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The Effect on Confidentiality of Petitions to Vacate, Modify or Confirm Arbitral Awards

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The ARIAS Quarterly recently included a case summary of the opinion issued by the U.S. District Court for the Southern District of New York in *Eagle Star Ins. Company Ltd. v. Arrowhead Indemnity Company*. *Eagle Star* addressed whether confidential arbitration information can remain sealed from public access when submitted to a federal court in support of a petition to confirm an arbitral award. The court ordered that the information -- deemed confidential "Arbitration Information" by the parties to the underlying reinsurance arbitration -- should be unsealed. In reaching its decision, the court first determined that the information qualified as "judicial documents" to which a presumption of public access attached. Second, the court concluded that the weight of the presumption was high because the information contained in the movant's petition and the respondent's motion to dismiss "constitute[s] the heart of what the Court is asked to act upon." Third, the court determined that the balance of competing considerations against the presumption of public access were insufficient to demonstrate that sealing was necessary. The court found that neither the parties' confidentiality agreement nor the risk that disclosure would impair the respondent's position in separate arbitrations in which it was engaged outweighed the presumption of public access to the documents.[1]

The opinion in *Eagle Star*, of course, is just one among a multitude of federal decisions addressing whether moving to vacate, modify, or confirm an arbitration award affects the confidentiality of documents generated by parties in private arbitration proceedings. Confidentiality is typically one of the key distinguishing features motivating parties to choose arbitration over litigation. The degree to which seeking relief in federal court may result in the public airing of confidential documents is therefore relevant to cedents and reinsurers alike, who often include arbitration clauses in their reinsurance contracts and sometimes seek to vacate, modify or confirm awards in court.

First, this article briefly reviews the presumption in favor of public access to judicial records -- a common law principle often invoked by federal courts faced with a motion to seal records to preserve the confidentiality of documents or information contained in court filings. Next, the article surveys the balancing tests employed by federal courts adjudicating motions to seal, paying particular attention to decisions involving motions to seal filed in connection with petitions to vacate, modify or confirm arbitral awards. [2]

I. The Right to Inspect and Copy Judicial Records

In *Nixon v. Warner Communications, Inc.*, the U.S. Supreme Court acknowledged that "the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." [3] The Supreme Court noted that American courts do not condition enforcement of this common law right on a proprietary interest in the document or a need for the records as evidence in a lawsuit. Rather, the interest necessary to support the right has been found "in the citizen's desire to keep a watchful eye on the workings of public agencies" and "a newspaper publisher's intention to publish information concerning the operation of government."[4] The Supreme Court made clear, however, that the right to inspect and copy judicial records is not absolute. For example, the Court noted that courts had the power to prevent records in a divorce case being used "to gratify private spite or promote public scandal," or, in the context of a business dispute, "as sources of business information that might harm a litigant's competitive standing."[5] The Court declined to identify all factors to be weighed in determining whether access to records is appropriate, stating that "the decision as to access is one best left to the sound discretion of the trial court, a discre-

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tion to be exercised in light of the relevant facts and circumstances of the particular case."[6]

Since *Nixon v. Warner Communications* was decided the contours of the common law right of public access to judicial documents has been shaped by federal appellate and district courts decisions. The federal case law establishes that there is a presumption in favor of public access to judicial records, but that the presumption may sometimes be overcome depending on the circumstances presented. Given the lack of a definitive test for balancing the presumption of public access against the harm caused by disclosure, the federal circuits have developed their own legal standards to determine when to seal court records and when to make them publicly accessible.

Below is a survey of some of the cases, identifying the major factors that federal courts consider and the relative weight those factors are accorded in the various circuits.[7] The balancing tests employed by the circuits are not uniform. For the purposes of this article, the circuits can be sub-divided into three groups.

II. The "Compelling Reasons" Standard

Seven of the twelve federal circuits follow what can be referred to as the "compelling reasons" standard.[8] These seven circuits include the First and Second, which encompass (among others) the federal district courts in New York, Massachusetts and Connecticut, where a significant amount of reinsurance litigation occurs. The other circuits that follow the "compelling reasons" standard are the Sixth, Seventh, Eighth, Ninth and Tenth Circuits.

Under this standard, "only the most compelling reasons can justify non-disclosure of judicial records."[9] Examples of reasons cited by these courts that are sufficiently compelling to overcome the presumptive right of access to judicial records include: improper use of material for libelous purposes; infringement upon trade secrets; information covered by a recognized privilege; and information required by statute to be maintained in confidence (such as the identity of a minor victim of a sexual assault).[10] Simply asserting that disclosure of the information would be harmful to a company or detrimental to its reputation is not sufficient to overcome the common law presumption in favor of public access to court records.[11] Similarly, without a "compelling justification," these courts hold that a litigant's preference to keep the subject matter of the case from its business rivals and customers does not outweigh the longstanding tradition that litigation is open to the public.[12] There is also broad consensus in these circuits that confidentiality agreements between litigants, pre-litigation confidentiality agreements between arbitration participants, and protective orders designating documents "confidential" for discovery purposes carry little, if any, countervailing weight against the common law right of public access to judicial documents.[13]

Some of the courts begin their analysis by asking whether the documents at issue are indeed "judicial documents" to which the presumption of public access attaches. The threshold for qualifying as a "judicial document" is not high. One district court stated that, "as a general rule, documents filed with a court in connection with a pending case" are presumptively public.[14] The Second Circuit requires slightly more, stating that "the item filed must be relevant to the performance of the judicial function and useful in the judicial process."[15] We have not located any federal decision holding that documents filed in connection with a petition to confirm an arbitration award do not qualify as judicial documents to which the presumption of public access would apply. And, according to the U.S. District Court for the Southern District of New York, "[i]t is well settled that the petition, memoranda, and other supporting documents filed in connection with a petition to confirm an arbitration award (including the Final Award itself) are judicial documents . . ."[16]

These general principles are placed in sharper relief when considered in light of the district court opinions discussed below, in which the "compelling reasons" standard was applied in connection with petitions to vacate or confirm arbitral awards.

In *Global Reinsurance Corp. v. Argonaut Insurance Co.*, the U.S. District Court for the Southern District of New York was asked to reconsider its decision to seal portions of arbitration awards filed in connection with petitions to confirm.[17] After giving Global Re an opportunity to explain how disclosure of the awards might impair its rela-

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tionships with retrocessionaires and others, the court found that Global Re had failed to establish how disclosure "would cause direct or immediate harm."[18] Further, the court concluded that Global Re's argument that disclosure might have a chilling effect on the free exchange of information between parties to a reinsurance agreement "does not provide an adequate basis to overcome the presumption of access."[19] In ordering the arbitration awards unsealed, the court noted that, "[i]n the circumstances where an arbitration award is confirmed, the public in the usual case has a right to know what the Court has done." [20]

The court's analysis in *Century Indemnity Co. v. AXA Belgium,* a decision also out of the U.S. District Court for the Southern District of New York, is similar. There, in connection with competing petitions to vacate and confirm arbitral awards, both parties moved to seal portions of their federal court motions and certain supporting exhibits, including the arbitration award and position statements and briefs submitted to the arbitration panel. The court found that the documents at issue "are indisputably judicial documents to which the presumption of access attaches."[21] The parties' argument that disclosure "would undermine the objectives of their Confidentiality Agreement and the reinsurance arbitration process in general" was insufficient to overcome the presumption in favor of access. The court reasoned that

[a]t bottom, the confidentiality agreement at issue in this case may be binding on the parties, but it is not binding upon the Court. And while parties to an arbitration are generally permitted to keep their private undertakings from the prying eyes of others, the circumstance changes when a party seeks to enforce in federal court the fruits of their private agreement to arbitrate, i.e., the arbitration award.[22]

For these reasons, the court denied both parties' motions to seal.[23]

In *Zimmer, Inc. v. W. Norman Scott, M.D.*, the arbitration panel specified in the body of its award that the hearing record, including the award itself, would be maintained in confidence pursuant to the Confidentiality Agreement and Order.[24] The party moving to vacate the award in the U.S. District Court for the Northern District of Illinois relied on the language of the award to support its motion to seal. The court rejected this argument, stating that "once a party seeks judicial review of an arbitration award the confidentiality of that award is lost absent compelling justification." The movant's reliance on the confidentiality language in the award coupled with its failure to show "specific justification" for keeping the award confidential, resulted in the court's order unsealing the award.[25]

The U.S. District Court for the Western District of Michigan was similarly unimpressed with the plaintiff's proffered justification for moving to seal the petition to vacate an arbitral award and all future pleadings in *Martis v. Dish Network*.[26] Echoing Sixth Circuit precedent, the court stated that sealing court records is a "drastic step" that must be justified by "the most compelling reasons." The party moving to seal court records bears the burden of showing that disclosing the records "would reveal some trade secrets or other truly confidential information."[27] As in *Zimmer*, the movants reliance on the parties' agreement to maintain their arbitration proceedings in confidence was found to be "of little moment."

Once the parties resort to the courts . . . their confidentiality agreement does not, and cannot, authorize the sealing of a presumptively public record. The parties are privileged to arbitrate in secret, but they must litigate in public.[28]

Finding no evidentiary showing that particular information was entitled to confidential treatment, the court denied the request to place the petition to vacate and future pleadings under seal.[29]

III. The Cendant Corp. Test

The U.S. Court of Appeals for the Third Circuit applies a test for motions to seal judicial records that appears similar to the circuits discussed above. However, the cases in this circuit are addressed separately because, in at least one instance, a district court in this circuit granted a motion to seal a reinsurance arbitration award to protect the business privacy interests of the arbitration participants and the integrity of the reinsurance arbitration process generally.

In *Cendant Corp. v. Forbes*, the Third Circuit set forth the standards governing motions to seal judicial records. The court stated that the "well settled" common law public right of access to judicial records strengthens confidence in the courts by fostering a fuller understanding of the judicial system. This right creates a strong presumption in favor of public access that can be overcome by showing that the interest in secrecy outweighs the presumption. "Broad allegations of harm, bereft of specific examples or articulated reasoning, are insufficient." The burden is on the party seeking to seal the records to show (1) "that the material is the kind of information that courts will protect" and (2) "that disclosure will work a clearly defined and serious injury to the party seeking closure."[30]

There are two contrasting decisions by the U.S. District Court for the Eastern District of Pennsylvania, both of which apply the test articulated in *Cendant Corp.*, that are noteworthy. The first is *Zurich American Insurance Co. v. Rite Aid Corp.*, where the issue of sealing the case record arose in the context of a motion to vacate or modify a (non-reinsurance) arbitration award pursuant to the Federal Arbitration Act. Citing *Cendant Corp.*, the court stated that the legal standard "for assessing the propriety of sealing . . . is a finding of compelling countervailing interests, including a requirement that the district court make specific findings on the record regarding this standard before sealing the record."[31] Except for the federal tax returns of two individuals, the court denied the request to maintain the case records under seal. In so doing, the court noted that "judges should carefully and skeptically review privately-reached confidentiality agreements that are

submitted to the court for approval before approving them," and that courts "should not rubber stamp any agreement among the parties to seal the record."[32]

The second case, *Century Indemnity Co. v. Certain Underwriters at Lloyds*, involves a petition to confirm a reinsurance arbitration award where the parties had entered into a standard ARIAS-U.S. Confidentiality Agreement. In support of its unopposed motion to seal the arbitration award, Century Indemnity cited the terms of the Confidentiality Agreement and the integrity of the reinsurance arbitration process, which it argued could be jeopardized if the typically confidential proceedings were open to public scrutiny. After reciting the standard set forth in *Cendant Corp.*, the court granted Century Indemnity's motion. Among other factors the court considered that weighed in favor of sealing the award was a "significant business privacy interest that would affect Defendant if the award is disclosed."[33] The court also reasoned that the purpose behind sealing was "legitimate" because "[t]he parties entered into a Confidentiality Agreement and it is the practice in the reinsurance industry to keep arbitration proceedings, including final awards, confidential."[34] The district court found that upholding the Confidentiality Agreement "will promote the voluntary execution of private arbitration agreements; a sound public policy objective."[35] In light of these factors, and given the lack of any public health and safety issues compelling disclosure, the court entered an order sealing the award.[36]

IV. The "Competing Interests" Test

In adjudicating motions to seal, the Fourth, Fifth and Eleventh Circuits follow what can be referred to as the "competing interests" test. Rather than positing that "compelling reasons" are necessary to rebut the presumption of public access, these courts employ a more neutral test, which contemplates that, when resolving motions to seal, courts must determine whether "the public's right of access is outweighed by competing interests" favoring disclosure.[37] Or, as expressed by the Fifth Circuit, "[i]n exercising its discretion to seal judicial records, the court must balance the public's common law right of access against the interests favoring disclosure."[38] The Fifth Circuit noted that, while "other circuits have held that there is a strong presumption in favor of the public's common law right of access to judicial records . . . we have refused to assign a particular weight to the right."[39]

Some district courts within these circuits applying the "competing interests" test have given significant weight to the litigating parties' confidentiality agreements as a factor favoring nondisclosure. In *Kaufman v. The Travelers Companies, Inc.*, the plaintiffs moved to seal two confidential settlement agreements which, by their terms, required the plaintiffs to "take reasonable precautions to prevent disclosure of any term."[40] The plaintiffs argued that sealing the confidential settlement agreements would "protect the expectations of the settling parties . . ." For other documents containing confidential information referenced in the settlement agreements, the plaintiffs sought leave to redact such information. The U.S. District Court for the District of Maryland granted the plaintiffs' motion to seal.[41] For similar reasons, the U.S. District Court for the Northern District of Texas granted a motion to seal a petition to confirm an arbitration award and all supporting exhibits in *Decapolis Group, LLC v. Mangesh Energy, LTD.* The contract at issue contained a provision that the parties would not disclose confidential information, such as information "relating to the business, products, affairs and finances of a Party . . ." The parties also agreed that the underlying arbitration proceedings would be confidential. Rejecting the plaintiff's contention that the information in the arbitration award came from "open sources," the court granted the motion to seal, finding that "any public interest in the Award is minimal and counterbalanced by the interest in confidentiality expressed in the parties' agreement."[42]

By way of contrast, a U.S. District Court in Florida denied an unopposed motion to seal an arbitral award that was based solely on the bald assertion that the award contained confidential business information. In *Mayo Clinic Jacksonville. v. Alzheimer's Institute of America, Inc.*, the defendant sought an order confirming an arbitration award. The defendant did not attach the award to its petition, citing the plaintiffs' concern about disclosure of their confidential information, which plaintiffs contended was protected pursuant to a confidentiality provision in the License Agreement at issue in the arbitration. The court found the unsupported assertion concerning disclosure of confidential business information an insufficient basis on which to seal a presumptively public document.[43]

V. Conclusion

The federal case law demonstrates that moving to vacate, modify or confirm arbitral awards usually results in public disclosure of the petition, the award and other documents filed in support of the motion. This is particularly true in the seven federal circuits that require a showing of "compelling reasons" to overcome the presumption of public access to judicial records. Courts in those circuits (including the district courts in New York, Connecticut and Massachusetts where reinsurance litigation is concentrated) hold that private confidentiality agreements are insufficient to justify sealing presumptively public records. Indeed, unless the information constitutes a trade secret or is protected from disclosure by statute or a recognized privilege, these courts are unlikely to seal information from public view. Even in the three circuits that apply the less onerous "competing interests" test, the courts typically find that conclusory assertions of commercial harm are insufficient to support a motion to seal. To overcome the right of public access, most courts require the presentation of specific facts establishing a likelihood of significant harm resulting from public disclosure of the documents or information in question.

Because they are nearly always at-

tached as an exhibit to any motion to vacate, modify or confirm, the panel's award is the single arbitration document that is most often subject to public disclosure. When crafting final awards, arbitrators should be cognizant of the courts' bias in favor of public access to judicial documents.

The common law presumption in favor of public access might also influence the parties' conduct in connection with seeking post-award relief in court. Under the ARIAS-approved Confidentiality Agreement, the parties agree that, in connection with motions to confirm, modify or vacate an award, "all submissions of Arbitration Information to a court shall be sealed." To comply with this provision, the moving party typically files a motion with the court seeking leave to file its pleadings under seal. This motion, in turn, triggers the presumption of public access and the balancing tests discussed above, which usually result in public disclosure despite the contrary intent evidenced by the parties' Confidentiality Agreement.

In connection with motions to confirm an award (as opposed to motions to vacate or modify, which are almost always contested) there may be an opportunity for parties to minimize the erosion of confidentiality that typically results from such proceedings. Specifically, if the motion to confirm is not going to be contested, the parties could attempt to agree on a streamlined filing that limits the disclosure of Arbitration Information to a mutually acceptable minimum. The parties could then agree to waive the provision in the Confidentiality Agreement that requires sealed court filings, and the streamlined motion to confirm could be filed as a public document. This approach will not preserve the confidentiality of arbitration proceedings in their entirety. But it at least allows the parties to maintain some control over what information will and will not become a matter of public record.

Finally, in connection with an unopposed motion to confirm, a court might be persuaded to limit the extent of the public disclosure by permitting the filing of a redacted arbitration award. The recent decision in *Nationwide Mutual Insurance Co. v. Continental Casualty Co.* is instructive on this point. There, the district court judge noted that it was not necessary for her to even review the arbitration award to adjudicate the unopposed motion to confirm.[44] Because, in this case, the substance of the arbitration award "[did] not 'influence or underpin the judicial decision' to confirm it," the district court permitted the petitioner to file a redacted version of the final award that omitted two paragraphs.[45] The court reasoned that, in the context of an unopposed motion to confirm, "the presumption in favor of public filing . . . is not triggered," and "no public interest is compromised by omission of that information from the public record."[46] ▼

ENDNOTES

1 *Eagle Star Insurance Co. Ltd. v. Arrowood Indemnity Co.*, No. 13 CV 3410, 2013 WL 5322573, at *1-3 (S.D.N.Y. Sept. 23, 2013).

2 In addition to a common law right, courts have also recognized a right of access to court records that derives from the first amendment to the United States Constitution. *See, e.g., Chicago Tribune Co. v. Bridgestone/Firestone*, 263 F.3d 1304, 1310 (11th Cir. 2001) (discussing scope of constitutional right of access). The constitutional right of access has rarely been invoked in a context relevant to this article.

3 *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597-98 (1978).

4 *Id.*

5 *Id.* at 598.

6 *Id.* at 599.

7 This article does not address the thirteenth federal circuit court, the United States Court of Appeals for the Federal Circuit.

8 The D.C. Circuit applies its own unique six-part test for adjudicating motions to seal, with a strong yet rebuttable presumption in favor of public access. *See, e.g., U.S. v. Hubbard*, 650 F.2d 293, 317-322 (D.C. Cir. 1998); *DBI Architects v. American Express Travel Related Services Co.*, 462 F. Supp. 2d 1, 7-8 (D.D.C. March 30, 2006). We have not located any cases in this circuit applying the standard in connection with a motion to vacate, modify or confirm an arbitral award.

9 *In re Knoxville News-Sentinel Co.*, 723 F.2d 470, 476 (6th Cir. 1983); *FTC v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 410 (1st Cir. 1987); *Union Oil Co. of Cal. V. Leavell*, 220 F.3d 562, 568 (7th Cir. 2000); *Foltz v. State Farm Mut. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003); *Lugosch v. Pyramid Co. of Onandaga*, 435 F.3d 110, 121 (2d Cir. 2006); *Neal v. The Kansas City Star*, 461 F.3d 1048, 1053 (8th Cir. 2006). Courts in the Tenth Circuit do not use the "compelling reasons" nomenclature, but their analysis and decisions align most closely with courts in the circuits that employ the "compelling reasons" test. *See, e.g.*, *Mann v. Boatwright*, 477 F.3d 1140, 1149 (10th Cir. 2007) (common law right of access "can be rebutted if countervailing interests *heavily outweigh* the public interest in access") (emphasis added); *Stormont-Vail Healthcare, Inc. v. Biomedix Vascular Solutions, Inc.*, No. 11-4093-SAC, 2012 WL 884926, at *1-3 (D. Kan. Mar. 14, 2012) (applying standard articulated in *Mann* in denying motion to seal).

10 *See, e.g.*, *Foltz*, 331 F.3d at 1136; *Baxter Int'l, Inc. v. Abbott Labs.*, 297 F.3d 544, 546 (7th Cir. 2002).

11 *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1179 (6th Cir. 1983); *see also Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1182 (9th Cir. 2005) (compelling reasons standard not met where movant makes "conclusory statements about the contents of documents -- that they are confidential and that, in general," their disclosure would be harmful to movant); *Stormont-Vail Healthcare*, 2012 WL 884926, at *3 ("a concern for a business public image is not sufficient enough to rebut the presumption of public access").

12 *Union Oil Co. of Cal. v. Leavell*, 220 F.3d 562, 567-68 (7th Cir. 2000); *see also Allstate Ins. Co. v. Balle*, No. 2:10-cv-02205, 2014 LEXIS 42192, at *2 (D. Nev. March 27, 2014) (fact that "production of records may lead to a litigant's embarrassment, incrimination, or exposure to further litigation will not, without more, compel the court to seal its records").

13 *See, e.g., Brown*, 710 F.2d at 1180; *Baxter*, 297 F.3d at 546; *Corvello v. New England Gas Co.*, No. 05-221T, 2008 WL 5245331, at *7-8 (D.R.I. Dec. 16, 2008); *Century Indem. Co. v. AXA Belgium*, No. 11 Civ. 7263, 2012 WL 4354816, at *14 (S.D.N.Y. Sept. 24, 2012).

14 *Corvello*, 2008 WL 5245331 at *6.

15 *Lugosch*, 435 F. 3d at 119.

16 *Aioi Nissay Dowa Ins. Co. v. ProSight Specialty Mgmt. Co., Inc.*, No. 12 Civ. 3274, 2012 WL 3583176, at *6 (S.D.N.Y. Aug. 21, 2012). The Ninth Circuit has held that a showing of "good cause" is sufficient to support the sealing of discovery material attached to non-dispositive motions. *Foltz*, 331 F.3d at 1135. However, this exception to the "compelling reasons" standard does not apply to petitions to vacate, modify or confirm arbitration awards, which are case dispositive.

17 *Global Reinsurance Corp. v. Argonaut Ins. Co.*, Nos. 07 Civ. 8196, 07 Civ. 8350, 2008 WL 180545, at *1-2 (S.D.N.Y. Apr. 21, 2008).

18 *Id.* at *1.
19 *Id.*
20 *Id.* at *2.
21 *Century Indem. v. AXA*, 2012 WL 4354816, at *12-13 (S.D.N.Y. Sept. 24, 2012) (internal quotations omitted).
22 *Id.* at 14 (internal quotations omitted).
23 *Id.* at *15 (internal quotations omitted).
24 *Zimmer, Inc. v. W. Norman Scott, M.D.*, No. 10 C 3170, 2010 WL 3004237, at *1-2 (N.D. Ill. July 28, 2010) (internal quotations omitted).
25 *Id.* at *2-3 (internal quotations omitted).
26 *Martis v. Dish Network*, No. 1:13-cv-1106, 2013 WL 6002208, at **1-2 (W.D. Mich. Nov. 12, 2013).
27 *Id.* at *2.
28 *Id.*
29 *Id. Accord Amerisure Mut. Insurance Co. v. Everest Reinsurance Co.,* No. 14-cv-13060, 2014 U.S. Dist. LEXIS 153013, at *3-6 (E.D. Mich. Oct. 29, 2014) (denying request to seal in its entirety reinsurance arbitration panel's award, noting that "the Sixth Circuit has stressed that a corporation's interest in shielding 'prejudicial information' from public view, standing alone, cannot justify the sealing of that information").
30 *In re Cendent Corp.*, 260 F.3d 183, 192-94 (3d Cir. 2001). The court stated that the act of filing a document with the court clearly establishes a record as a "judicial document" to which the presumption of public access attaches. *Id.* at 192.
31 *Zurich Am. Ins. Co. v. Rite Aid Corp.*, 345 F. Supp.2d 497, 503-04 (E.D. Pa. 2004) (internal quotations omitted).
32 *Id.* at 504 (internal quotations omitted).
33 *Century Indem. Co. v. Certain Underwriters at Lloyds*, 592 F. Supp.2d 825, 828 (E.D. Pa. 2009).
34 *Id.*
35 *Id.*
36 *Id.* at 827-28.
37 *In re The Knight Publishing Co.*, 743 F.2d 231, 235 (4th Cir. 1984); *accord Chicago Tribune Co. v. Bridgestone/Firestone*, 263 F.3d 1304, 1310-12 (11th Cir. 2001) (("The common-law right of access as it applies to particular documents requires the court to balance the competing interests of the parties").
38 *SEC v. Van Waeyenberghe*, 990 F.2d 845, 848 (5th Cir. 1993).
39 *Id.* at 850 fn.4.
40 *Kaufman. v. The Travelers Co., Inc.*, No. DKC 2009-0171, 2010 WL 2639879, at *4 (D. Md. June 29, 2010).
41 *Id.* at *3-4.
42 *Decapolis Group, LLC v. Mangesh Energy, Ltd.*, No. 3:13-cv-1547-M, 2014 WL 702000, at *1-2 (N.D. Tex. Feb. 24, 2014).
43 *See generally Mayo Clinic Jacksonville. v. Alzheimer's Inst. of Am., Inc.*, No. 8:05-cv-639-T-23TBM, 2008 WL 4998427, at *1-2 (M.D. Fla.. Nov. 24, 2008).
44 *Nationwide Mutual*, 14-cv-844, Dkt. No. 21 at *2 (N.D. Ill. June 3, 2014).
45 *Id.* at 2-3.
46 *Id.* at 3.