

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PIOTR NOWAK	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 12-4165
PENNSYLVANIA PROFESSIONAL	:	
SOCCER, LLC et al	:	

**ORDER-MEMORANDUM**

AND NOW, this 3<sup>rd</sup> day of December 2015, upon consideration of Defendants' uncontested Memorandum under our November 20, 2015 Order (ECF Doc. No. 33) seeking to continue an umbrella seal order under *Pansy v. Borough of Stroudsburg* and its progeny<sup>1</sup> (ECF Doc. No. 34), it is **ORDERED**:

1. Defendants' Memorandum filed under seal (ECF Doc. No. 34) is **STRICKEN** with leave to file an unsealed Memorandum on or before **December 17, 2015** seeking a continued seal and redacting only those portions of referenced testimony or documents meeting the *Pansy* standards while providing an unredacted *in camera* copy to the Court;

2. On or before **December 17, 2015**, the parties shall file a joint memorandum not exceeding twenty (20) pages describing, if warranted, a basis to seal the pleadings in this case, the arbitration submissions, orders and exhibits admitted in the arbitration other than the hearing transcripts of May 28, 29, 30, August 19 and 20, 2014.

***Analysis***

Corporate Defendants moved to seal the entire record in an arbitration arguing the parties contracted for a private arbitration, expected their arbitrated dispute to be confidential and disclosure may result in embarrassment to Plaintiff Piotr Nowak and his former employer, the

Philadelphia Union professional soccer team. Nowak does not object to the umbrella seal.

This case presents an employment dispute familiar to federal courts examining good cause for termination under an employment agreement. Nowak moved to vacate the arbitration award and the Philadelphia Union moves to confirm the arbitration award.<sup>2</sup> We initially allowed the parties to file motions under an umbrella seal subject to our November 20, 2015 Order requiring Defendants timely move to continue the umbrella seal as to any document warranting this confidentiality.<sup>3</sup> While the parties agreed to maintain confidentiality in the arbitration, they could not agree to bind this public forum when they move this Court to vacate or enforce an arbitration award.

The parties seek to seal three categories of documents: exhibits exchanged in the arbitration which, for the most part, do not exhibit intent to remain confidential; pleadings, transcripts and the Order in the arbitration; and, the motions before this Court to vacate or confirm the arbitration award. Electing to seek relief in a public forum, the parties expect the public will have access to the filed information and must show a particularized need to deny public access to all of the records upon which we will base our decision.

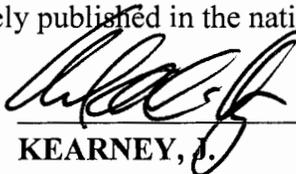
Broad allegations of embarrassment not substantiated by specific examples or articulated reasoning are not a particularized need.<sup>4</sup> “[T]he harm must be significant, not a mere trifle.”<sup>5</sup> “[B]ecause release of information not intended by the writer to be for public consumption will almost always have some tendency to embarrass, an applicant for a protective order whose chief concern is embarrassment must demonstrate that the embarrassment will be particularly serious.”<sup>6</sup> Further, while Nowak may argue some noneconomic harm from disclosure of events occurring in 2012”, the Philadelphia Union must show with “some specificity that the

embarrassment resulting from dissemination of the information would cause a significant harm to its competitive and financial position.”<sup>7</sup>

While we understand the parties’ wish to maintain confidentiality regarding allegations and testimony surrounding the Philadelphia Union’s termination of Nowak, their wishes in private arbitration, including reliance on the agreement by them and witnesses, is not outcome determinative.<sup>8</sup>

Filings in this Court such as complaints and motions seeking relief and invoking this Court’s authority are especially deserving of the right to access.<sup>9</sup> When facing claims of embarrassment in motions and pleadings, we are mindful of the general rule “judicial records such as pleadings and other papers filed with the court in civil actions are public documents available for inspection and review by any interested person.”<sup>10</sup>

The parties have not, as yet, met the particular need for confidentiality for the admitted exhibits, Orders and pleadings in this case. At a minimum, Defendants have not narrowed their request for umbrella confidentiality, including redacting names of involved witnesses in both the investigation and arbitration.<sup>11</sup> Further, the parties shall address any specific present noneconomic harm from public access to documents in December 2015 and thereafter resulting from the June 2012 employment termination of a well-known coach of a Major League Soccer team due to philosophical differences widely published in the national and local press.<sup>12</sup>

  
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KEARNEY, J.

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<sup>1</sup> 23 F.3d 772 (3d Cir. 1994).

<sup>2</sup> ECF Doc Nos. 18, 35.

<sup>3</sup> ECF Doc Nos. 21, 33.

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<sup>4</sup> *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986)(citing *United States v. Garrett*, 571 F.2d 1323, 1326, n.3 (5<sup>th</sup> Cir. 1978)).

<sup>5</sup> *Cipollone*, 785 F.2d at 1121 (citing *Joy v. North*, 692 F.2d 880, 894 (2d Cir. 1982)).

<sup>6</sup> *Cipollone*, 785 F.2d at 1121.

<sup>7</sup> *Id.*

<sup>8</sup> *Nationwide Mutual Insurance Company v. Randall & Quilter Reinsurance Company*, No. 07-120, 2007 WL 2326878, \*2 (S.D.Ohio Aug. 10, 2007)

<sup>9</sup> *In re: Domestic Drywall Antitrust Litigation*, MDL No. 2437, No. 15-1712, p.4, n. 1 (E.D.Pa Dec. 1, 2015) (citing limited instances of redactions of personal identifiers and confidential personal information)

<sup>10</sup> *Dombrowski v. Bell Atlantic Corp.*, 128 F.Supp.2d 216, 217 (E.D.Pa. 2000)

<sup>11</sup> A Major League Soccer report relating to Nowak does not identify the persons by name providing information to the investigator.

<sup>12</sup> *See e.g.* [www.sportingnews.com/soccer-news/2969503-peter-nowak-fired-philadelphia-union-dismiss-famed-coach](http://www.sportingnews.com/soccer-news/2969503-peter-nowak-fired-philadelphia-union-dismiss-famed-coach).