

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 07-21403-CIV-COHN

ANTONIO HERNANDEZ, individually,
and on behalf of all others similarly situated,

Magistrate Judge Seltzer

Plaintiff,

vs.

IGE U.S. LLC,

Defendants.

_____ /

ORDER GRANTING IN PART and DENYING IN PART
UNOPPOSED MOTION TO SEAL

_____ THIS CAUSE is before the Court upon Plaintiff's Unopposed Motion for Leave to File Motion to Enforce Settlement Under Seal [DE 66]. The Court has carefully considered the motion and is otherwise fully advised in the premises.

Plaintiff seeks permission to file a motion to enforce a settlement under seal, because "certain terms of the settlement are to remain confidential." The motion is unopposed by Defendant. However, the Court has an obligation to consider the public interest before allowing an entire motion or settlement agreement to be sealed. "It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." Nixon v. Warner Communications, Inc., 435 U.S. 589, 597 (1978). This common law presumption of access to documents filed with a court is not absolute.¹ For example, documents

¹ Accountability is one of the principal justifications for allowing public access to court records. See, e.g., Union Oil Co. of California v. Leavell, 220 F.3d 562, 568 (7th Cir. 2000). While most cases that discuss the sealing of court records involve third party-challenges, the fact that no such challenge exists here is inconsequential

exchanged in discovery or settlement agreements not filed with the court need not be subject to public review. See Federal Trade Comm'n v. Standard Financ. Mgmt. Corp., 830 F.2d 404, 408 (1st Cir. 1987); Pansy v. Borough of Stroudsburg, 23 F.3d 772, 781-83 (3d Cir. 1994). However, if a settlement agreement is filed with the court for approval or interpretation, then the parties must demonstrate extraordinary circumstances in order to deny the public access to the agreement. Brown v. Advantage Eng'g Inc., 960 F.2d 1013, 1016 (11th Cir. 1992).

“The strength of the presumption of openness falls along a continuum, with the presumption being stronger for documents that ‘directly affect an adjudication’ than for documents, such as discovery materials, that ‘come within a court’s purview solely to insure their irrelevance.’” Stalnaker v. Novar Corp., 293 F. Supp. 2d 1260, 1264 (M.D. Ala. 2003) (quoting United States v. Amodeo, 71 F.3d 1044, 1049 (2d Cir. 1995)).

When faced with a request to seal judicial documents the Court must weigh the interests in favor of openness—i.e., judicial transparency—against the interest of the parties in keeping the matter secret. Jessup v. Luther, 277 F.3d 926, 928 (7th Cir. 2002). The interest in secrecy has been deemed compelling in cases involving trade secrets, the privacy of children, the identify of informants, or when the information could be used for scandalous or libelous purposes. Id.; Hagestad v. Tragesser, 49 F.3d 1430, 1434 (9th Cir. 1995).

because the presumption of openness does not depend upon media interest. Stalnaker v. Novar Corp., 293 F. Supp. 2d 1260, 1263 (M.D. Ala. 2003). Rather, the presumption in favor openness in this matter is based upon the “citizen’s desire to keep watchful eye on the workings of the public agencies.” Nixon, 435 U.S. at 598.

Upon the present motion, it is not clear why the settlement agreement at issue in this case should be sealed. A defendant's general interest in keeping its settlement agreement under seal does not raise to the level of extraordinary circumstance. Brown, 960 F.2d at 1016; see also Stalnaker, 293 F. Supp. 2d at 1264.

In any event, the Court sees no reason why the entire motion should be sealed, even if the parties have a valid justification for sealing parts of the Settlement Agreement. Sealed motions are difficult to track in the filing system. It would appear that the motion itself should not be filed under seal, but if needed, could refer to a sealed Settlement Agreement.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Plaintiff's Unopposed Motion for Leave to File Motion to Enforce Settlement Under Seal [DE 66] is hereby **GRANTED in part** and **DENIED in part**;
2. The Motion to Enforce Settlement shall NOT be filed under seal;
3. The parties may file a renewed motion to seal the Settlement Agreement, and, to move the case forward, may file the Settlement Agreement under seal as an exhibit to either the Motion to Enforce Settlement or the Motion to Seal the Settlement Agreement;
4. If the Settlement Agreement is filed under seal, the party wishing to keep the Agreement sealed must file a brief explaining why the Court should keep the Agreement under seal.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 29th day of July, 2008.


JAMES I. COHN
United States District Judge

copies to:

Magistrate Judge Barry Seltzer
C. Richard Newsome, Esq.
Donald E. Haviland, Jr., Esq.
Samuel Heywood, Esq./James M. Miller, Esq.