddy's Entm't, Inc., 2005 U.S. Dist. LEXIS 32216 (W.D. Tex. Oct. 18, 2005) at *14. However, the court also expressly recognized the confidentiality agreement that encompassed the requested discovery and considered the "strong public interest in preserving the confidentiality of arbitration awards" in its ruling. Id. at *9-10, *14.

In contrast, in TIG Insurance Company v. Aon Re, Inc., No. 3:04-CV-1307-B, 2004 U.S. Dist. LEXIS 24795 (N.D. Tex. Dec. 9, 2004), the relevance of the discovery sought in a subsequent action was not at issue. TIG filed for summary judgment against Aon Re on the basis that certain liability issues were previously resolved in a final arbitration award between TIG and United States Life Insurance Company ("U.S. Life"). However, the U.S. Life arbitration award was subject to a confidentiality agreement and order that required any information disclosed in connection with court proceedings had to be filed under seal. The order also required TIG to notify U.S. Life with any anticipated production of information from the arbitration. Although TIG notified U.S. Life as required and Aon Re agreed to enter into a confidentiality agreement as well, TIG sought to seal the record in its entirety.

Recognizing the presumption in favor of public access to judicial records, the court denied TIG's motion to seal the entire record because the request was overly broad and included non-confidential information. TIG, 2004 U.S. Dist. LEXIS 24795 at *3-4. Nevertheless, the court recognized the importance of the confidentiality agreement and order under the U.S. Life arbitration award and permitted TIG to refile its documents with confidential portions separately compiled. Id. at *4. Thus, similar to cases involving the confirmation or challenge of an arbitration award, TIG balanced the competing policy interests of public access and **arbitration confidentiality** by permitting seal of specifically identified documents rather than the entire record.

In Security Insurance Company of Hartford v. Trustmark Insurance Company, 218 F.R.D. 18 (D. Conn. 2003), the court examined a defendant's objection to the discovery on both relevancy and confidentiality grounds. 218 F.R.D. at 20-21. A reinsurer brought an action against a retrocessionaire, alleging the impermissible cancellation of a retrocession agreement, breach of the agreement, and violation of the Connecticut Unfair Trade Practices Act ("CUPA"). Plaintiff requested the production for documents relating to prior arbitrations disputes in the United Kingdom, and the court held that those disputes, restricted to a time period contemporaneous with the allegations in the subsequent litigation, may have been relevant in determinations of bad faith and establishing a pattern or practice under CUTPA. Id. at 20-21. Because the defendant did not provide evidence of the scope of the confidentiality agreement for the arbitrations, the court interpreted English law to limit arbitration privacy concerns to documents created for the purpose of arbitration and not to the actual business transactions on which the disputes were based. Id. at 21.

The court further found, consistent with English law, confidentiality is not an issue when there is mutual consent to disclosure by the parties to arbitration. Id. In this case, plaintiff had obtained consent from two of three opposing parties in the

discoverable arbitration disputes. The court found that if the opposing parties consented, defendant's refusal to grant consent was not sufficient grounds to prevent production of the documents. Id. The court ordered defendant to give consent and produce the documents within the scope of consent given by the opposing parties. Id.

But what happens when the opposing party does not consent to the disclosure of prior disputes? The court in Zurich Am. Ins. Co. v. Rite Aid Corp., 345 F.Supp.2d 497, 506-507 (E.D. Pa. 2004), found that such consent is not necessary. In Zurich, an employer's liability insurer sought to modify an arbitration award that fixed insurer's indemnification for liability for an earlier arbitration award against the insured in its dispute with a former management employee. Although the insurer and insured did not contest an open record, the former employee who was party to the underlying arbitration sought to keep records relating to her dispute under seal in accordance with American Arbitration Association rules. The former employee argued that disclosure of the records would harm her reputation and integrity in the business community because the underlying dispute involved her role as a member of a management team that became embroiled with criminal fraudulent acts and representations by two of its highest ranking members.

Although the court recognized the confidentiality agreement between the arbitrating parties, it also found that "judges should 'carefully and skeptically' review privately-reached confidentiality agreements that are submitted to the court for approval before approving them." Id. at 504 (quoting Pansy v. Borough of Stroudsburg, 23 F.3d 772, 786 (3d Cir. 1994)). When weighing the former employee's privacy rights against policy favoring public access to records, the court found that the employee's privacy interests were significantly weakened by the fact that much of the information in the sealed documents was readily available to the public in Securities and Exchange Commission filings. Id. at 505; see also In re Heritage Org. LLC v. Canada, 322 B.R. 285, 297 (Bankr. N.D. Tex. 2005) (denying request to seal arbitration award according to parties' confidentiality agreement because documents were available to public pursuant to party's voluntary filings under bankruptcy code). Moreover, the employee's "broad allegations" of harm to her reputation were insufficient to rebut the presumption in favor of access. Zurich, 345 F.Supp.2d at 506. Thus, the court unsealed the record with exception of the employee's federal tax returns. Id. at 507.

Conclusion

Parties seeking to keep documents produced pursuant to arbitration proceedings may be able to keep those documents sealed in the event they are filed with a court. However, they cannot simply rely on private contractual agreements to maintain confidentiality. Rather, most courts require a party seeking to seal judicial records to show a serious injury if disclosure occurs, and the vast majority of courts will not issue a blanket seal on all filings in a matter filed with it. Thus, while parties may succeed in sealing specific documents used in arbitration proceedings, few will be able to shield all opinions, orders, briefs, and motions filed in the court.

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