

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

THE TRAVELERS INDEMNITY
COMPANY as successor in interest to GULF
INSURANCE COMPANY,

Plaintiff,

v.

EXCALIBUR REINSURANCE
CORPORATION f/k/a CAPITAL
INSURANCE COMPANY,

Defendant.

3:11 - CV- 1209 (CSH)

NOVEMBER 26, 2013

RULING ON EXCALIBUR'S MOTION TO SEAL

HAIGHT, Senior District Judge:

I. INTRODUCTION

In this reinsurance action, arising out of several "errors and omissions" policies issued by plaintiff Travelers Indemnity Company ("Travelers") to an insurance and reinsurance broker, defendant and reinsurer Excalibur Reinsurance Corporation f/k/a Capital Insurance Company ("Excalibur") moves to seal [Doc. 128] four documents pursuant to D. Conn. L. Civ. R. 5(e)(3) and 5(e)(4). The documents include two unredacted memoranda of law filed by Travelers and two identical exhibits, one appended to each such memorandum. Specifically, these documents are: Travelers' s "Unredacted Memorandum of Law In Support of Travelers'[s] Motion [Doc. 81] for Pre-Pleading Security" [Doc. 82] and "Exhibit 1" appended thereto [Doc. 82-1]; and Travelers's "Unredacted Memorandum of Law in Opposition to Defendant's Motion to Designate Discovery Material as 'Confidential Discovery Material' Pursuant to the Stipulated Protective Order" [Doc. 90]

and "Exhibit 2" appended thereto [Doc. 90-2].¹ The two exhibits to the referenced memoranda are identical and include five pages of testimony from the deposition transcript of Diane Ferro, a vice president of Excalibur. *See* Doc. 128 (Motion to Seal), p. 1; Doc. 110, p. 5.

In its previous Ruling [Doc. 125] dated August 5, 2013, familiarity with which is assumed, the Court provisionally sealed Travelers's two unredacted memoranda and upheld Excalibur's designation of the Ferro deposition transcript as "confidential discovery material" under the parties' Stipulated Protective Order ("SPO") [Doc. 24-1]. *See Travelers Indem. Co. v. Excalibur Reinsurance Corp.*, No. 3:11-CV-1209 (CSH), 2013 WL 4012772, at *8-9, 11-15 (D.Conn. Aug. 5, 2013). The Court clarified, however, that "[a]s to the deposition transcripts at issue, if Excalibur ultimately requests sealing by the Court, Excalibur must designate *the particular lines and/or passages to be sealed* and establish the particular basis for each sealing." 2013 WL 4012772, at *15 (emphasis in original). Moreover, the Court reminded Travelers that it would "be able to contest [Excalibur's] specific redactions" in that event.² *Id.*

¹ In describing Excalibur's present motion, the Court herein cites the docket numbers referenced by Excalibur in its request to seal, Doc. 82, 82-1, 90, & 90-2. For purposes of accuracy, however, and as set forth *infra*, the Court is aware that Doc. 82 and 90 were actually filed in redacted form and filed as "sealed" in unredacted form at Doc. 87 & 93. Also, the referenced Exhibits 1 and 2, respectively, were filed as "sealed" at both Doc. 82-1 and Doc. 87, p. 15-20, and at Doc. 90-2 and Doc. 93, p. 15-20. At Doc. 82-1 and 90-2, the docket simply indicates that the documents were "FILED UNDER SEAL," and provides no text of the Exhibits. Doc. 87 and 93 include full text of Exhibits 1 and 2 but were sealed provisionally by the Court in their entirety. Doc. 125.

² The Court notes that Travelers has filed no opposition to Excalibur's present motion to seal or to Excalibur's characterization of the designated transcript excerpts as containing "confidential business information." The filing period for such an objection has expired in that Excalibur's motion was filed on August 26, 2013. *See* D. Conn. L. Civ. R. 7(a) ("[u]nless otherwise ordered by the Court, all memoranda in opposition to any motion shall be filed within twenty-one (21) days of the filing of the motion.").

Acknowledging the Court's clarification regarding sealing, Excalibur filed the present motion to seal, arguing that the designated portions of Ferro's deposition transcript are "limited to five pages of a transcript that spans nearly two hundred pages." Doc. 128-1, p. 3. In particular, these five pages allegedly "concern confidential and sensitive business information of Excalibur," namely "internal policies and practices concerning claims handling and payment of claims." *Id.* Moreover, the testimony appearing on those pages also "concerns the business practices and relationships between Excalibur and its cedents," including "communications that Excalibur sent to its other cedents in addition to Travelers." *Id.*

II. DISCUSSION

As this Court has previously noted, "there is a strong presumption of public access to judicial documents and proceedings that is rooted in both the common law and the First Amendment." Doc. 48, p. 5 (citing *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597-98 (1978)).³ It thus follows that "court documents may only be sealed if 'specific, on the record findings are made demonstrating that closure is essential to preserve higher values and is narrowly tailored to serve that interest.'" Doc. 48, p. 5-6 (quoting *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 13-14 (1986)). *See also* D. Conn. L. Civ. R. 5(e)(3) (dictating that court may only grant a request to seal documents when said request is supported by "clear and compelling reasons" and "narrowly tailored to serve those reasons").

However, the Court has also recognized that "[t]he parties to an action often have a significant interest in protecting [sensitive business information, such as confidential proprietary

³ In this action, the Court has previously set forth in detail the relevant law of sealing in its prior Rulings, familiarity with which is assumed. *See, e.g.*, Doc. 38, p. 3-6; Doc. 48, p. 5-6.

information] from public dissemination." *Travelers Indem. Co.*, 2013 WL 4012772, at *5. Courts within this Circuit have thus held that "[n]otwithstanding the presumption of public access to judicial records, courts may deny access to records that are sources of business information that might harm a litigant's competitive standing." *In re Parmalat Sec. Litig.*, 258 F.R.D. 236, 244 (S.D.N.Y. 2009) (quoting *Nixon*, 435 U.S. at 598).

Upon a particularized showing of potential harm to the movant, this District has repeatedly recognized that sensitive business information may provide a "clear and compelling reason" to warrant sealing, D. Conn. L. Civ. R. 5(e)(3). See, e.g., *Crossman v. Astrue*, 714 F. Supp. 2d 284, 287 (D.Conn. 2009)("[t]here can be (and often are) considerations of . . . a business's proprietary information, such as trade secrets or confidential research, that can trump the right of the public to access court records"); *United States v. Ferguson*, No. 3:06CR137 (CFD), 2008 WL 113654, at *1 (D. Conn. Jan. 5, 2008) (granting motion to seal documents "on the ground that the accompanying documents contain detailed, confidential business information" that was unrelated to legal issues in the case, and "because the disclosure of this confidential information would cause undue harm to the businesses involved"); *Stanley Works v. Newell Co.*, No. Civ. 2:91-488(TEC), 1993 WL 151298, at *3 (D. Conn. Jan. 29, 1993) (maintaining sealing of transcript text because it contained "true business information which has been kept confidential and whose disclosure is likely to harm a business's ability to compete and its marketplace position").

Upon review of the designated materials, the Court will grant Excalibur's request to maintain sealing of the unredacted versions of Travelers's memoranda of law in support of its motion for pre-pleading security and in opposition to Excalibur's motion to designate material as "confidential

discovery material" pursuant to the Court-approved SPO.⁴ The Court will seal with permanency the unredacted memoranda [Doc. 87 & 93], containing Excalibur's confidential business information, in light of the fact that Travelers has also filed redacted versions of both memoranda, redacting only the material necessary to protect said confidential information. *See* Doc. 82, redactions at p. 5, 11-12; Doc. 90, redactions at p. 4 & n.3. The public has access to the redacted versions of these documents [Doc. 82 & Doc. 90], which redact no more than necessary to protect Excalibur's confidential business information.

With respect to the designated pages of the Ferro deposition transcript [referenced at Doc. 82-1 & 90-2], the Court finds that this testimony is sufficiently rife with Excalibur's sensitive and confidential business information to warrant sealing. These passages, which were provisionally sealed when presented by Travelers for sealing pursuant to the parties' SPO, will remain sealed by the Court. They contain sensitive and confidential business information, disclosure of which could materially affect Excalibur's ability to compete effectively as a business.

In sum, Excalibur has demonstrated that sealing the designated pages of the Ferro deposition transcript "is supported by clear and compelling reasons" – protection of confidential and sensitive business information. Moreover, Excalibur has "narrowly tailored" its sealing request to the extent that the five pages of testimony to be sealed disclose Excalibur's confidential business information. D. Conn. L. Civ. R. 5(e)(3). The Court will thus grant Excalibur's motion to seal with respect to the two identical exhibits of Ferro's deposition testimony [Doc. 87, p. 15-20, & Doc. 93, p. 15-20].

⁴ The Court previously granted Travelers's motions [Doc. 84 & 91] to provisionally seal the unredacted versions of its memoranda. Doc. 125. Such sealing complied with the parties' stipulated procedures in their Court-approved SPO [Doc. 24-1] to file materials under seal while the Court considered whether the allegedly "confidential discovery materials" should remain sealed upon becoming judicial documents. *See* Doc. 24-1, ¶ 11.

III. CONCLUSION

Pursuant to Local Rule of Civil Procedure 5(e)(3), the Court hereby GRANTS Excalibur's Motion to Seal [Doc. 128]. Travelers's unredacted "Memorandum of Law in Support of Motion for Pre-Pleading Security" [Doc. 87], and "Exhibit 1" appended thereto [Doc. 87, p. 15-20], and Travelers's unredacted "Memorandum of Law in Opposition to Defendant's Motion to Designate Discovery Material as 'Confidential Discovery Material' Pursuant to the Stipulated Protective Order" [Doc. 93], and "Exhibit 2" appended thereto [Doc. 93, p. 15-20], shall remain SEALED. The redacted versions of these memoranda [Doc. 82 & 90] shall remain accessible to the public. Their accompanying Exhibits, 1 and 2 respectively, which would otherwise set forth deposition testimony of Diane Ferro [Doc. 82-1 & 90-2], shall remain, as they now are, blank and designated "FILED UNDER SEAL."

It is SO ORDERED.

Dated: New Haven, Connecticut
November 26, 2013

/s/Charles S. Haight, Jr.
CHARLES S. HAIGHT, JR.
SENIOR UNITED STATES DISTRICT JUDGE