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Electronically Filed
Nov 10 2022 02:00 PM
Elizabeth A. Brown
U.S. Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

UNITED HEALTHCARE
INSURANCE COMPANY, a
Connecticut corporation; UNITED
HEALTHCARE SERVICES, INC.,
d/b/a UNITEDHEALT CARE, a
Minnesota corporation; UMR, INC.,
d/b/a UNITED MEDICAL
RESOURCES, a Delaware corporation;
SIERRA HEALTH AND LIFE
INSURANCE COMPANY, INC., a
Nevada corporation; and HEALTH
PLAN OF NEVADA, INC., a Nevada
corporation,

Appellants,

vs.

FREMONT EMERGENCY
SERVICES (MANDAVIA), LTD., a
Nevada professional corporation;
TEAM PHYSICIANS OF NEVADA-
MANDAVIA, P.C., a Nevada
professional corporation; CRUM
STEFANKO AND JONES, LTD.,
d/b/a RUBY CREST EMERGENCY
MEDICINE, a Nevada professional
corporation,

Respondents.

Supreme Court No. 85525
District Court No. A7292978

**OPPOSITION TO UNITED'S
MOTION TO EXTEND STAY
OF DISTRICT COURT'S
ORDER UNSEALING CERTAIN
TRIAL EXHIBITS AND
TRANSCRIPTS**

**Opposition to United’s Motion to Extend Stay of District Court’s Order
Unsealing Certain Trial Exhibits and Transcripts**

After a five-week trial, a Clark County jury found that United engaged in unfair practices by systematically underpaying emergency-care providers who provide life-saving medical treatment to all patients seeking care, regardless of coverage status or ability to pay. During this public trial, livestreamed over the Internet, the jury listened to exhaustive witness testimony and viewed hundreds of exhibits, then found United guilty of oppression, fraud, and malice in its treatment of the plaintiff Health Care Providers. Now, United wants to delay as long as possible the public’s access to the documents and testimony that support the jury’s verdict.

This is nothing new. United’s conduct in this case has been marked by persistent overuse of confidentiality designations. Of the approximately 61,000 documents United produced to the Health Care Providers, it designated more than 38,000 of them—over 63%—as attorneys’ eyes only, and by doing so increased trial costs. *See* 1 App 4–5.¹

United’s overuse of confidentiality designations extended to its sealing efforts. In its motion to seal in the district court, United made no effort to meet

¹ Citations to “App” refer to Appellants’ appendix. Citations to “Resp App” refer to Respondents’ appendix.

1 its burden by tying specific documents to actual trade secrets or other protectible
2 information. Rather, United relied on broad generalizations to justify its request
3 to seal over 100 exhibits, including documents that United itself had introduced
4 in open court and discussed extensively without any effort to preserve
5 confidentiality. *See* 3 App 455–58; 3 App 466–89; 1 App 9–10.

6 What’s more, United asks this Court to seal trial transcripts that United
7 originally did not try to seal at all. After ten months of post-judgment motion
8 practice regarding United’s effort to seal 123 trial **exhibits** during which United
9 never moved to seal trial **transcripts**, United reversed course and suddenly
10 requested redaction of the court record as well. 1 App 141; *see* 1 App 134.

11 The district court thoroughly and thoughtfully reviewed the material
12 United sought to seal over the course of several hearings. After weighing
13 United’s interests and the countervailing interests of the public in open courts,
14 the court issued a detailed order granting United’s motion in part and denying it
15 in part. 1 App 161–250; 2 App 251–98. There is no need to undo that work now,
16 even temporarily.

17 Although United characterizes the district court’s order as “unsealing” the
18 trial record, these documents were never sealed in the first place. The district
19 court denied in part United’s motion to seal, and United is appealing that order.
20 *See* 1 App. 88 (exhibits were “locked” during trial, not sealed). In other words,

1 United’s motion is a request to seal documents that United failed to establish
2 should be sealed under the Nevada Rules for Sealing and Redacting Court
3 Records. It should be viewed through that lens.

4 I. LEGAL STANDARD

5 A. Motion to Seal

6 The open courts presumption in Nevada is well-established. *Del Papa v.*
7 *Steffen*, 112 Nev. 369, 374, 915 P.2d 245, 248 (1996) (recognizing that the public
8 has a right to access proceedings in civil cases under state law and the U.S.
9 Constitution). Unless otherwise provided **by law**, the “sitting of every court of
10 justice shall be public.” NRS 1.090. “Every trial on the merits must be conducted
11 in open court.” NRCP 77(b). This Court has recognized this strong policy in the
12 Nevada Rules for Sealing and Redacting Court Records: “All court records in
13 civil actions are available to the public, except as otherwise provided in these
14 rules or by statute.” SRCR 1(3).

15 A court may only seal records after finding that “the specific sealing or
16 redaction is justified by identified compelling privacy or safety interests that
17 outweigh the public interest in access to the court record.” SRCR 3(4). Grounds
18 supporting sealing include that the “sealing or redaction is necessary to protect
19 intellectual proprietary or property interests such as trade secrets as defined in
20 NRS 600A.030(5)” or other compelling circumstances. SRCR3(4). If a court

seals records, it must use the least restrictive means **and duration**. SRCR 3(6).

B. Motion to Stay

When considering motions to stay, this Court considers the following factors: (1) whether the object of the appeal will be defeated if the stay is denied; (2) whether the appellant will suffer irreparable or serious injury if the stay is denied; (3) whether the respondent will suffer irreparable or serious injury if the stay is granted; and (4) whether the appellant is likely to prevail on the merits in the appeal. NRAP 8(c). As discussed below, these factors weigh against granting United's requested stay.

II. ARGUMENT

A. United is unlikely to prevail on the merits.

Fundamentally, United's motion to extend the stay should be denied because United provided insufficient evidence to overcome the presumption of an open court and open trial record in the first instance.

1. The public interest in this trial was significant.

The public took a significant interest in this trial. Two media requests were granted and the public audience sometimes stretched the livestreaming software to its limit. 1 App 3–4; 3 App 449. Based on the trial record alone, the internet audience ranged from 41 (the entire capacity of the physical courtroom, pursuant to fire marshal restrictions) to 198. 1 App 4.

1 **2. United asks to protect stale, outdated information.**

2 The information United wants to shield from public view cannot have
3 proprietary or trade-secret value because it is stale. *See, e.g., United States v.*
4 *Int’l Bus. Mach. Corp.*, 67 F.R.D. 40, 46 (S.D.N.Y. 1975) (noting that “disclosure
5 of two-and-a-half-year-old sales data” will not result in a “clearly defined, serious
6 injury”). Even a matter of months can render information stale. *See, e.g., Katch,*
7 *LLC v. Sweetser*, 143 F. Supp. 3d 854, 869 (D. Minn. 2015) (information over a
8 month old was stale or would soon become so); *Lexis-Nexis v. Beer*, 41 F. Supp.
9 2d 950, 959 (D. Minn. 1999) (noting four-month-old information would be of
10 little value and thus not a trade secret).

11 By the time of trial, the majority of the exhibits United sought to seal were
12 well over two years old; many were five to fifteen years out of date. 1 App 6; 1
13 App 18–19. Since then, yet another year has passed. It is United’s burden to
14 explain “why the information contained [within these old documents] is not
15 already so stale as to no longer be proprietary and/or harmful.” *Talking Rain*
16 *Beverage Co., Inc. v. DS Servs. of Am., Inc.*, No. 15-cv-1804, 2017 WL 2806831,
17 at *2 (W.D. Wash. June 29, 2017); *see also Glob. Material Techs., Inc. v.*
18 *Dazheng Metal Fibre Co.*, 133 F. Supp. 3d 1079, 1085 (N.D. Ill. 2015) (finding
19 that the party seeking to prevent disclosure bears the burden of “establish[ing]
20 good cause and explain[ing] with particularity why the information is not stale”).

1 Indeed, “the lapse of time” since the creation of these documents “makes it highly
2 unlikely that any exposure” to their contents could be used to United’s detriment.
3 *Hartford Cas. Ins. Co. v. Am. Dairy & Food Consulting Lab’ys, Inc.*, No. 09-cv-
4 0914, 2010 WL 2510999, at *6 (E.D. Cal. June 17, 2010).

5 Instead of providing evidence to meet that burden, however, United
6 provided only conclusory declarations and vague descriptions of “commercially
7 sensitive” information. 3 App 466–89; 3 App 509–13. None of the evidence
8 addressed how years’-old information is relevant in today’s market.

9 **3. United is not pursuing the least restrictive means.**

10 Under the Nevada Rules for Sealing and Redacting Court Records, a court
11 must use the least restrictive means and duration for any sealing or redacting
12 order. SRCR 3(5)–(6). United’s request, on the other hand, seeks to hide broad
13 swaths of information.

14 For example, United requested to seal DX4569, an exhibit that United
15 moved into evidence and shared on the public courtroom screens without
16 limitation. 1 App 9; 1 Resp App 6–14. In response to questions from United’s
17 counsel, United’s witness explained the document, the basis for putting it
18 together, and the business concerns related to the email. *Id.* Yet despite
19 affirmatively introducing this evidence into the public trial proceedings, United
20 now seeks to seal almost every percentage or number in the document (other than

1 dates and Medicare references) without any particularized justification.

2 The same is true for DX4048, DX4478, DX4573, DX5505, DX5506, and
3 DX5507. United moved each exhibit into evidence without any limitation on its
4 use or mention of any confidentiality. 1 App 9–10; 1 Resp App 19. Likewise,
5 United requests to seal documents relating to its nominal payments for ER
6 services, an average of \$246 per claim, a figure United elicited from its own
7 witness during trial. 1 Resp App 38–39. United is unlikely to succeed in its
8 appeal of this order.

9 **B. The sealing issue is peripheral to United’s appeal.**

10 Denying United’s request to seal this non-confidential material will not
11 affect the purpose of United’s overall appeal. The jury awarded a \$62,450,182.29
12 verdict against United. 1 Resp App 21–30; 1 Resp App 31–32. In response,
13 United filed a 147-page motion for new trial, a 38-page motion for judgment as
14 a matter of law, and a 16-page motion for remittitur and to alter or amend the
15 judgment, none of which even discussed the sealing issue. 1 Resp App 33–195;
16 2 Resp App 262–308; 2 Resp App 311–27. It is unlikely that United will devote
17 significant attention to these documents on appeal, if it even addresses them at
18 all.

19 **C. Disclosing this stale information will not harm United.**

20 The problem with United’s harm argument is that United never established

1 that the release of the material at issue would cause it harm in the first place.
2 Instead, United simply relied then, as it does now, on generalizations and
3 unsupported claims that the materials were competitively sensitive. The exhibits
4 United seeks to protect include business plans and revenue projections for bygone
5 years and other financial information that would be disclosed in SEC-mandated
6 filings. *See, e.g.*, 3 App 553–65 and 4 App 566–98 (DX4048); 4 App 604–17
7 (DX4478); 4 App 623–36 (DX4573); 5 App 845 (DX5504); 5 App 847–1065
8 and 6 App 1066–90 (DX5505); 6 App 1105–73 (DX5507). Simply claiming that
9 these materials are “competitively sensitive” is not enough.

10 United’s sole example of alleged harm is not even harm to United. United
11 claims that the disclosure of certain documents during the trial caused non-party
12 MultiPlan’s stock to drop six points. Motion at 4–5. In fact, as the Health Care
13 Providers explained to the trial court, within two weeks of the alleged damaging
14 disclosure, MultiPlan’s stock price was higher than it had been immediately
15 before the documents were disclosed. 1 App 12. United cannot and does not
16 show that MultiPlan’s stock price was affected by anything other than normal
17 market fluctuations. 1 App 12–13.

18 Other information United wishes to seal includes benefit information that
19 is widely disseminated. For example, United’s proposed redactions to PX473
20 seek to protect information including the allowed amount for members’ claims,

1 the amount actually paid to the provider, coinsurance amounts, and similar
2 information. 1 App 11. These allowed amounts and related information were
3 discussed extensively during trial without any confidentiality objection by
4 United. *See id.* The only “harm” that United could suffer from disclosure of this
5 trial information is the potential for the public to know how little United actually
6 reimburses emergency-care providers.

7 As for the testimony United wishes to redact from the trial transcripts, this
8 was testimony made in open court during a livestreamed trial to which United
9 did not pose a contemporaneous objection. 3 App 319–20; 325–27. If United
10 were truly at risk of irreparable harm, it would have objected at trial.

11 **D. Further needless delay harms the public’s interest in open courts.**

12 United continues to tout a narrative that the Health Care Providers are
13 “egregious billers” whose charges for lifesaving emergency medical care cause
14 “financial hardship.” 1 Resp App 164. There can be little doubt that United’s
15 continuing efforts to shroud the trial evidence in secrecy are designed to prevent
16 the public from seeing proof that United’s narrative is false. But the primary
17 interest at issue is the interest of the public and the court system in maintaining
18 openness and transparency. *See* SRCR 1(3). As long as United is able to
19 withhold nonconfidential court documents from the public, that interest is
20 harmed.

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ♦ KENNEDY and that on the 10th day of November, 2022, service of the foregoing **OPPOSITION TO UNITED’S MOTION TO EXTEND STAY OF DISTRICT COURT’S ORDER UNSEALING CERTAIN TRIAL EXHIBITS AND TRANSCRIPTS** was made by electronic service through Nevada Supreme Court’s electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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