

Sealed Settlement Agreements in Federal District Court

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The Report

The Judicial Conference of the United States' Advisory Committee on Civil Rules asked the Federal Judicial Center to conduct research on sealed settlement agreements filed in federal district court. Although the practice of *confidential* settlement agreements is common, the question is how often and under what circumstances such agreements are *filed* under seal.

Many civil cases settle before trial, and defendants commonly seek confidentiality agreements concerning the terms of settlement. Usually such agreements are not filed. A high proportion of civil cases settle,¹ but a sealed settlement agreement is filed in less than one-half of one percent of civil cases. In 97% of these cases, the complaint is not sealed.

The Law of Sealing

"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) (footnotes omitted). "It is uncontested, however, that the right to inspect and copy judicial records is not absolute. Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes." *Id.* at 598.

Accountability is a principal reason for public access. *Joy v. North*, 692 F.2d 880, 893 (2d Cir. 1982) ("An adjudication is a formal act of government, the basis of which should, absent exceptional circumstances, be subject to public scrutiny."); *Jessup v. Luther*, 277 F.3d 926, 928 (7th Cir. 2002) ("the public cannot monitor judicial performance adequately if the records of judicial proceedings are secret"); *id.* at 929 ("The public has an interest in knowing what terms of settlement a federal judge would approve and perhaps therefore nudge the parties to agree to."); *Union Oil Co. of California v. Leavell*, 220 F.3d 562, 568 (7th Cir. 2000) ("The political branches of government claim legitimacy by election, judges by reason. Any step that withdraws an element of the judicial process from public view makes the ensuing decision look more like fiat, which requires compelling justification.").

Courts of appeals have determined that the common law presumption of access applies to documents filed with the court, although it does not apply to documents exchanged in discovery, *Federal Trade Commission v. Standard Financial Management Corp.*, 830 F.2d 404, 408 (1st Cir. 1987); *United States v. Amodeo*, 71 F.3d 1044, 1050 (2d Cir. 1995), or to settlement agreements not filed, *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 781–83 (3d Cir. 1994). Also, the presumption of public access is stronger for documents filed in conjunction with substantive action by the court than for documents filed as part of discovery disputes. *Anderson*

1. An analysis of disposition codes for civil terminations from 1997 through 2001 showed that 22% were dismissed as settled and 2% were terminated on consent judgment. Another 10% were voluntary dismissals, and some of these probably were settled. An additional 20% are coded as "other" dismissals.

v. Cyrovac Inc., 805 F.2d 1, 11 (1st Cir. 1986); *Leucadia Inc. v. Applied Extrusion Technologies Inc.*, 998 F.2d 157, 165 (3d Cir. 1993); *Foltz v. State Farm Mutual Automobile Insurance Co.*, 331 F.3d 1122, 1135–36 (9th Cir. 2003); *Chicago Tribune Co. v. Bridgestone/Firestone Inc.*, 263 F.3d 1304, 1312 (11th Cir. 2001).

Some court opinions have explicit statements that if a settlement agreement is filed with the court for the court's approval or interpretation, then denying the public access to the agreement requires special circumstances. *Bank of America National Trust & Savings Association*, 800 F.2d 339, 345 (3d Cir. 1986) ("Once a settlement is filed in the district court, it becomes a judicial record, and subject to the access accorded such records."); *Herrnreiter v. Chicago Housing Authority*, 281 F.3d 634, 637 (7th Cir. 2002) ("[Defendant's] desire to keep the amount of its payment quiet (perhaps to avoid looking like an easy mark, and thus drawing more suits) is not nearly on a par with national security and trade secret information. Now that the agreement itself has become a subject of litigation, it must be opened to the public just like other information (such as wages paid to an employee, or the price for an architect's services) that becomes the subject of litigation."); *Brown v. Advantage Engineering Inc.*, 960 F.2d 1013, 1016 (11th Cir. 1992) ("It is immaterial whether the sealing of the record is an integral part of a negotiated settlement between the parties, even if the settlement comes with the court's active encouragement. Once a matter is brought before a court for resolution, it is no longer solely the parties' case, but also the public's case. Absent a showing of extraordinary circumstances . . . , the court file must remain accessible to the public.").

Many appellate opinions have stressed the importance of the court's stating specific reasons for sealing a filed document. *In re Cendant Corp.*, 260 F.3d 183, 194 (3d Cir. 2001) ("Broad allegations of harm, bereft of specific examples or articulated reasoning, are insufficient."); *Stone v. University of Maryland Medical System Corp.*, 855 F.2d 178, 182 (4th Cir. 1988) ("the district court must provide a clear statement, supported by specific findings, of its reasons for sealing any records or documents, as well as its reasons for rejecting measures less drastic than sealing them"); *Hagestad v. Tragesser*, 49 F.3d 1430, 1435 (9th Cir. 1995) ("because the district court failed to articulate any reason in support of its sealing order, meaningful appellate review is impossible").

Only two federal district courts have local rules pertaining specifically to sealed settlement agreements. The District of South Carolina proscribes them, D.S.C. L.R. 5.03(C), and the Eastern District of Michigan limits how long they may remain sealed, E.D. Mich. L.R. 5.4. Forty-nine districts (52%) have local rules pertaining to sealed documents generally. Fourteen districts (15%) have rules covering only administrative mechanics (e.g., how sealed documents are marked),² thirty-two districts (34%) have rules covering how long a document may remain sealed (after which it is returned to the parties, destroyed, or un-

2. California Central, California Eastern, Colorado, Delaware, District of Columbia, Georgia Southern, Indiana Southern, Montana, New Hampshire, New York Northern, Oklahoma Western, Rhode Island, Vermont, Wisconsin Eastern.

sealed),³ and twelve districts (13%) have good-cause rules.⁴ These rules are compiled in Appendix B.⁵

Findings

We examined 288,846 civil cases that were filed in a sample of 52 districts. We found 1,270 cases with sealed settlement agreements (0.44%). That is one in approximately 227 cases.

The sealed settlement rate for individual districts ranges from considerably less than the national rate to considerably more than that rate. Figure 1 shows sealed settlement rates for individual districts. Three districts (6%) had no sealed settlement agreements—Indiana Northern, Iowa Southern, and South Dakota. Three districts (6%) had sealed settlement rates more than twice the national rate—Pennsylvania Eastern (0.94%), Hawaii (2.2%), and Puerto Rico (3.3%).⁶

We studied all eleven districts whose local rules require good cause to seal a document. The rate of sealed settlement agreements in those districts was 0.37%. The rate of sealed settlement agreements in the other districts was somewhat higher—0.45%—but the difference was not statistically significant.⁷

Sealed settlement agreements appear in cases of many different types. Table 1 shows nature-of-suit frequencies. More than half of the cases with sealed settlement agreements are either personal injury cases (30%) or employment cases (27%). Another fifth are either contract cases (11%) or civil rights cases (10%). Intellectual property cases account for 11% of civil cases with sealed settlement agreements, but the rate of sealed settlement agreements in such cases is relatively high (1.5%). Cases identified as Fair Labor Standards Act cases have an even higher rate of sealed settlement agreements (2.6%), almost six times the overall average. Because the court must approve settlement agreements in such cases, they are frequently filed.

3. Arizona, California Northern, California Southern, Connecticut, Florida Southern, Idaho, Illinois Northern, Iowa Northern and Southern, Kansas, Maryland, Michigan Eastern, Michigan Western, Minnesota, Mississippi Northern and Southern, Missouri Eastern, New York Eastern, North Carolina Eastern, North Carolina Middle, North Carolina Western, North Dakota, Ohio Northern, Ohio Southern, Oregon, Pennsylvania Middle, Tennessee Eastern, Texas Eastern, Texas Northern, Utah, Virginia Western, Washington Western.

4. California Northern, Illinois Northern, Maryland, Michigan Western, Mississippi Northern and Southern, Missouri Eastern, New York Western, Oklahoma Northern, Tennessee Eastern, Utah, Washington Western. Note that the good-cause rule for the Western District of New York is new (May 1, 2003).

5. In May 2003 we presented to the Advisory Committee on Civil Rules a compilation of both federal and state rules on sealed trial court documents, at the committee's request. This compilation is available in our unpublished report, "Sealed Settlement Agreements in Federal District Court—May 2003 Progress Report," which, like this report, is available at www.fjc.gov.

6. The high rate for Pennsylvania Eastern is due largely to a single multidistrict litigation case; 79% of the cases with sealed settlement agreements that we found in that district were in this multidistrict litigation. The sealed settlement agreement rate in Hawaii is relatively high in part because sealing the record of successful settlement conferences is a relatively frequent practice there; approximately two-thirds of the cases we identified as containing sealed settlement agreements in Hawaii were so identified for this reason. The high rate of sealed settlement agreements in Puerto Rico appears to reflect a relatively more common practice of filing and sealing such agreements there.

7. $p = 0.63$.

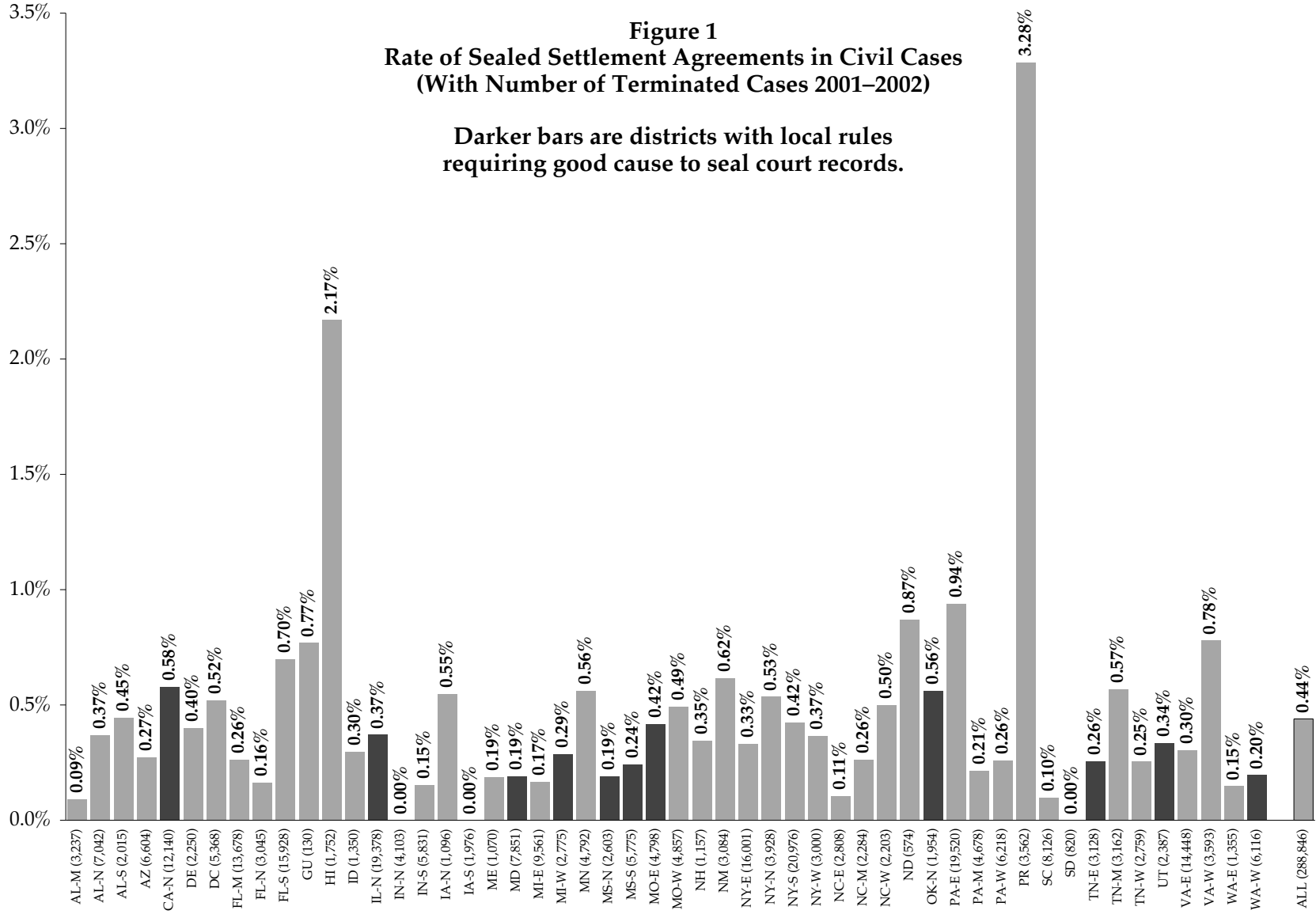


Table 1. Types of Cases with Sealed Settlement Agreements

Nature of Suit	Number of Cases	Proportion Among Cases with Sealed Settlement Agreements ¹	Sealed Settlement Rate
Personal Injury	378	30%	0.82%
Personal Property	28	2%	0.64%
Real Property	7	1%	0.07%
ERISA	26	2%	0.19%
Fair Labor Standards Act	88	7%	2.58%
Other Employment/Labor	223	18%	0.75%
Other Civil Rights	124	10%	0.55%
RICO	9	1%	1.06%
Securities	10	1%	0.73%
Antitrust	10	1%	0.59%
Trademark	48	4%	1.19%
Patent	62	5%	2.17%
Copyright	29	2%	1.35%
Contract	145	11%	0.33%
Other	83	7%	0.08%
Total	1,270	100%	0.44%

1. Entries in the table sum to more than 100% because of rounding.

Sealed settlement agreements appear to be filed typically to facilitate their enforcement. If they are filed with the court, the same judge who heard the case can enforce the agreement without a new action being filed, and the court can enforce the agreement with contempt powers. Often the agreement is filed so that the court can approve it. Among cases with sealed settlement agreements, almost one-quarter (22%) were actions typically requiring court approval of settlement agreements. This includes cases involving minors or other persons requiring special protection (13%), actions under the Fair Labor Standards Act (7%), and class actions (6%).⁸

8. The three individual percentages add up to more than the overall percentage because some cases had more than one reason for court approval of settlements. A few cases with Fair Labor Standards Act claims had other nature-of-suit codes.

Sometimes the settlement agreement is not filed until one party believes it has been breached, and then it is filed as a sealed exhibit in a motion to enforce it. In approximately 11% of the cases with sealed settlement agreements, this was how the agreement came to be filed. In a few additional cases, there was a motion to enforce after the agreement was filed.

Occasionally the settlement agreement is not a sealed document filed with the court, but a part of a sealed or partially sealed proceeding or transcript. This was true for 13% of the cases we found with sealed settlement agreements.

In 97% of the cases with sealed settlement agreements, the *complaint* is not sealed. Almost the only time we encountered a sealed complaint was in cases in which the entire record is sealed. (Sometimes the docket sheet is sealed;⁹ sometimes although the case file is sealed, the docket sheet is not.¹⁰) In one additional

9. We encountered 23 cases with sealed docket sheets: Cahaba Pressure-Treated Forest Products v. OM Group (AL-N 7:97-cv-01917 filed 07/25/1997) (fraud action dismissed as settled); Thomason Lumber Co. v. Cahaba Pressure-Treated Forest Products (AL-N 7:98-cv-00043 filed 01/08/1998) (contract action dismissed as settled); Pennsylvania National Mutual Casualty Insurance Co. v. Cahaba Pressure-Treated Forest Products (AL-N 2:98-cv-01261 filed 05/19/1998) (insurance action dismissed as settled); Sealed Plaintiff v. Sealed Defendant (CA-N 4:00-cv-02945 filed 08/14/2000) (statutory action dismissed as settled); Sealed Plaintiff v. Sealed Defendant (CA-N 3:01-cv-01156 filed 03/21/2001) (statutory action dismissed as settled); Sealed Plaintiff v. Sealed Defendant (CA-N 3:01-cv-02928 filed 07/27/2001) (contract action dismissed as settled); Nick Chorak Mowing v. United States (DC 1:99-cv-00587 filed 03/08/1999) (contract action dismissed as settled); Engel v. Equifax Inc. (DC 1:01-cv-00882 filed 04/17/2001) (statutory action dismissed as settled); United States v. Board of Regents (FL-N 4:93-cv-40226 filed 06/25/1993) (statutory action dismissed as settled); Sealed Plaintiff v. Sealed Defendant (FL-S 0:01-cv-01845 filed 05/04/2001) (commerce action resolved by consent judgment); Casimiro v. Allstate (HI 1:99-cv-00527 filed 07/22/1999) (insurance action dismissed as settled); Kessler v. American Postal (MD 8:98-cv-03547 filed 10/21/1998) (statutory action dismissed as settled); United States v. Frederick Memorial (MD 1:01-cv-02923 filed 10/02/2001) (statutory action dismissed as settled); Compaq Computer Corp. v. SGII Inc. (MI-W 1:02-cv-00028 filed 01/16/2002) (trademark action dismissed as settled); Sealed Plaintiff v. Sealed Defendant (MN 0:98-cv-02428 filed 11/10/1998) (fraud action dismissed as settled); Sealed Plaintiff v. Sealed Defendant (MN 0:99-cv-00292 filed 02/18/1999) (fraud action dismissed as settled); Sealed Plaintiff v. Sealed Defendant (MN 0:02-cv-00369 filed 02/12/2002) (fraud action dismissed as settled); Sealed Plaintiff v. Sealed Defendant (MN 0:02-cv-04270 filed 11/07/2002) (contract action dismissed as settled); Sealed Plaintiff v. Sealed Defendant (MS-S 1:95-cv-00161 filed 03/23/1995) (statutory action dismissed as settled); Compass Marine v. Lambert Fenchurch (MS-S 1:99-cv-00252 filed 04/05/1999) (fraud action dismissed as settled); Arviso v. Mission Manor Health (NM 6:02-cv-01072 filed 08/27/2002) (statutory action dismissed as settled); United States v. Genesee Valley Card (NY-W 6:97-cv-06502 filed 11/12/1997) (statutory action dismissed as settled); United States v. 2986 Tallman Road (NY-W 6:01-cv-06155 filed 03/23/2001) (drug-related seizure of property case resolved by consent judgment).

10. We encountered 15 cases with sealed case files but unsealed docket sheets: a product liability action brought by a minor, Farr v. Newell Rubbermaid Inc. (AL-N 5:00-cv-00997 filed 04/18/2000); an employment action against the University of Michigan in which private medical information was an issue, Baker v. Bollinger (MI-E 4:00-cv-40239 filed 06/26/2000); a civil rights action by a minor against a county, M.K. v. Pinnacle Programs Inc. (MN 0:98-cv-02440 filed 11/13/1998); a wrongful death action against a city and a railroad, Schlicht v. Dakota Minnesota & Eastern Railroad Corp. (MN 0:98-cv-02059 filed 12/28/1999); a job discrimination action brought on behalf of children, Rowe v. Boys and Girls Club of America (MN 0:01-cv-202269 filed 12/10/2001); two consolidated foreclosure actions pertaining to gambling boat mortgages, Credit Suisse First Boston Mortgage Capital LLC v. Doris (MS-N 4:99-cv-00283 filed 11/22/1999), consolidated with Credit Suisse First Boston Mortgage Capital Inc. v. Bayou Caddy's Jubilee Casino (MS-N 4:99-cv-00284 filed 11/22/1999); a *qui tam* action under the False Claims Act against a hospital, United States *ex rel.* Padda v. Jefferson Memorial Hospital (MO-E 4:00-cv-00177 filed 02/03/2000); a RICO action by one unnamed plaintiff against three unnamed defendants, Sealed Plaintiff v. Sealed Defendant (NY-E 9:00-cv-04693 filed 08/11/2000); another product liability case with a mi-

case, all documents in the case file are sealed, including the complaint and the settlement conference report, except for the agreed judgment, which specifies the terms of settlement.¹¹

We did not evaluate whether the sealing of documents complied with circuit law and local rules, but we did observe that the public record almost never included specific findings justifying sealing.

Some of the cases with sealed settlement agreements are likely to be of greater public interest than others. Table 2 lists some types of cases that might be of special public interest. The table shows how many cases of each type had sealed settlement agreements and the proportion of sealed settlement agreements that are in cases of each type. Approximately two-fifths of the cases with sealed settlement agreements have at least one of the features in Table 2 that might make them of special public interest. Appendix C contains case descriptions showing what the public record reveals about each of the 1,270 cases with sealed settlement agreements. Because the complaints are almost never sealed, the public record almost always identifies the defendants and reveals what the defendants are alleged to have done.

We had access to important terms of settlement in 18% of the cases with sealed settlement agreements. Occasionally this was because we had access to sealed documents. Sometimes sealed documents became unsealed. Sometimes documents that are not sealed disclose some or all terms of the settlement agreement. Analysis of information available in this way confirms that settlement agreements, sealed or otherwise, generally contain four essential elements: (1) a denial of liability, (2) a release of liability, (3) the amount of settlement, and (4) a requirement of confidentiality. In unfair competition cases, especially cases involving patents, the terms of settlement typically bind the parties to certain actions in addition to or instead of the payment of a settlement amount. In general, however, the only thing kept secret by the sealing of a settlement agreement is the amount of settlement.

nor plaintiff, *Keyes v. Deere & Co.* (PA-E 2:98-cv-00602 filed 02/06/1998); an insurance case involving a workers' compensation claim, *Slater v. Liberty Mutual Insurance Co.* (PA-E 2:98-cv-01711 filed 03/31/1998); a copyright case, *Valitek Inc. v. Hewlett-Packard Co.* (PA-E 2:99-cv-03024 filed 06/15/1999); an insurance case against a church, *Travelers Casualty & Surety Co. v. Church of the Lord Jesus Christ of the Apostolic Faith* (PA-E 2:00-cv-03320 filed 06/29/2000); a patent case, *Graham Packaging Co. v. Mooney* (PA-M 1:00-cv-02027 filed 11/20/2000); and a third product liability case with a minor plaintiff, *Angelo v. General Motors Corp.* (PA-W 2:00-cv-00871 filed 05/04/2000).

11. This was a civil rights action for failure to prevent disclosure of the plaintiff's medical condition, *Doe v. City of Tulsa* (OK-N 4:00-cv-00896 filed 10/18/2000). We counted this as a case with a sealed settlement agreement, because although the agreed judgment was not sealed, other documents containing terms of settlement were sealed.

Table 2. Types of Cases That Might Be of Special Public Interest

Type of Case	Number of Cases	Proportion Among Cases with Sealed Settlement Agreements
Environmental	10	1%
Product Liability (includes cases with other nature-of-suit codes) ¹	258	20%
Professional Malpractice	40	3%
Public Party Defendant	152	12%
Very Serious Injury (death or serious permanent disability) ²	334	26%
Sexual Abuse	31	2%
Any of These Reasons³	503	40%
None of These Reasons	767	60%

1. More than half of these cases arose from a 1998 airplane crash near Peggy's Cove, Nova Scotia (144 cases in the Eastern District of Pennsylvania). The 1996 crash of TWA Flight 800 taking off from Kennedy Airport also accounted for a substantial fraction of these cases (31 cases in the Southern District of New York).

2. More than half of these cases arose from the Peggy's Cove and TWA 800 airplane crashes (144 cases in the Eastern District of Pennsylvania and 33 cases in the Southern District of New York).

3. Some cases might be of special public interest for more than one reason. Over a third of these cases arose from the Peggy's Cove and TWA 800 airplane crashes.

Conclusion

Sealed settlement agreements are rare in federal court. They occur in less than one-half of one percent of civil cases. In 97% of these cases, the complaint is not sealed, so the public has access to information about the alleged wrongdoers and wrongdoings. Although the public record seldom contains specific findings justifying the sealing of settlement agreements, generally the only thing kept secret by the sealing is the amount of settlement.

Appendix A. Method

Districts

We looked for sealed settlement agreements in all 11 districts with local rules requiring good cause to seal a document and in a 50% random sample of the other districts.¹²

We originally designed our method so that we might include all districts in the study, but we studied the districts in a modified random order so that if we concluded the research without studying all districts, we would have studied a random sample. Because state court practices might influence federal practice, we decided to study districts in the same state together, and we decided that the same researcher should study all districts in the same state. So we listed the states (plus the District of Columbia, Guam, Puerto Rico, and the Virgin Islands) in random order and began studying the districts in that order.¹³

We modified random selection in the following ways. We began our research with districts in North Carolina, which is home to the overseeing subcommittee's chair (the Honorable Brent McKnight, U.S. District Judge for the Western District of North Carolina), so that his additional knowledge about cases in his district would serve as a check on our work. We also put at the top of the list states with districts that have local rules specifically concerning sealed settlement agreements. The Eastern District of Michigan has a rule calling for the unsealing of settlement agreements after two years. E.D. Mich. L.R. 6.4. The District of South Carolina has a new rule proscribing the sealing of settlement agreements. D.S.C. L.R. 5.03(C). We also put Florida at the top of the list, because of the state's groundbreaking "Sunshine in Litigation" law, Fla. Stat. §69.081.

We decided that the first 47 districts in the list would provide a sample of sufficient size, taking into account an estimate that it would take approximately a year and a half to study that many districts. We determined that our time frame would permit us to supplement the random sample with the five otherwise unselected districts with local rules requiring good cause to seal a document. Our study would then include all 11 districts with good-cause rules,¹⁴ permitting a rough comparison between those districts and a sample of other districts, especially with respect to sealed settlement rates.¹⁵

12. The Western District of New York adopted a good-cause rule after the cases in this study were terminated.

13. The District of the Northern Mariana Islands is not included, because its docket sheets are not available electronically.

14. California Northern, N.D. Cal. Civ. L.R. 79-5; Illinois Northern, N.D. Ill. L.R. 26.2; Maryland, D. Md. L.R. 105.11; Michigan Western, W.D. Mich. L. Civ. R. 10.6; Mississippi Northern and Southern, N. & S. D. Miss. L.R. 83.6; Missouri Eastern, E.D. Mo. L.R. 83-13.05(A); Oklahoma Northern, N.D. Okla. L.R. 79.1(D); Tennessee Eastern, E.D. Tenn. L.R. 26.2; Utah, D. Utah L. Civ. R. 5-2; and Washington Western, W.D. Wash. L. Civ. R. 5. The Western District of New York adopted a good-cause rule after the cases in this study were terminated, *see* W.D.N.Y. L.R. 5.4(a) (adopted May 1, 2003).

15. Three of these additional districts—California Northern, Illinois Northern, and Oklahoma Northern—are in multidistrict states. We did not study the other districts in those states.

To test whether results from our modified random sample are likely to be different from an unmodified random sample, we computed the overall rate of sealed settlement agreements using a procedure somewhat different from just dividing the number of sealed settlements we found by the number of cases we examined. Nine districts were selected before we started selecting districts at random—districts in Florida, Michigan, North Carolina, and South Carolina. We computed an average by weighting each of these districts as 1. There are 85 other districts. Not considering the five districts that were selected only because they have good-cause rules (California Northern, Illinois Northern, Maryland, Oklahoma Northern, and Utah), we selected 38 at random. So we weighted these districts $85/38 = 2.24$ in computing an average. Using this weighting scheme, we computed a sealed settlement rate of 0.46%, which is almost identical to the unweighted rate of 0.44%. We decided, therefore, to analyze our data as if our sample were truly random.

Termination Cohort

We decided to look at cases terminated over a two-year period—calendar years 2001 and 2002. Because we include all calendar months, there are unlikely to be any hidden seasonal biases. Looking at two years of terminations ensures that our data will not be based only on an idiosyncratic year.

Finding Sealed Settlement Agreements

Our search for sealed settlement agreements was a process of step-by-step elimination—upon closer and closer review—of cases that do not have sealed settlement agreements.

We rejected the idea of looking only at cases with disposition codes of “settled” or “consent judgment” in data reported to the Administrative Office because that would have eliminated 37% of the cases we ultimately found.¹⁶ Even if we also looked at cases with disposition codes of “voluntary dismissal” and “other dismissal,” we would have eliminated 20% of the cases we ultimately found.¹⁷

We attempted to download all 288,846 docket sheets for cases terminated in 2001 or 2002 in the study districts. We found 138 of the docket sheets (0.05%) to be sealed. We searched each unsealed docket sheet for the word “seal.”¹⁸ This search found “seal,” “sealed,” “unseal,” etc., including “Seal,” “Seale,” etc., in a party name. Docket *entries* (and headers) with the word “seal” in them were extracted and assembled into a text file. If a docket *sheet* had the word “seal” in it, then we also searched for the word “settle” (which found “settle,” “settled,” “settlement,” etc.), extracted docket *entries* with the word “settle” in them, and

16. Sixty percent of the cases we found were coded 13 = “dismissed: settled” and 4% were coded 5 = “judgment on consent.”

17. Eight percent of the cases we found were coded 12 = “dismissed: voluntarily” and 9% were coded 14 = “dismissed: other.”

18. Because the Northern District of Illinois has a procedure for restricting public access to documents without actually sealing them (although they may also be sealed), for that district we also searched for the word “restrict.”

assembled them into the same text file as the docket entries with the word “seal” in them. Naturally, some docket entries had both the word “seal” and the word “settle” in them.

We considered, but rejected, looking only at cases in which a docket entry with the word “seal” had a date within two weeks, for example, of either the termination date or a docket entry with the word “settle.” Had we done this, we would have missed 6% of the cases we ultimately found.¹⁹

The docket entries compiled using this method came from 15,043 cases. If “seal” and “settle” docket entries from the same case suggested that the case might or did have a sealed settlement agreement, then we read the entire docket sheet for that case. Sometimes, for example, a docket entry merely says “sealed document,” and review of other docket entries is necessary to determine what the sealed document might be.²⁰

This review of 2,262 docket sheets eliminated cases with sealed documents filed only at the beginning of *qui tam* actions or attached only to discovery motions, motions for summary judgment, or motions in limine.

When we reviewed a complete docket sheet, we determined two things. First, we determined whether the case might or did include a sealed settlement agreement. If so, then we identified which documents in the case file to review to learn what the case is about and to learn as much as possible about the sealed settlement agreement. We reviewed actual documents filed in 1,410 cases. Generally we reviewed complaints, cross-claims and counterclaims, court opinions, and documents pertaining, or possibly pertaining, to the settlement.

We were not able to determine with very good precision whether cases with sealed docket sheets contained sealed settlement agreements, so we regarded cases with sealed docket sheets that were terminated by consent judgment or settlement as containing sealed settlement agreements and cases terminated otherwise as not containing sealed settlement agreements.²¹

In this way we identified 1,270 cases among cases terminated over a two-year period in 52 districts that appear to have sealed settlement agreements.²² Table A summarizes the number of cases reviewed in each district. Descriptions of these cases are presented in Appendix C.

19. In one case the word “seal” is 627 days from both termination and the word “settle” (Franco v. Saks & Co., NY-S 1:00-cv-05522 filed 07/26/2000).

20. For this project, researchers who examined docket sheets and court documents all have law degrees—either a J.D. or an M.L.S. (master of legal studies, which typically requires approximately one year of law school). Tim Reagan reviewed documents from districts in California, Guam, Iowa, Michigan, Missouri, New Hampshire, North Carolina, Puerto Rico, South Carolina, and Virginia; Shannon Wheatman reviewed documents from districts in Florida, Hawaii, Indiana, Maine, Maryland, North Dakota, Pennsylvania, Puerto Rico, Virginia, and Washington; Marie Leary reviewed documents from districts in Alabama, Arizona, Delaware, Idaho, New York, and South Dakota; Natacha Blain reviewed documents from districts in Illinois, Minnesota, Mississippi, New Mexico, Oklahoma, Tennessee, and Utah; Steve Gensler reviewed documents from the District of Columbia.

21. We were given access to 17 of these sealed docket sheets, and our decision as to the presence of a sealed settlement agreement was based on a review of the docket sheets rather than the less precise rule of thumb.

22. This includes 23 cases (2%) with sealed docket sheets terminated either by consent judgment or settlement, according to data reported to the Administrative Office.

Sealed Settlement Agreements

Table A. Number of Cases Examined in Each District

District	Cases Terminated in 2001 or 2002	Sealed Docket Sheets	Docket Sheets with Entries Examined	Docket Sheets Read	Case Files Examined	Cases with Sealed Settlement Agreements
Alabama Middle	3,237	0	80	4	3	3
Alabama Northern	7,042	3	745	26	24	26
Alabama Southern	2,015	1	78	22	9	9
Arizona	6,604	18	347	32	21	18
California Northern ¹	12,140	11	635	146	82	70
Delaware	2,250	0	213	13	9	9
District of Columbia	5,368	5	469	39	35	28
Florida Middle	13,678	17	529	103	43	36
Florida Northern	3,045	2	160	11	5	5
Florida Southern	15,928	16	669	260	128	111
Guam	130	0	7	3	1	1
Hawaii	1,752	2	458	42	40	38
Idaho	1,350	6	440	10	5	4
Illinois Northern ¹	19,378	0	649	99	80	72
Indiana Northern	4,103	1	216	11	0	0
Indiana Southern	5,831	0	200	60	13	9
Iowa Northern	1,096	0	42	15	6	6
Iowa Southern	1,976	0	69	9	0	0
Maine	1,070	0	141	10	2	2
Maryland ¹	7,851	8	232	20	15	15
Michigan Eastern	9,561	0	351	52	19	16
Michigan Western ²	2,775	2	181	13	7	8
Minnesota	4,792	13	300	31	27	27
Mississippi Northern ²	2,603	0	54	22	5	5
Mississippi Southern ²	5,775	11	211	38	18	14
Missouri Eastern ²	4,798	0	342	53	22	20
Missouri Western	4,857	0	167	35	27	24
New Hampshire	1,157	2	83	10	4	4
New Mexico	3,084	3	86	23	19	19
New York Eastern	16,001	0	495	88	59	53
New York Northern	3,928	0	192	27	22	21

Table A. Number of Cases Examined in Each District (continued)

District	Cases Terminated in 2001 or 2002	Sealed Docket Sheets	Docket Sheets with Entries Examined	Docket Sheets Read	Case Files Examined	Cases with Sealed Settlement Agreements
New York Southern	20,976	0	948	130	95	89
New York Western	3,000	12	106	20	12	11
North Carolina Eastern	2,808	0	143	12	4	3
North Carolina Middle	2,284	0	63	10	7	6
North Carolina Western	2,203	2	101	27	14	11
North Dakota	574	0	126	8	6	5
Oklahoma Northern ¹	1,954	0	176	35	15	11
Pennsylvania Eastern	19,520	0	655	208	192	183
Pennsylvania Middle	4,678	0	520	25	12	10
Pennsylvania Western	6,218	0	306	44	20	16
Puerto Rico	3,562	0	223	159	120	117
South Carolina	8,126	0	311	25	8	8
South Dakota	820	0	40	6	0	0
Tennessee Eastern ²	3,128	0	249	15	11	8
Tennessee Middle	3,162	0	581	39	24	18
Tennessee Western	2,759	0	222	37	16	7
Utah ¹	2,387	3	179	11	8	8
Virginia Eastern	14,448	0	330	57	47	44
Virginia Western	3,593	0	112	41	31	28
Washington Eastern	1,355	0	70	3	2	2
Washington Western ²	6,116	0	741	23	16	12
Total Number of Cases	288,846	138	15,043	2,262	1,410	1,270

1. District with a local rule requiring good cause for sealing and *not* part of the 50% random sample.

2. District with a local rule requiring good cause for sealing and part of the 50% random sample.

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Appendix B

Federal District Court Local Rules on Sealed Records

This appendix is a compilation of federal district court local rules on sealed documents as of January 2004.²³

Middle District of Alabama

No relevant local rule.

Northern District of Alabama

No relevant local rule.

Southern District of Alabama

No relevant local rule.

District of Alaska

No relevant local rule.

District of Arizona

Analysis: No restriction on the court's authority to seal a document. A sealed document may not remain under seal indefinitely. A document filed under seal in an action for which no trial commenced will be unsealed and eligible for destruction twenty-three years from the date final judgment or final disposition was entered. A document filed under seal in an action for which a trial commenced or an action was consolidated pursuant to Fed. R. Civ. P. 65(a) will be unsealed twenty-three years from the date final judgment or final disposition was entered and will remain stored as a permanent record. This rule does not apply to a document placed under seal in a case in which final judgment or final disposition occurred prior to 1990. Nor does it apply to sexual abuse cases filed pursuant to 18 U.S.C. § 3509 and juvenile cases, unless the record has been expunged.

District of Arizona Local Rule 1.3. Custody and Disposition of Exhibits and Sealed Documents.

(d) *Sealed Documents—Generally.* Unless otherwise ordered by the Court, any sealed document, paper, case file or thing in any action where final judgment or final disposition occurred in 1990 or thereafter, will be subject to the custody and dis-

position processes according to (e) or (f), below, as applicable.

(e) *Sealed Documents—Actions in Which No Trial Commenced.* Unless otherwise ordered by the Court, any document, paper, case file or thing filed under seal in any action for which no trial commenced shall be eligible for destruction no less than 23 years from the date of entry of final judgment or final disposition. The seal will be vacated without further action by the Court at the time of destruction.

(f) *Sealed Documents—Actions in Which the Case Was Terminated During or After Trial.* Unless otherwise ordered by the Court, any document, paper, case file or thing filed under seal in any action for which a trial commenced shall be unsealed without further action by the Court 23 years from the date of entry of final judgment or final disposition, and will remain stored as a permanent record. This rule further applies to all cases consolidated pursuant to Rule 65 (a), Federal Rules of Civil Procedure.

The following types of cases will be exempt from this practice:

- Sexual abuse cases filed pursuant to 18 U.S.C. § 3509.
- Juvenile cases, unless the record has been expunged.

Eastern and Western Districts of Arkansas

No relevant local rule.

Central District of California

Analysis: No restriction on the court's authority to seal a document. A sealed document may remain sealed indefinitely; no durational limitations are imposed by this rule. Disclosure can only occur upon written order of the court.

23. Marie Leary took the lead in compiling and analyzing these rules.

**Central District of California Local Rule 79-5.
Confidential Court Records.**

79-5.1. Filing Under Seal—Procedures. No case or document shall be filed under seal without prior approval by the Court. Where approval is required, a written application and a proposed order shall be presented to the judge along with the document submitted for filing under seal. The proposed order shall address both the sealing of the application and order itself, if appropriate. The original and judge's copy of the document shall be sealed in separate envelopes with a copy of the title page attached to the front of each envelope. Conformed copies need not be placed in sealed envelopes. Where under-seal filings are authorized by statute or rule, the authority therefor shall appear on the title page of the proposed filing.

79-5.2. Confidential Court Records—Disclosure. No sealed or confidential record of the Court maintained by the Clerk shall be disclosed except upon written order of the Court.

79-5.3. Procedure for Disclosure of Confidential Court Records. An application for disclosure of sealed or confidential court records shall be made to the Court in writing and filed by the person seeking disclosure. The application shall set forth with particularity the need for specific information in such records. The procedures of L.R. 7-3 *et seq.* shall govern the hearing of any such application.

Eastern District of California

Analysis: No restriction on the court's authority to seal a document. A sealed document may remain sealed indefinitely; no durational limitations are imposed by this rule. Unsealing of a document must be made by court order.

Eastern District of California General Local Rule 39-138(b). Sealing of Documents.

Except as otherwise provided by statute or rule, documents may be sealed only upon written order of a Judge or Magistrate Judge. Court orders sealing documents are filed and maintained in the public case file and should not reveal the sealed information. A duplicate order is attached to the envelope containing the sealed documents. The case file shall reflect the date a document is ordered unsealed and by whom, and, if a document is resealed, the date and by whom.

Northern District of California

Analysis: The court must find that good cause to seal has been established before ordering a document or portions thereof to be placed under seal. A sealed document may not remain under seal indefinitely. Unless the court orders otherwise upon a showing of good cause at the conclusion of the case by a party that submitted the document that the court placed under seal, the document will be automatically unsealed and open to public inspection ten years from the date the case was transmitted to the National Archives and Records Administration or other court-designated depository.

Northern District of California Civil Local Rule 79-5. Sealed or Confidential Documents.

(a) *Applicability.* When a statute, a federal or local rule or a Court order permits documents or things to be filed under seal, i.e., not open to inspection by the public, the procedures set forth in this local rule apply.

(b) *Lodging Matter with Request to File Under Seal.* A party authorized by statute, rule or Court order to file a document under seal must lodge the document with the Clerk in accordance with this rule. The Clerk shall refer the matter to the assigned Judge pursuant to Civil L.R. 79-5(d). No document shall be filed under seal except pursuant to a Court order that authorizes the sealing of the particular document or portion thereof and is narrowly tailored to seal only that material for which good cause to seal has been established. Any order sealing any documents shall direct the sealing of only those documents, pages or, if practicable, those portions of documents or pages, which contain the information requiring confidentiality. All other portions of such documents shall be included in the public file.

Commentary: As a public forum, the Court will only entertain requests to seal that establish good cause and are narrowly tailored to seal only the particular information that is genuinely privileged or protectable as a trade secret or otherwise has a compelling need for confidentiality. Documents may not be filed under seal pursuant to blanket protective orders covering multiple documents. Counsel should not attempt to seal entire pleadings or memoranda required to be filed pursuant to the Federal Rules of Civil Procedure or these Local Rules.

(c) *Format.* The lodged document must be contained in an 8½ inch by 11 inch sealed envelope or other suitable container. The party must affix a cover sheet to the document and to its envelope or container, which must:

(1) Set out the information required by Civil L.R. 3-4(a) and (b);

(2) Set forth the name, address and telephone number of the submitting party;

(3) If filed pursuant to a previous Court order, state the date and name of the Judge ordering the matter filed under seal and attach a copy of the order; if filed pursuant to statute or rule, state the authorizing statute or rule and good cause for filing the submitted matter under seal;

(4) Prominently display the notation: "DOCUMENT FILED UNDER SEAL." When permitted by the Court order, the notation may also include: "NOT TO APPEAR ON THE PUBLIC DOCKET."

(d) *Motion to File Under Seal.* Counsel seeking to file a document or thing under seal, which is not authorized by statute or rule to be so filed, may file a motion under Civil L.R. 7-10 and lodge the document or thing with the Clerk in a manner which conforms with Civil L.R. 79-5(c). If pursuant to referral by the Clerk or motion of a party, the Court orders that a lodged document be filed under seal, the Clerk shall file the lodged document under seal. Otherwise, the lodged document shall be returned to the submitting party and the document shall not be placed in the file.

Commentary. Upon receipt of an order to file a lodged document under seal, the Clerk shall file-stamp the sealed envelope or container containing the document. Following receipt and away from public view, the clerk shall remove the item from the envelope, place a dated filed-stamp on the original document, enter it on the docket in a manner that ensures confidentiality consistent with this local rule, and place the document in a sealed folder which shall be maintained in a secure location at the courthouse of the assigned Judge or at the national Archives and Records Administration or other Court-designated depository.

(e) *Effect of Seal.* Unless otherwise ordered by the Court, any document, paper or thing filed under seal shall be kept from public inspection, including inspection by attorneys and parties to the action during the pendency of the case. Once a case is closed, any document, paper or thing filed under seal in a case shall be open to public inspection without further action by the Court 10

years from the date the case is transmitted to the National Archives and Records Administration or other Court-designated depository. However, a party that submitted documents, papers or other things which the Court placed under seal in a case may, upon showing good cause at the conclusion of the case, seek an order which would continue the seal until a specific date beyond the 10 years provided by this rule. Nothing in this rule is intended to affect the normal records destruction policy of the United States Courts.

Southern District of California

Analysis: No restriction on the court's authority to seal a document. A sealed document may not remain sealed indefinitely. Unless otherwise ordered by the court, a sealed document will be returned to the party that submitted it upon entry of the final judgment or termination of the appeal, if any.

Southern District of California Local Civil Rule 79.2. Books and Records of the Clerk.

b. *Sealed Documents.* Documents filed under seal in civil actions will be returned to the party submitting them upon entry of the final judgment or termination of the appeal, if any, unless otherwise ordered by the court.

c. *Sealing Orders.* Documents that are to be filed under seal must be accompanied by an order sealing them. If the order is also to be filed under seal, it shall so state.

District of Colorado

Analysis: No restriction on the court's authority to seal a document. A sealed document may remain sealed indefinitely; no durational limitations are imposed by this rule.

District of Colorado Local Civil Rule 7.2. Motions to Seal; Motions to Close Court Proceedings.

A. *Scope.* Upon motion and a showing of compelling reasons, a judicial officer may order that:

1. All or a portion of papers and documents filed in a case shall be sealed; or

2. All or a portion of court proceedings shall be closed to the public.

B. *Motion Open to Public Inspection.* A motion to seal or close court proceedings will be placed in the case file and open to public inspection.

C. *Proposed Filing.* A proposed filing of papers or documents will be submitted under seal until the motion to seal is decided by a judicial officer.

D. *Public Notice; Objections.* On the business day after the filing of a motion to seal or motion to close court proceedings, a public notice will be posted in the clerk's office and on the court's web site. The public notice will advise of such motion and state that any person or entity may file objections to the motion on or before the date set forth in such public notice. The date will be not less than three business days after the public notice is posted.

E. *Order.* No order to seal or close court proceedings will be entered before the date set forth in the public notice for filing objections, except in emergency circumstances shown or referred to in the motion.

**District of Colorado Local Civil Rule 7.3.
Procedures for Filing Papers and Documents
Under Seal.**

A. *Manner of Filing.* The following papers or documents must be placed unfolded in a sealed envelope with a copy of a cover page (see section B. of this rule) affixed to the outside of the envelope:

1. papers or documents ordered sealed by the court;
2. proposed filings of papers or documents submitted under seal with a motion requesting that the documents be sealed; and
3. documents required to be sealed by law.

B. *Cover Page.* The cover page affixed to the outside of the sealed envelope must include:

1. the case caption;
2. the title of the paper or document;
3. the name, address, and telephone number of the attorney or pro se party filing the paper or document;
4. a notation that the paper or document is filed under seal;
5. the title and date of the court order pursuant to which the paper or document is sealed, if applicable; or
6. the citation of the statute or other authority pursuant to which the paper or document is sealed, if applicable.

C. *Copies.* Copies of the papers or documents in sealed envelopes shall be filed in accordance with D.C. Colo. L. Civ. R. 10.1.L.

District of Connecticut

Analysis: No restriction on the court's authority to seal a document. A sealed document may not remain sealed indefinitely. If counsel did not file a motion for return of the sealed document, ninety days after final determination of the action the clerk may destroy the sealed document or send it with other parts of the file to the Federal Records Center, whereupon the document will be automatically unsealed without notice to counsel.

**District of Connecticut Local Civil Rule 5(d).
Serving and Filing Pleadings and Other Papers.
Sealed Documents.**

1. Counsel seeking to file a document under seal shall file a motion to seal and shall attach to the motion the document to be sealed. The document shall be submitted in an unsealed envelope, bearing the caption of the case, the case number, and the caption of the document to be sealed. The Clerk of the Court shall file-stamp the motion to seal and the document to be sealed, shall docket the motion and document and shall forward the motion to seal and the document to be sealed to the Court for consideration. If ordered sealed by the Court, the Clerk shall seal the document in the envelope provided by counsel, shall note the date of the sealing order on the envelope and docket sheet. Until such document is ordered sealed, the document shall be treated as a public document subject to public inspection. In the alternative, counsel can seek advance permission of the Court to file a document under seal without submitting the document to be sealed.

2. Counsel filing documents which are, or may be claimed to be, subject to any protective or impounding order previously entered shall file with the documents, and serve on all parties, a notice that the documents are, or are claimed to be, subject to such order or orders, identifying the particular order or orders by date, and shall submit such documents to the Clerk under seal.

3. Any file or document ordered sealed by the Court upon motion of the parties, by stipulation or by the Court, sua sponte, shall remain sealed pending further order of this Court, or any Court sitting in review. Upon final determination of the action, as defined in Rule 14 of the Local Rules of Civil Procedure, counsel shall have ninety (90) days to file a motion pursuant to Rule 14 for the return of the sealed documents. Any sealed document thereafter remaining may be destroyed by the Clerk pursuant to Rule 14 or retired by the Clerk with other parts of the file to the Federal

Records Center, whereupon they shall be automatically unsealed without notice to counsel.

District of Delaware

Analysis: No restriction on the court's authority to seal a document. A sealed document may remain sealed indefinitely; no durational limitations are imposed by this rule.

District of Delaware Local Rule 5.3. Number of Copies.

The original and one copy of pleadings, stipulations, motions, responses to motions, briefs, memoranda of points and authorities, appendices and any papers filed under seal shall be filed with the Clerk of Court. Any party filing papers under seal shall distinguish the original on the cover of the paper. The original of all other papers required to be filed shall be filed with the Clerk. Two copies of each paper filed with the Court shall be served on local counsel for each of the other parties. Whenever papers are captioned in more than one action, sufficient copies shall be furnished to permit the Clerk to file one copy in each action.

District of the District of Columbia

Analysis: No restriction on the court's authority to seal a document. A sealed document may remain sealed indefinitely; no durational limitations are imposed by this rule.

District of Columbia Federal District Court Local Civil Rule 5.1(j). Form and Filing of Pleadings and Other Papers. Sealed or Confidential Documents.

(1) Absent statutory authority, no cases or documents may be sealed without an order from the Court. Any pleading filed with the intention of being sealed shall be accompanied by a motion to seal. The document will be treated as sealed, pending the outcome of the ruling on the motion. Failure to file a motion to seal will result in the pleading being placed in the public record.

(2) Unless otherwise ordered or otherwise specifically provided in these Local Rules, all documents submitted for a confidential in camera inspection by the Court, which are the subject of a Protective Order, which are subject to an existing order that they be sealed, or which are the subject of a motion for such orders, shall be submitted to the Clerk securely sealed in an envelope/box needed to accommodate the documents. The envelope/box containing such documents shall

contain a conspicuous notation that carries "DOCUMENT UNDER SEAL" or "DOCUMENTS SUBJECT TO PROTECTIVE ORDER," or the equivalent.

(3) The face of the envelope/box shall also contain the case number, the title of the Court, a descriptive title of the document and the case caption unless such information is to be, or has been, included among the information ordered sealed. The face of the envelope/box shall also contain the date of any order, or the reference to any statute permitting the item sealed.

(4) Filings of sealed materials must be made in the Clerk's Office during the business hours of 9:00 a.m. and 4:00 p.m. daily except Saturdays, Sundays and legal holidays. Filings at the security desk are prohibited because the Security Officers are not authorized to accept this material.

Middle District of Florida

No relevant local rule.

Northern District of Florida

No relevant local rule.

Southern District of Florida

Analysis: No specific restriction on the court's authority to seal a document; the party seeking to file a document under seal must set forth a reasonable basis for departing from the court's general policy of public filings. A sealed document may not remain sealed indefinitely unless the court's sealing order specifically provides for permanent sealing of the matter. A sealed document will be unsealed, destroyed, or returned to the filing party upon expiration of the time specified in the court's sealing order, which may not exceed five years from the date of filing absent extraordinary circumstances.

Southern District of Florida General Local Rule 5.4. Filings Under Seal; Disposal of Sealed Materials.

A. *General Policy.* Unless otherwise provided by law, Court rule or Court order, proceedings in the United States District Court are public and Court filings are matters of public record. Where not so provided, a party seeking to file matters under seal shall follow the procedures prescribed by this rule.

B. *Procedure for Filings Under Seal.* A party seeking to make a filing under seal shall:

1. Deliver to the Clerk's Office an original and one copy of the proposed filing, each contained in a separate plain envelope clearly marked as "sealed document" with the case number and style of the action noted on the outside. The Clerk's Office shall note on each envelope the date of filing and docket entry number.

2. File an original and a copy of the motion to seal with self-addressed postage-paid envelopes, setting forth a reasonable basis for departing from the general policy of a public filing, and generally describing the matter contained in the envelope. The motion shall specifically state the period of time that the party seeks to have the matter maintained under seal by the Clerk's Office. Unless permanent sealing is sought, the motion shall set forth how the matter is to be handled upon expiration of the time specified in the Court's sealing order. Absent extraordinary circumstances, no matter sealed pursuant to this rule may remain sealed for longer than five (5) years from the date of filing.

3. File an "ORDER RE: SEALED FILING" in the form set forth at the end of this rule. The form is available at the Clerk's Office. The bottom portion should be left blank for the Judge's ruling.

C. *Court Ruling*. If the Court grants the motion to seal, the Clerk's Office shall maintain the matter under seal as specified in the court order. If the Court denies the motion to seal, the original and copy of the proposed filing shall be returned to the party in its original envelope.

D. *Disposition of Sealed Matter*. Unless the Court's sealing order permits the matter to remain sealed permanently, the Clerk will dispose of the sealed matter upon expiration of the time specified in the Court's sealing order by unsealing, destroying, or returning the matter to the filing party.

Comment (2001): The current amendments are intended to reflect more accurately existing procedures, and to assist the court in the maintenance and ultimate disposition of sealed records by creating a form order which specifies how long the matter is to be kept under seal and how it is to be disposed of after the expiration of that time. By its terms, this rule does not apply to materials covered by specific statutes, rules or court orders authorizing, prescribing or requiring secrecy. However, litigants are required to complete an "Order Re: Sealed Filing" in the form set forth at the end

of this rule for materials being filed under seal after the entry of, and pursuant to, a protective order governing the use of and disclosure of confidential information.

Middle District of Georgia

No relevant local rule.

Northern District of Georgia

No relevant local rule.

Southern District of Georgia

Analysis: No restriction on the court's authority to seal a document. A sealed document may remain sealed indefinitely; no durational limitations are imposed by this rule.

Southern District of Georgia Local Rule 79.7. Records and Documents. Sealed Documents.

(a) Papers submitted for filing with the Clerk may be placed under seal only where required by operation of law, these rules, or order of a judicial officer.

(b) Any person desiring to have any matter placed under seal shall present a motion stating grounds why a document filed with the Clerk should not be available for public inspection. The Clerk shall: (i) docket the motion as a Motion to Seal; (ii) refrain from labeling the filing as "sealed" or identifying the person seeking the sealing order unless the person consents; (iii) designate any accompanying papers as "sealed matter"; and (iv) maintain the motion and accompanying papers in a secure file pending a ruling on the Motion to Seal.

(c) If the Motion to Seal is denied, any papers which the person sought to have sealed, and which were submitted to the Clerk with the motion, shall be returned to the person, who shall then have the option of filing the papers in the normal course.

(d) Motions to Seal may extend to three layers of information: (1) the name of the movant; (2) the title of the filing sought to be sealed; and (3) the contents of the filing itself. In most cases, only the contents of the filing itself (e.g., proprietary data embodied within an in limine motion) will warrant sealing, not the title of the filing (e.g., Motion in Limine) or the identity of the movant (e.g., XYZ Tire Company). Therefore, unless the Court specified otherwise, the Clerk shall construe all sealing orders to extend only to the contents of the un-

derlying filing. The burden rests upon the moving party to justify all three sealing levels.

Southern District of Georgia Local Rule 83.28. Attorneys, Court Facilities, and Business. Release of Information by Courthouse Personnel.

All courthouse supporting personnel, including but not limited to the United States Marshal and his deputies, the Clerk and his deputies, the Probation Officer and probation clerks, bailiffs, court reporters, and any employees or subcontractors retained by the official court reporters, are prohibited from disclosing to any person, without authorization from the Court, any information relating to a pending grand jury proceeding, criminal case, or civil case that is not part of the public record of the Court. The public record of each case shall be those materials which are contained in the court's official file as maintained by the Clerk except such parts thereto as may be sealed, secret, impounded or specially set aside for in camera inspection. . . .

District of Guam

No relevant local rule.

District of Hawaii

No relevant local rule.

District of Idaho

Analysis: No restriction on the court's authority to seal a document. A sealed document may not remain sealed indefinitely. Unless the court orders otherwise, after the case is closed and the appeal time has expired, or if the case is appealed, after the conclusion of all appeals, the sealed document will be returned to the submitting party.

District of Idaho Local Rule 5.3. Sealed Documents and Public Access.

(a) *Motion to File Under Seal.* Counsel seeking to file a document under seal shall file an ex parte motion to seal, along with supporting memorandum and proposed order, and lodge the document with the Clerk of Court. Said motion must contain "MOTION TO SEAL" in bold letters in the caption of the pleading.

(b) *Motion to Seal Existing Documents.* Counsel seeking to place a pending case or filed document under seal shall file an ex parte motion to seal, along with supporting memorandum and a proposed order with the court. Said motion must

contain "MOTION TO SEAL" in bold letters in the caption of the pleading. Portions of a document cannot be placed under seal. Instead, the entire document must be placed under seal in order to protect confidential information.

(c) *Public Information.* The Clerk of Court shall file and docket the motion to seal in the public record of the court. All lodged documents under seal will not be docketed, scanned or available for public inspection unless otherwise ordered by the court.

(d) *Format of Lodged Documents Under Seal.* Counsel lodging the material to be sealed shall submit the material in an UNSEALED 8½ x 11 inch manila envelope. The envelope shall contain the title of the court, the case caption, and case number.

(e) *Procedures.* The Clerk of Court will forward the lodged documents to the assigned judge for consideration. The assigned judge will direct the clerk to:

- (1) File the documents under seal with any further specific instructions; or
- (2) Return the documents to the offering party with appropriate instructions; or
- (3) File the documents or materials in the public record.

(f) *Return of Sealed Documents to Public Record.* Because the Federal Records Center prohibits the storage of sealed records or documents, the clerk must unseal all documents and cases prior to shipment of any record to the Federal Records Center. Absent any other court order, the sealed documents will be returned to the submitting party after the case is closed and the appeal time has expired, or if appealed, after the conclusion of all appeals.

Central District of Illinois

No relevant local rule.

Northern District of Illinois

Analysis: The court must find that good cause has been shown before ordering a document to be filed as a restricted or sealed document. A restricted or sealed document may not remain restricted or under seal indefinitely. Except where the court, in response to a request of a party or on its own motion, orders otherwise, the clerk will place the restricted document in the public file sixty-three days following final disposition, including appeals of the case. If on written motion filed not more than sixty-three days following the

closing of the case period a party requests to have the restricted document turned over, the court may authorize the clerk to turn over the document to the party, destroy it, or retain the document as a restricted document no longer than twenty years and then destroy it.

**Northern District of Illinois Local Rule 5.8.
Filing Materials Under Seal.**

Any document to be filed as a restricted or sealed document as defined by L.R. 26.2 must be accompanied by a cover sheet which shall include the following:

(A) the caption of the case, including the case number;

(B) the title "Restricted Document Pursuant to L.R. 26.2";

(C) a statement indicating that the document is filed as restricted in accordance with an order of court and the date of that order; and

(D) the signature of the attorney of record or unrepresented party filing the document.

Any document purporting to be a restricted or sealed document as defined in L.R. 26.2 that is presented for filing without the cover page or copy of the order shall not be treated as a restricted or sealed document, but shall be processed like any other document. In such instances the clerk is authorized to open the sealed envelope and remove the materials for processing.

**Northern District of Illinois Local Rule 26.2.
Protective Orders; Restricted Documents.**

(a) *Definitions.* As used in this rule the term:

"Restricted document" means a document or an exhibit to which access has been restricted either by a written order or by a rule;

"Sealed document" means a restricted document which the court has directed be maintained within a sealed enclosure such that access to the document requires breaking the seal of the enclosure;

"Document awaiting expunction" means a document or an exhibit which the court has ordered held for possible expunction pursuant to 21 U.S.C. §844(b)(2) but for which the period for holding prior to final destruction has yet to pass; and

"Protective order" means any protective order entered pursuant to Fed. R. Civ. P. 26(c), or any other order restricting access to one or

more documents filed or to be filed with the court.

(b) *Restricting Order.* The court may on written motion and for good cause shown enter an order directing that one or more documents be restricted. The order shall also specify the persons, if any, who are to have access to the documents without further order of court. The minute order accompanying the order shall specify any qualifications as to access and disposition of the documents contained in the order.

(c) *Docket Entries.* The court may on written motion and for good cause shown enter an order directing that the docket entry for a restricted document show only that a restricted document was filed without any notation indicating its nature. Absent such an order a restricted document shall be docketed in the same manner as another document except that the entry will indicate that the document is restricted.

(d) *Inspection of Restricted Documents.* The clerk shall maintain a record in a manner provided for internal operating procedures approved by the Court of persons permitted access to restricted documents. Such procedures may require anyone seeking access to show identification and to sign a statement to the effect that they have been authorized to examine the restricted document.

(e) *Disposition of Restricted Documents.* When a case is closed in which an order was entered pursuant to section (b) of this rule, the clerk shall maintain the documents as restricted documents for a period of 63 days following the final disposition including appeals. Except where the court in response to a request of a party made pursuant to this section or on its own motion orders otherwise, at the end of the 63 day period the clerk shall place the restricted documents in the public file.

Any party may on written motion request that one or more of the restricted documents be turned over to that party. Such motions shall be filed not more than 63 days following the closing of the case period.

In ruling on a motion filed pursuant to this section or on its own motion, the court may authorize the clerk to do one of the following for any document covered by the order:

- (1) turn over a document to a party; or
- (2) destroy a document; or

(3) retain a document as a restricted document for a period not to exceed 20 years and thereafter destroy it.

Northern District of Illinois Internal Operating Procedure 30. Restricted Documents.

(a) *Separate Filing Area for Restricted Documents.* The clerk shall maintain restricted documents, sealed documents, and documents awaiting ex-punction as defined by L.R. 26.2(a) separately from the files of documents to which access has not been restricted. Any area used to store documents to which access has been restricted shall be secure from entry by any persons other than the clerk or those designated in writing by the clerk as authorized to have access. The clerk shall designate in writing deputies authorized to accept restricted documents either from chambers or for filing pursuant to protective orders. Materials accepted for filing as restricted shall be maintained in a secure area until collected by one of the designated deputies. Where the materials so accepted are being filed pursuant to a protective order, the deputy accepting them will stamp the cover of the document with a FILED stamp indicating the date of filing.

(b) *Handling Sealed Documents.* Where a document is ordered to be sealed, it is to be delivered for filing pursuant to L.R. 5.9 with the seal on the enclosure intact. If the document is sent from chambers or returned from an appellate court with the seal broken, one of the deputies authorized to handle restricted materials pursuant to section (a) will forthwith deliver the document to the courtroom deputy assigned to the judicial officer to whose calendar the proceedings to which the sealed document was filed is assigned. If that judicial officer is no longer sitting, the deputy will forthwith deliver the document to the courtroom deputy assigned to the emergency judge. The courtroom deputy will promptly bring the document to the attention of the judge. The judicial officer will either order that the document be resealed, or order that it continue to be handled as a restricted document, but not as a sealed document, or enter such other order as required to indicate the status of the document. Where the document is to be resealed, the judicial officer or courtroom deputy will reseal the document and transmit it to the appropriate deputy in the clerk's office. Where under the terms of a protective order a party is permitted to inspect a sealed document and that party appears in the clerk's office and requests the document, one of the deputies authorized to handle restricted materials pursuant to section (a) will obtain the document and provide an area where the person may inspect the document other than in the public area of the clerk's office. The deputy will complete a form

showing the date, description of the document, the name of the person requesting access to the document, a statement indicating that the deputy has checked the protective order and it does indeed authorize the person to inspect the document, and a statement that the deputy requested of and was shown identification by the person requesting access to the document. Any person wishing to break the seal and inspect the document must sign the form completed by the deputy to indicate that they are authorized to inspect the document and have broken the seal. After the person has completed the inspection, the deputy will follow the procedures set out in the previous paragraph for handling the resealing of the document. . . .

Southern District of Illinois

No relevant local rule.

Northern District of Indiana

No relevant local rule.

Southern District of Indiana

Analysis: No restriction on the court's authority to seal a document. A sealed document may remain sealed indefinitely; no durational limitations are imposed by this rule.

Southern District of Indiana Local Rule 5.3. Filing of Documents Under Seal.

(a) *General Rule.* No document will be maintained under seal in the absence of an authorizing statute, Court rule, or Court order.

(b) *Filing of Cases Under Seal.* Any new case submitted for filing under seal must be accompanied by a motion to seal and proposed order. Any case presented in this manner will be assigned a new case number, District Judge and Magistrate Judge. The Clerk will maintain the case under seal until a ruling granting the motion to seal is entered by the assigned District Judge. If the motion to seal is denied, the case will be immediately unsealed with or without prior notice to the filing party.

(c) *Filing of Documents Under Seal.* Materials presented as sealed documents shall be inside an envelope which allows them to remain flat. Affixed to the exterior of the envelope shall be an 8½ x 11" cover sheet containing:

- i. the case caption;
- ii. the name of the document if it can be disclosed publicly, otherwise an appropriate title

by which the document may be identified on the public docket;

iii. the name, address and telephone number of the person filing the document; and

iv. in the event the motion requesting the document be filed under seal does not accompany the document, the cover sheet must set forth the citation of the statute or rule or the date of the Court order authorizing filing under seal.

(d) *Prohibition of Electronic Filing of Sealed Documents.* Sealed documents will not be filed electronically, but rather manually on paper. The party filing a sealed document shall file electronically a Notice of Manual Filing (see Form in Electronic Case Filing Administrative Policies and Procedures Manual for the Southern District of Indiana). The courtroom deputy to the District or Magistrate Judge should be contacted for instructions when filing certain ex parte documents which could not be disclosed by the electronic Notice of Manual Filing.

Northern and Southern Districts of Iowa

Analysis: No restriction on the court's authority to seal a document. A sealed document may not remain sealed indefinitely. Thirty days after a judgment has become final (sixty days if the United States is a party), or, if an appeal from the judgment is filed, thirty days after the issuance of the mandate by the circuit court, the clerk of court may unseal a document not claimed and withdrawn after (1) the clerk gives notice to the attorneys of record in the case and to any pro se parties of the clerk's intention to unseal the document; and (2) no response to the notice is filed within thirty days after the notice was sent. If a timely objection is filed, the document will be unsealed only upon an order of the court.

Northern and Southern Districts of Iowa Local Rule 1.1(k). General Provisions; Effective Date; Scope. Public Records.

All filings with the Clerk of Court's Office are public records and are available for public inspection unless otherwise ordered by the court or provided by a Local Rule or a statute of the United States. Materials may be filed under seal with the Clerk of Court, but only in accordance with the procedures prescribed in L.R. 5.1(e).

Northern and Southern Districts of Iowa Local Rule 5.1(e). Service, Filing of Papers, and Proof of Service. Sealed Documents and Exhibits.

A party seeking to file under seal a pleading, motion, document, or exhibit first must file a written request for leave to do so. The pleading, motion, document, or exhibit thereafter may be filed under seal only if the court so orders. If the court enters an order permitting or directing the parties to file certain designated materials under seal, the parties thereafter must file all such materials under seal without filing a further request to do so.

A request for leave to file materials under seal may be filed under seal ex parte and without prior court order. The request must be delivered by the Clerk of Court in a sealed envelope marked with the caption of the case and the notation, "FILED UNDER SEAL PURSUANT TO L.R. 5.1(e)."

Materials to be filed under seal must be filed in a sealed envelope marked with the caption of the case and the notation, "SEALED PURSUANT TO COURT ORDER ENTERED [DATE]."

All materials filed in response to or in connection with other materials filed under seal also must be filed in a sealed envelope marked with the caption of the case and the notation, "SEALED PURSUANT TO COURT ORDER ENTERED [DATE]."

Envelopes containing materials filed under seal may be opened only by the Clerk of Court, deputy clerks, federal judges, and their staff members.

Thirty days after a judgment has become final (60 days if the United States is a party), or, if an appeal from the judgment is filed, 30 days after the issuance of the mandate by the circuit court, sealed materials not claimed and withdrawn pursuant to L.R. 83.7(e) may be unsealed by the Clerk of Court after the following occurs:

1. The Clerk of Court gives notice to the attorneys of record in the case and to any pro se parties of the Clerk of Court's intention to unseal the materials; and

2. No response to the notice is filed within 30 days after the notice has been sent.

If a timely objection is filed, the document or exhibit will be unsealed only upon an order of the court.

A party intending to object to a notice of intention to unseal a document must, before filing the objection, confer with opposing counsel and any

pro se parties and attempt to reach an agreement on the disposition of the exhibit pursuant to L.R. 83.7(e) in lieu of the unsealing of the exhibit. An objection to a notice of intention to unseal must contain a statement describing the results of these efforts.

The procedures in this section do not apply to preindictment ex parte filings by the government in criminal cases or to cases where other procedures are required by statute.

District of Kansas

Analysis: No restriction on the court's authority to seal a document. A sealed document may not remain sealed indefinitely. A document placed under seal after October 22, 1998, will be unsealed ten years after a final judgment or dismissal was entered in the case, unless the court ordered otherwise at the time of entry of such judgment or dismissal. If a document placed under seal before October 22, 1998, is contained in a case that has been closed by entry of final judgment or order of dismissal for ten years or more, the clerk will lift the seal on the document after notifying the parties by written notice, unless a motion to extend the seal, served on all parties to the action, is filed within six months.

District of Kansas Local Rule 5.4.6. In re Procedural Rules for Electronic Case Filing. Sealed Documents.

Until the Electronic Filing System has adequate confidentiality procedures for sealed documents, documents ordered to be placed under seal must be filed conventionally and not electronically unless specifically authorized by the court. A motion to file documents under seal may be filed electronically unless prohibited by law. The order of the court authorizing the filing of documents under seal may be filed electronically unless prohibited by law. A paper copy of the order must be attached to the documents to be filed under seal and be delivered to the clerk.

District of Kansas Local Rule 79.4. Sealed Files and Documents in Civil Cases.

(a) *Documents/files sealed after the effective date of this rule.* Any file, pleading, motion, memorandum, order or other document placed under seal by order of this court in any civil action shall be unsealed by operation of this rule ten years after entry of a final judgment or dismissal unless otherwise ordered by the court at the time of entry of such judgment or dismissal. Any party, upon

motion filed no more than six months before the seal is to be lifted, with notice to the remaining parties, may seek to renew the seal for an additional period of time not to exceed ten years. There shall be a rebuttable presumption that the seal shall not be renewed, and the burden shall be on the moving party to establish an appropriate basis for renewing the seal.

(b) *Documents/files under seal before the effective date of this rule.* On an ongoing basis, for a term of ten years from the effective date of the adoption of this rule, the clerk of the court will identify all civil files which have been sealed, or civil files in which sealed pleadings, motions, memoranda, orders or other documents are contained, and which files have been closed by entry of final judgment or order of dismissal, for a term of ten years or more, and at that time shall notify the parties, by written notice mailed to the last known address of counsel representing each party to the action, that:

(1) unless a motion to extend the seal, served on all parties to the action, is filed within six months, the seal will be lifted; and

(2) if a motion to extend the seal is filed, the burden shall be on the moving party to overcome a rebuttable presumption that the seal shall not be renewed and to establish an appropriate basis for renewing the seal.

In the event of a pro-se litigant all notices required by this rule shall be mailed to the last known mailing address of such litigant as reflected in the records of the Clerk of the District court in the file in issue.

(c) By its terms, this rule applies only to civil actions and does not apply to sealed files, documents, records, transcripts, or any other matter sealed in criminal cases.

Eastern and Western Districts of Kentucky

No relevant local rule.

Eastern District of Louisiana

No relevant local rule.

Middle District of Louisiana

No relevant local rule.

Western District of Louisiana

No relevant local rule.

District of Maine

No relevant local rule.

District of Maryland

Analysis: To file a document under seal, the court must consider the parties' joint motion to seal portions of the court record and any opposition thereto, refrain from ruling on the joint motion for at least fourteen days to permit interested parties to file objections, and consider any objections by interested parties. Then, the court must find and hold that alternatives to sealing would not provide sufficient protection and that sealing of the specified portion of the record would be appropriate. A sealed document may not remain under seal indefinitely. Upon final termination of an action, if any counsel fails to remove from the record the sealed document within thirty days of receiving notice from the clerk, the clerk may return the document to the parties, destroy it, or otherwise dispose of it.

District of Maryland Local Rule 105.11. Motions, Briefs and Memoranda. Sealing.

Any motion seeking the sealing of pleadings, motions, exhibits or other papers to be filed in the Court record shall include (a) proposed reasons supported by specific factual representations to justify the sealing and (b) an explanation why alternatives to sealing would not provide sufficient protection. The Court will not rule upon the motion until at least 14 days after it is entered on the public docket to permit the filing of objections by interested parties. Materials that are the subject of the motion shall remain temporarily sealed pending a ruling by the Court. If the motion is denied, the party making the filing will be given an opportunity to withdraw the materials.

Authors' Note: The district's form "Order Sealing Portions of the Court Record (Local Rule 105.11)" includes provisions not stated in Local Rule 105.11:

2. That the Sealed Record (as defined above) be, and hereby is, PLACED UNDER SEAL by the Clerk of the Court and that the Sealed Record shall be placed in an envelope or other container which is marked 'SEALED, SUBJECT TO ORDER OF COURT DATED _____.'

3. A copy of this Order shall be mailed to all counsel of record and to any other person entitled to notice hereof, and shall be docketed in the Court file.

District of Maryland Local Rule 113.2. Disposition of Exhibits. Upon Final Termination of Action.

Upon the final termination of an action, the Clerk shall send a notice to counsel advising them to remove from the record within thirty days of the notice all trial and hearing exhibits and all sealed materials which they presented at any time during the pendency of the action. If any counsel fails to do so, the clerk may return the materials to the parties, destroy the materials, or otherwise dispose of them.

District of Massachusetts

No relevant local rule.

Eastern District of Michigan

Analysis: No restriction on the court's authority to seal a document. A sealed document may not remain sealed indefinitely. Unless the court orders otherwise, a sealed settlement agreement will be unsealed and placed in the case file two years after the date on which it was sealed. The time limit for other sealed documents is sixty days from entry of final judgment and appellate mandate, if appealed.

Eastern District of Michigan Local Rule 5.3. Civil Discovery Material Sealed Under Protective Orders.

(a) *Filing.* Documents subject to a protective order must be filed pursuant to L.R. 5.1. In addition, each document subject to a protective order must be placed in a separate 9½ x 12 inch envelope and sealed closed. Each envelope must plainly state the full case caption, title of the document enclosed and the text, "FILED UNDER SEAL PUSUANT TO A PROTECTIVE ORDER" in bold, capital letters not less than one inch high.

(b) *Disposition.* Sixty days after the entry of a final judgment and an appellate mandate, if appealed, attorneys must present to the court a proposed order specifying whether the material sealed with protective order is (a) to be returned to the parties or (b) unsealed and placed in the case file. Failure to present the order will result in the court ordering the clerk to unseal the material and place it in the case file.

Comment: L.R. 5.3 makes attorneys responsible for material sealed with a protective order. Upon receipt of sealed material, the Clerk's Office will provide copies of this Rule to the submitting party.

Attorneys are cautioned to seal only those documents specifically referenced in the protective order. If the sealed documents are exhibits to a motion, only the exhibits are to be filed under seal. Attorneys are instructed not to fasten, staple or bind sealed and public documents together.

Sealed settlement agreements or other material provided by statute, e.g., Qui Tam cases, are not covered by L.R. 5.3.

**Eastern District of Michigan Local Rule 5.4.
Sealed Settlement Agreements in Civil Cases.**

Absent an order to the contrary, sealed settlement agreements will remain sealed for two years after the date of sealing, after which time they will be unsealed and placed in the case file.

Comment: L.R. 5.4 is an exception to L.R. 5.3. If a sealed settlement agreement is submitted to chambers for filing, the judge's courtroom deputy clerk will provide a copy of this Rule to the attorneys of record.

Western District of Michigan

Analysis: The court must find that there was good cause shown in order to seal a document. A sealed document may not remain sealed indefinitely. Unless the court orders otherwise, a sealed document will be unsealed thirty days after the case is terminated or any appeal is terminated, whichever is later.

Western District of Michigan Local Civil Rule 5.7(d)(ii). Service and Filing of Pleadings and Other Papers. Filing and Service by Electronic Means. Electronic Filing. Papers That May Not Be Filed Electronically.

The following documents may not be filed electronically, but must be submitted in paper form:

- a. Documents filed under seal pursuant to W.D. Mich. L. Civ. R. 10.6;
-

Western District of Michigan Local Civil Rule 10.6. Form of Pleadings and Other Papers; Filing Requirements. Filing Under Seal.

(a) *Request to Seal.* Requests to seal a document must be made by motion and will be granted only upon good cause shown. If the document accompanies the motion, it shall be clearly labeled "Proposed Sealed Document" and shall include an envelope suitable for sealing the document. The

envelope shall have the caption of the case, case number, title of document, and the words "Contains Sealed Documents" prominently written on the outside. The document shall not be considered sealed until so ordered by the Court.

(b) *Documents Submitted Pursuant to Court Order.* A document submitted pursuant to a previous order by the Court authorizing the document to be filed under seal shall be clearly labeled "Sealed Document," shall be submitted in an envelope suitable for sealing the document, and identify the order or other authority allowing filing under seal. The caption of the case, case number, title of document, and the words "Contains Sealed Documents" shall be prominently written on the outside of the envelope.

(c) *Expiration of Seal.* Unless otherwise ordered by the Court, thirty days after the termination of a case or any appeal, whichever is later, sealed documents and cases will be unsealed by the Court.

District of Minnesota

Analysis: No restriction on the court's authority to seal a document. A sealed document may not remain sealed indefinitely. Four months after a case is closed, or if the case is appealed, thirty days after the filing and recording of the mandate of the appellate court disposing of the case, the parties must take away a sealed document in the clerk's custody, unless the court orders otherwise on its own motion or on the motion of any party or nonparty. If the document remains in the clerk's custody after the expiration of the time periods mentioned above, the clerk shall destroy the sealed document thirty days after the clerk notifies counsel in the case by mail, unless the court orders otherwise.

**District of Minnesota Local Rule 79.1.
Custody and Disposition of Records, Exhibits and Documents Under Seal.**

(c) *Documents Subject to a Protective or Confidentiality Order.* Original documents filed subject to a protective or confidentiality order shall be separately stored and maintained by the Clerk and shall not be disclosed or otherwise made available to any person except as provided by the terms and conditions of the relevant order.

(d) *Removal of Models, Diagrams, Exhibits and Documents under Seal.* All models, diagrams, exhibits and documents subject to a protective or confidentiality order remaining in the custody of the Clerk shall be taken away by the parties

within four months after the case is finally decided unless an appeal is taken. In all cases in which an appeal is taken, they shall be taken away within 30 days after the filing and recording of the mandate of the Appellate Court finally disposing of the cause. On motion of any party, or on the request of any nonparty, or on the court's own initiative, the court may order that any model, diagram, exhibit or document shall be retained by the Clerk for such longer period of time as may be determined by the court, notwithstanding any of the foregoing requirements of this paragraph (d).

(e) *Other Disposition by the Clerk.* When models, diagrams, exhibits and documents subject to a protective or confidentiality order in the custody of the Clerk are not taken away within the time specified in the preceding paragraph of this rule, it shall be the duty of the Clerk to notify counsel in the case, by mail, of the requirements of this rule. Any articles, including documents subject to a protective or confidentiality order, which are not removed within 30 days after such notice is given shall be destroyed by the Clerk, unless otherwise ordered by the Court.

Northern and Southern Districts of Mississippi

Analysis: In order to seal a document the court must find good cause for placing the document under seal. A sealed document cannot remain sealed indefinitely. A sealed document will be unsealed and placed in the case file thirty days following final disposition (including direct appeal) of the action, unless the court (upon motion) orders otherwise. Any order permitting a document to be maintained under seal longer than thirty days must set a date for unsealing.

Northern and Southern Districts of Mississippi Local Rule 83.6. Sealing of Court Records.

(A) *Court Records Presumptively in Public Domain.* Except as otherwise provided by statute, rule, or order, all pleadings and other materials filed with the court ("court records") shall become a part of the public record of the court.

(B) *When and How Sealed; Redactions.* Court records or portions thereof shall not be placed under seal unless and except to the extent that the person seeking the sealing thereof shall have first obtained, for good cause shown, an order of the court specifying those court records, categories of court records, or portions thereof, which shall be placed under seal. The court may, in its discretion,

receive and review any document in camera without public disclosure thereof and, in connection with any such review, determine whether good cause exists for the sealing of the document. Unless the court orders otherwise, the party seeking sealing shall file with the court redacted versions of court records when only a portion thereof is to be sealed.

(C) *Criminal Matters; Unsealing.* The Office of the United States Attorney shall present to the court a proposed order in connection with any indictment, complaint, or bill of information that the United States Attorney wishes to file under seal. Unless otherwise ordered by the Court, indictments, complaints, and bills of information filed under seal shall be unsealed after all defendants have made an appearance before the court.

(D) *Duration of Sealing.* Court records filed under seal in civil and criminal actions shall be maintained under seal for thirty days following final disposition (including direct appeal) of the action. After that time, all sealed court records shall be unsealed and placed in the case file unless the court, upon motion, orders that the court records be maintained under seal beyond the thirty-day period. All such orders shall set a date for unsealing of the court records.

Eastern District of Missouri

Analysis: The court must find that good cause exists before ordering a document to be placed under seal. A sealed document may not remain under seal indefinitely. Unless the court orders otherwise, a document filed under seal will be placed in the public file thirty days after a final order or other disposition has been issued in a civil action in the district court, or thirty days after the receipt of a mandate from the court of appeals in a case in which an appeal has been taken. Prior to the expiration of the thirty-day period following the termination of a case, a party may move for an order of the court either extending the seal for a specified additional time period or returning the sealed document to the filing party upon a showing of good cause.

Eastern District of Missouri Local Rule 83-13.05(A). Pleadings and Documents Filed Under Seal. Pleadings and Documents in Civil Cases.

(1) Upon a showing of good cause in a written motion of any party, the court may order that a

document or series of documents filed in a civil case be received and maintained by the clerk under seal. The clerk of court shall maintain such documents in a restricted area apart from the case file to which the public has access. Unless the docket reflects prior entry of an order to file under seal or the party offering a pleading or document presents the clerk with an order of the court authorizing a filing under seal or a motion for such order, all pleadings and documents received in the office of the clerk shall be filed in the public record of a civil case, except as otherwise required by law.

(2) Not less than thirty (30) days after a final order or other disposition has been issued in a civil action in the district court, or thirty (30) days after the receipt of a mandate from the court of appeals in a case in which an appeal has been taken, the clerk shall place in the public file all documents previously filed under seal, unless otherwise ordered by the court. Prior to the expiration of the thirty day period following the termination of a case, a party may move for an order of the court either extending the seal for a specified additional time period or returning sealed documents to the filing party upon a showing of good cause.

Western District of Missouri

No relevant local rule.

District of Montana

Analysis: No restriction on the court's authority to seal a document. A sealed document may remain sealed indefinitely; no durational limitations are imposed by this rule.

District of Montana Local Rule 77.6. Filing Under Seal.

Unless otherwise provided by statute or rule, no case or document shall be filed under seal without prior approval by the Court. If a filing under seal is requested, a written application and a proposed order shall be presented to the judge along with the document submitted for filing under seal. Unless otherwise ordered by the Court, the application and proposed order and document shall not be served on opposing parties. The original and judge's copy of the document shall be sealed in separate envelopes with a copy of the title page attached to the front of each envelope. Conformed copies need not be placed in sealed envelopes.

District of Nebraska

No relevant local rule.

District of Nevada

No relevant local rule.

District of New Hampshire

Analysis: No restriction on the court's authority to seal a document. A sealed document may remain sealed indefinitely; no durational limitations are imposed by this rule. The court may specify the duration of the sealing order in the court's order sealing the document.

District of New Hampshire Local Rule 83.11. Sealed Documents.

(a) *Filings, Orders, and Docket Entries.* All filings, orders, and docket entries shall be public unless:

(1) a filing, order, or docket entry must be sealed pursuant to state law, federal law, the Federal Rules of Criminal or Civil Procedure, or these rules;

(2) a filing, order, or docket entry has been sealed by order of another court or agency; or

(3) this court issues an order sealing a filing, order, or docket entry.

(b) *Levels of Sealed Filings, Orders, and Docket Entries.*

(1) Level I. Filings, orders, and docket entries sealed at Level I may be reviewed by any attorney appearing in the action without prior leave of court.

(2) Level II. Filings, orders, and docket entries sealed at Level II may be reviewed only by the filer or, in the case of an order, the person to whom the order is directed without prior leave of court.

(c) *Motions to Seal.* A motion to seal must be filed before the sealed material is submitted or, alternatively, the item to be sealed may be tendered with the motion and both will be accepted provisionally under seal, subject to the court's subsequent ruling on the motion. The motion must explain the basis for sealing, specify the proposed duration of the sealing order, and designate whether the material is to be sealed at Level I or Level II. Any motion to seal, upon specific request, may also be sealed if it contains a discussion of the confidential material. If the court denies the motion to seal, any materials tendered under provisional seal will be returned to the movant.

(d) *Filing Procedures.* All material submitted by a party either under seal or requesting sealed status, provisionally or otherwise, shall be placed in a sealed envelope with a copy of the document's cover page affixed to the outside of the envelope. The party shall designate the envelope with a conspicuous notation such as "DOCUMENTS UNDER SEAL," "DOCUMENTS SUBJECT TO PROTECTIVE ORDER," or the equivalent. If the basis for the document's sealed status is not apparent, an explanatory cover letter should also be attached to alert the clerk's staff of its special status.

Parties cannot seal otherwise public documents merely by agreement or by labeling them "sealed."

District of New Jersey

No relevant local rule.

District of New Mexico

No relevant local rule.

Eastern District of New York

Analysis: No restriction on the court's authority to seal a document. A sealed document may not remain sealed indefinitely. Following the issuance of an administrative order on February 21, 2001, all sealed records in civil and criminal cases that have been closed through calendar year 1995 were indexed and archived at the Federal Records Center, where they will remain sealed for twenty years, and then they will be destroyed after notice is given to the court. The court will periodically review sealed records in civil and criminal cases, and sealed records in cases that have been closed for at least five years also will be indexed and archived at the Federal Records Center.

Eastern District of New York Administrative Order 2001-02. In re Sealed Records (E.D.N.Y. February 21, 2001).

Whereas the Clerk of Court has within his possession in the Clerk's Office vault scores of boxes of sealed records in civil and criminal cases that have been closed for at least five (5) years;

it is ORDERED that all sealed records in civil and criminal cases that have been closed through calendar year 1995 be indexed and archived at the Federal Records Center, and remain sealed, with disposition within prescribed guidelines, after twenty years' time and upon prior notice to the Court,

and it is further ORDERED that records sealed in civil and criminal cases after the effective date of this Order be reviewed periodically and when closed for at least five (5) years, also shall be indexed and archived at the Federal Records Center.

SO ORDERED.

Northern District of New York

Analysis: No restriction on the court's authority to seal a document. A sealed document may remain sealed indefinitely; no durational requirements are imposed by this rule. A document sealed by court order will remain under seal until the court enters a subsequent order unsealing the document, either on its own motion or in response to a motion of a party.

Northern District of New York Local Rule 83.13. Sealed Matters.

Cases may be sealed in their entirety, or only as to certain parties or documents, when they are initiated, or at various stages of the proceedings. The court may on its own motion enter an order directing that a document, party or entire case be sealed. A party seeking to have a document, party or entire case sealed shall submit an application, under seal, setting forth the reason(s) why the document, party or entire case should be sealed, together with a proposed order for approval by the assigned judge. The proposed order shall include language in the "ORDERED" paragraph stating the referenced document(s) to be sealed and should include the phrase "including this sealing order." Upon approval of the sealing order by the assigned judge, the clerk shall seal the document(s) and the sealing order. A complaint presented for filing with a motion to seal and a proposed order shall be treated as a sealed case, pending approval of the order. Once a document or case is sealed by court order, it shall remain under seal until subsequent order, upon the court's own motion or in response to the motion of a party, is entered directing that the document or case be unsealed.

Southern District of New York

No relevant local rule.

Western District of New York

Analysis: A party must demonstrate a substantial showing for the court to place a document under seal. The party must submit an application under seal which sets forth the reasons for sealing the

document. A sealed document may remain sealed indefinitely unless the court orders otherwise. A party must obtain a court order in order to unseal the document.

**Western District of New York Local Rule 5.4.
Sealing of Complaints and Documents in Civil
Cases.**

(a) Except when otherwise required by statute or rule, there is a presumption that Court documents are accessible to the public and that a substantial showing is necessary to restrict access.

(b) Upon the proper showing, cases may be sealed in their entirety, or only as to certain parties or documents, when they are initiated, or at various stages of the proceedings. The Court may, on its own motion, enter an order directing that a document, party or entire case be sealed. A party seeking to have a document, party or entire case sealed shall submit an application, under seal, setting forth the reasons for sealing, together with a proposed order for approval by the assigned Judge. The proposed order shall include language in the "ORDERED" paragraph stating the referenced document(s) to be sealed. Upon approval of the sealing order by the assigned Judge, the Clerk shall seal the document(s). Upon denial of a sealing application, the Clerk shall notify the party of such decision. The party shall have five business days from the date of the notice to withdraw the document(s) submitted for sealing or appeal the decision denying the sealing request. If the party fails to withdraw the document(s) or otherwise appeal after the expiration of five business days, the document(s) shall be filed by the Clerk and made a part of the public record.

(c) When the sealing of a civil complaint is appropriate under either statute or this rule, the Clerk shall inscribe in the public records of the Court only the case number, the fact that a complaint was filed under seal, the name of the District Judge or Magistrate Judge who ordered the seal, and (after assignment of the case to a District Judge and a Magistrate Judge in the normal fashion) the names of the assigned District Judge and the assigned Magistrate Judge.

(d) A complaint presented for filing with a motion to seal and a proposed order shall be treated as a sealed case, pending approval of the order.

(e) Documents authorized to be filed under seal or pursuant to a protective order must be presented to the Clerk in envelopes bearing sufficient identification. The envelopes shall not be

sealed until the documents inside have been filed and docketed by the Clerk's office.

(f) Unless an order of the court otherwise directs, all sealed documents will remain sealed after final disposition of the case. The party desiring that a sealed document be unsealed after disposition of the case must seek such relief by motion on notice.

Eastern District of North Carolina

Analysis: No restriction on the court's authority to seal a document. A sealed document may not remain sealed indefinitely. If counsel fails to retrieve the sealed document after the action concludes and all appeals are completed, within thirty days of final disposition the court may order the document to be unsealed upon ten days' notice by mail to counsel for all parties.

**Eastern District of North Carolina Local Civil
Rule 79.2. Sealed Documents.**

(a) *Filing Sealed Documents.* Absent statutory authority, no cases or documents may be sealed without an order from the court. A party desiring to file material under seal must first file a motion seeking leave to file the information under seal, or have a court-approved protective order in place.

(b) *Proposed Sealed Documents.* All proposed, sealed material which accompanies a Motion to Seal shall be received by the clerk and temporarily sealed, pending a ruling on the motion to seal. The filing of a Motion to Seal documents will toll the time for filing the material. If the Motion to Seal is allowed, the sealed material shall be filed on the same date as the order allowing the filing under seal. If the motion to file the material under seal is denied, the movant will be given an option of retrieving the material or having it filed the same date as the order denying the filing under seal.

(c) *Docketing Sealed Documents.* When material is filed under seal, the docket will indicate generically the type of document filed under seal, but it will not contain a description that would disclose its identity.

(d) *Return of Sealed Materials.* After the action concludes and all appeals have been completed, counsel is charged with the responsibility of retrieving and maintaining all sealed documents. Upon 10 days notice by mail to counsel for all parties, and within 30 days after final disposition, the court may order the documents to be unsealed and they will thereafter be available for public inspection.

(e) *Form*. All under seal or potentially under seal documents shall be delivered to the clerk's office enclosed in a red envelope, marked with the case caption, case number, and a descriptive title of the document, unless such information is to be, or has been, among the information ordered sealed. Additionally, the following information will be prominently displayed:

SEALED PURSUANT TO THE
PROTECTIVE ORDER
ENTERED ON ___/___/98
or
PROPOSED SEALED MATERIAL:
SUBMITTED PURSUANT TO MOTION
TO SEAL FILED ON ___/___/98

Middle District of North Carolina

Analysis: No restriction on the court's authority to seal a document. A sealed document may not remain sealed indefinitely. Within thirty days after the time for appeal has expired or thirty days after an appeal has been decided, the clerk may return a sealed document to the parties or destroy it. If the case file is transferred to the GSA for records holding, the court cannot ensure the confidentiality of a sealed document.

Middle District of North Carolina Local Rule 83.5(c). Custody and Disposition of Trial Exhibits, Sealed Documents, and Filed Depositions. Disposition of Exhibits, Sealed Documents, and Filed Depositions by Clerk.

Any exhibit, sealed document, disk, or filed deposition in the clerk's custody more than 30 days after the time for appeal, if any, has expired, or an appeal had been decided and mandate received, may be returned to the parties or destroyed by the clerk. Complaints, answers, motions, responses and replies, whether sealed or not, must be forwarded to the General Services Administration for permanent storage. The confidentiality of sealed documents cannot be assured after the case file is transferred to the General Services Administration for records holding.

Western District of North Carolina

Analysis: No restriction on the court's authority to seal a document. At final disposition of the case, a sealed document will be unsealed unless the court orders otherwise.

Western District of North Carolina Local Rule 5.1(D). Filing of Papers, Presenting Judgments, Orders, and Communications to Judge and Sealed Records. Sealed Matters.

(1) *New Civil Cases*. A civil complaint may be sealed at the time the case is filed if the complaint is accompanied by an ex parte motion of the plaintiff/petitioner accompanied by an order sealing the case. The case will be listed on the clerk's index as Sealed Plaintiff vs. Sealed Defendant.

(2) *Pending Cases*. A pending case may be sealed at any time upon motion of either party and execution by the court of a written order. Unless otherwise specified in the order, neither the clerk's case index nor the existing case docket will be modified.

(3) *Documents*. Documents ordered sealed by the court or otherwise required to be sealed by statute shall be marked as such within the document caption and submitted together with the judge's copy prepared in the same manner. If the document is sealed pursuant to a prior order of the court, the pleading caption shall include a notation that the document is being filed under court seal and include the order's entry date.

No document shall be designated by any party as "filed under seal" or "confidential" unless:

(a) it is accompanied by an order sealing the document;

(b) it is being filed in a case that the court has ordered sealed; or

(c) it contains material that is the subject of a protective order entered by the court.

(4) *Case Closing*. Unless otherwise ordered by a court, any case file or documents under court seal that have not previously been unsealed by the court order shall be unsealed at the time of final disposition of the case.

(5) *Access to Sealed Documents*. Unless otherwise ordered by the court, access to documents and cases under court seal shall be provided by the clerk only pursuant to court order. Unless otherwise ordered by the court, the clerk shall make no copies of sealed case files or documents.

District of North Dakota

Analysis: No restriction on the court's authority to seal a document. A sealed document in a civil action may not remain sealed indefinitely. Unless otherwise ordered by the court, the clerk must return a document filed under seal in a civil action

to the submitting party upon entry of a final judgment or termination of appeal, if any.

**District of North Dakota Local Rule 5.1(F).
Sealed Documents and Files.**

(1) The clerk must return documents filed under seal in civil actions to the party submitting them, upon entry of a final judgment or termination of appeal, if any, unless otherwise ordered by the court.

(2) The clerk must retain custody of documents filed under seal in criminal cases, unless otherwise ordered by the court.

(3) The clerk must retain custody of entire files which are permanently sealed by statute or court order.

**District Court for the Northern
Mariana Islands**

No relevant local rule.

Northern District of Ohio

Analysis: No restriction on the court's authority to seal a document. A sealed document may not remain sealed indefinitely. Unless the court orders to continue the seal for a specified period, the court will order the document to be unsealed thirty days after the termination of the case or any appeal, whichever is later.

**Northern District of Ohio Local Civil Rule 5.2.
Filing Documents Under Seal.**

No document will be accepted for filing under seal unless a statute, court rule, or prior court order authorizes the filing of sealed documents. If no statute, rule, or prior order authorizes filing under seal, the document will not be filed under seal.

Materials presented as sealed documents shall be in an envelope which shows the citation of the statute or rule or the filing date of the court order authorizing the sealing, and the name, address, and telephone number of the person filing the documents.

If the sealing of the document purports to be authorized by court order, the person filing the documents shall include a copy of the order in the envelope. If the order does not authorize the filing under seal, or if no order is provided, the Clerk will unseal the documents before filing them. Before unsealing the documents, the Clerk will notify the person whose name and telephone number appears on the envelope in person (if he or she

is present at the time of filing) or by telephone. The filer may withdraw the documents before 4:00 p.m. the day the Clerk notifies him or her of the defect. If not withdrawn, the documents will be unsealed and filed.

New cases submitted for filing without a signed sealing order will be assigned a new case number, District Judge and Magistrate Judge. The Clerk, without further processing, will send the file to the assigned District Judge for a sealing order. If a sealing order is signed, the Clerk will enter as much information as is permitted by the sealing order into the system to open and identify the case.

Thirty days after the termination of the case or any appeal, whichever is later, sealed documents and cases will be unsealed pursuant to court order, unless either a motion to continue the seal for a specified period of time or a motion to withdraw the document is filed and granted by the Court.

Southern District of Ohio

Analysis: No restriction on the court's authority to seal a document. A sealed document may not remain sealed indefinitely. Unless the court orders otherwise, counsel must withdraw the sealed document within six months after final termination of the action; if the document is not withdrawn by counsel, the clerk will dispose of it after the six-month withdrawal period has expired.

**Southern District of Ohio Local Rule 79.2.
Disposition of Exhibits, Models, Diagrams,
Depositions, and Other Materials.**

(a) *Withdrawal By Counsel.* All models, diagrams, depositions, photographs, x-rays and other exhibits and materials filed in an action or offered in evidence shall not be considered part of the pleadings in the action and, unless otherwise ordered by the Court, shall be withdrawn by counsel without further Order within six (6) months after final termination of the action.

(b) *Disposal By The Clerk.* All models, diagrams, depositions, x-rays and other exhibits and materials not withdrawn by counsel shall be disposed of by the Clerk as waste at the expiration of the withdrawal period.

**Southern District of Ohio Local Rule 79.3.
Sealed, or Confidential Documents.**

(a) Unless otherwise ordered or otherwise specifically provided in these Rules, all documents submitted for a confidential in camera inspection

by the court, which are the subject of a Protective Order, which are subject to an existing order that they be sealed, or which are the subject of a motion for such orders, shall be submitted to the Clerk securely sealed in an envelope approximately 9" x 12" in size, or of such larger size as needed to accommodate the documents.

(b) The envelope containing such documents shall contain a conspicuous notation that it carries "DOCUMENTS UNDER SEAL," "DOCUMENTS SUBJECT TO PROTECTIVE ORDER," or the equivalent.

(c) The face of the envelope shall also contain the case number, the title of the court, a descriptive title of the document and the case caption, unless such information is to be, or has been, included among the information ordered sealed. The face of the envelope shall also contain the date of any order, or the reference to any statute permitting the item to be sealed. The date of filing of an order formally sealing documents, submitted in anticipation of such an order, shall be added by the Clerk when determined.

(d) The Clerk's file stamp and appropriate related information or markings shall be made on the face of the envelope. Should the document be ordered opened and maintained in that manner in the case records, the actual date of filing will be noted on the face of the document by the Clerk and the envelope retained therewith.

(e) Sealed or confidential documents shall be disposed of in accordance with Rule 79.2.

Eastern District of Oklahoma

No relevant local rule.

Northern District of Oklahoma

Analysis: The court must find that good cause exists before ordering that a document be placed under seal. A sealed document may remain under seal indefinitely; no durational limitations are imposed by this rule. Only the court or a court order can unseal the document.

Northern District of Oklahoma Local Rule 79.1(D). Records Kept by the Court Clerk. Sealing of Records.

No pleading, document, or record shall be placed under seal without a prior, specific order of the court finding good cause to do so. No seal shall be lifted, except by the court, or by court order.

Western District of Oklahoma

Analysis: No restriction on the court's authority to seal a document. A sealed document may remain sealed indefinitely; no durational limitations are imposed by this rule.

Frequently Asked Questions (www.okwd.uscourts.gov/faq). Filing Documents.

What is the procedure for filing a motion/document under seal?

When filing a motion/document under seal, you should follow these steps:

- Place the motion/document to be sealed in an open, large manila envelope.
- Prepare a cover motion requesting permission to file your motion/document under seal.
- Attach the cover motion by stapling it outside the envelope containing the motion/document to be sealed.
- File the motion/document to be sealed at the intake counter. The intake clerk will stamp both the documents and will immediately give it to the Chief Deputy Clerk or the Operations Manager for docketing and delivery to the presiding judge or magistrate judge.
- Once the judge or magistrate judge has ruled upon the cover motion to seal, the sealed motion/document will be sealed and placed in the vault or, in the case of denial of the motion, will be placed in the case file.

District of Oregon

Analysis: No restriction on the court's authority to seal a document. A sealed document may not remain sealed indefinitely. Unless a party submits to the clerk a motion to return the sealed document within sixty days after a case is closed or sixty days after an appeal is concluded, the document will be unsealed before it is sent to the Federal Records Center.

District of Oregon Local Rule 3.8. Sealed Cases.

(a) *New Action.* At the time a complaint is presented for filing, any party seeking to file the case under seal, must either:

- (1) File a motion and supporting memorandum requesting the court to seal the file. Pending the court's ruling on the motion to

seal, the case file and records will be withheld from the public record; or

(2) Provide a citation to the authorizing legislation (if any). Upon verification of the legislation, the case file and associated records will be sealed and withheld from the public record.

(b) *Pending Action.* A party seeking to place a pending case under seal must file an appropriate motion requesting the court to seal the file and all associated electronic records.

(c) *Court's Responsibility.* After reviewing the motion and supporting materials, the court will either:

(1) Grant the motion and direct the clerk to file the case and all subsequent papers and electronic records under seal, and to limit future access to the sealed case to those individuals included in the order; or

(2) Deny the motion and direct the clerk to file the case in the public records of the court.

(d) *Access to Sealed Cases.* Subsequent access to the sealed case will be regulated by controlling statute or court order.

District of Oregon Local Rule 3.9. Sealed Documents.

(a) *Sealed Documents Generally.* Portions of a document cannot be placed under seal. Instead, the entire document must be placed under seal in order to protect confidential information.

(b) *Filing a Document Sealed by Previous Court Order.* When a previous court order authorizes the filing of a document or other materials under seal, the filing party must present the clerk with a copy of the court order and submit the materials in an envelope provided by the clerk's office marked "SEALED MATERIALS". In addition, all documents authorized to be filed under seal must have the words "AUTHORIZED TO BE FILED UNDER SEAL" typed directly below the document title.

(c) *Motions to File a New Document Under Seal.* Motions to file a new document under seal—even those offered by stipulation of the parties—will be handled as in camera submissions pursuant to L.R. 3.10.

(d) *Motion to Seal Previously Filed Documents.* A party seeking to place under seal a document that is currently in the public record, must file and serve a motion and proposed order pursuant to L.R. 3.9(e). Unless requested, the motion will be treated as a discovery motion pursuant to L.R. 26.5.

(e) *Order to Seal Documents and/or Cases.* (See L.R. 79.2.) A proposed order to seal a document or case must include language that:

(1) Identifies the persons authorized to review, copy, photograph, and/or inspect the sealed materials; and

(2) Instructs the clerk whether the document should be excluded from the electronic docket as well as the public case file.

(f) *E-Government Act of 2002.* In accordance with this rule, and the E-Government Act of 2002, a party authorized to file a document under seal may file an unredacted document which will be retained by the court as part of the official record. At the court's direction, the filing party may also be required to file a redacted copy of the sealed document for inclusion in the public case file. (See L.R. 10.3).

District of Oregon Local Rule 3.10. In Camera Submissions.

(a) *During Court Proceedings.* Documents or other materials offered and accepted for in camera inspection during a court proceeding will be handled in accordance with L.R. 3.10(c).

(b) *Tendered to the Clerk's Office.* Documents tendered ex parte to the clerk's office for transmission to the court and subsequent in camera inspection, must be:

(1) Accompanied by a transmittal letter or motion to the assigned judge requesting that the materials be reviewed in camera; and

(2) Enclosed in a separate envelope provided by the clerk's office and marked:

SEALED MATERIALS
For in Camera Inspection

(c) *Court Responsibility.* After completing the in camera inspection, the court will direct the clerk's office to:

(1) File the documents or materials in the public record; or

(2) File the documents under seal with appropriate disclosure instructions to the clerk; or

(3) Direct that the documents should be returned to the offering party with appropriate instructions.

(d) *Order Regulating Subsequent Disclosure.* See L.R. 3.9(e).

District of Oregon Local Rule 3.11. Return of Sealed Documents to the Public Record.

(a) *Unsealing Documents and Cases.* Because the Federal Records Center prohibits storage of sealed records or documents, the clerk must unseal all documents and cases prior to shipment of any record to the Federal Records Center.

(b) *Application to Return Sealed Documents.* Therefore, not later than sixty (60) days after a case is closed, or within sixty (60) days after the conclusion of any appeal, any party may file and serve a motion to have the clerk return a sealed document.

(c) *Authorization to Unseal Documents or Cases.* Unless otherwise restricted by federal law, and absent an application pursuant to L.R. 3.11(b), the clerk is authorized to unseal all previously sealed civil documents and cases before a record is shipped to the Federal Records Center.

District of Oregon Local Rule 100.17(c). Public Access to Electronic Records. Sealed Documents.

(See also L.R. 3.9.) A motion to file documents under seal may be filed electronically unless prohibited by law or otherwise ordered by the court. The order of the court authorizing the filing of documents under seal may be filed electronically unless prohibited by law. Documents ordered to be placed under seal must be filed conventionally and not electronically. A paper copy of the order must be attached to the documents filed under seal and delivered to the clerk.

Eastern District of Pennsylvania

No relevant local rule.

Middle District of Pennsylvania

Analysis: No restriction on the court's authority to seal a document. A sealed document may not remain sealed indefinitely. Unless good cause is shown, for all documents that are still under seal after the case is terminated, the court will unseal them no later than two years after the final judgment or the exhaustion of all appeals.

Middle District of Pennsylvania Local Rule 79.5. Unsealing of Civil Cases/Documents.

Unless good cause is shown, all civil cases and/or documents in those cases which still remain under seal after the case is terminated will be unsealed by the court no later than two (2) years after the final judgment and/or the exhaustion of all appeals.

Western District of Pennsylvania

No relevant local rule.

District of Puerto Rico

No relevant local rule.

District of Rhode Island

Analysis: No restriction on the court's authority to seal a document. A sealed document may remain sealed indefinitely; no durational limitations are imposed by this rule. The document will remain under seal until the court vacates or amends the order to seal.

District of Rhode Island Amended General Order 2002-01 (January 31, 2003). Motions to Seal.

A motion to seal shall be accompanied by the document(s) sought to be sealed and a written memorandum not exceeding 5 pages which sets forth the basis for seeking an order to seal. Upon receipt of a motion to seal and the supporting memorandum, the clerk shall docket the items received and transmit them immediately to the chambers of the judge to whom the case has been assigned. Any opposition to the motion to seal likewise shall be docketed and transmitted to the judge to whom the case has been assigned.

If the Court grants the motion to seal, all documents sealed shall be placed in an envelope and a copy of the Court's order shall be affixed thereto. The sealed envelope and its contents shall be retained by the clerk in a secure location until such time as the Court vacates or amends the order to seal. If the Court denies the motion to seal, the document shall be placed in the Court file in accordance with this Order and the Local Rules.

District of South Carolina

Analysis: Local rules prohibit the sealing of a settlement agreement, but local rules can be suspended for good cause.

District of South Carolina Local Civil Rule 1.02. Suspension or Modification.

For good cause shown in a particular case, the Court may suspend or modify any Local Civil Rule.

**District of South Carolina Local Civil Rule 5.03.
Filing Documents Under Seal.**

Absent a requirement to seal in the governing rule, statute, or order, any party seeking to file documents under seal shall follow the mandatory procedure described below. Failure to obtain prior approval as required by this Rule shall result in summary denial of any request or attempt to seal filed documents. Nothing in this Rule limits the ability of the parties, by agreement, to restrict access to documents which are not filed with the Court. See Local Civil Rule 26.08.

(A) A party seeking to file documents under seal shall file and serve a “Motion to Seal” accompanied by a memorandum. See Local Civil Rule 7.04. The memorandum shall:

(1) identify, with specificity, the documents or portions thereof for which sealing is requested;

(2) state the reasons why sealing is necessary;

(3) explain (for each document or group of documents) why less drastic alternatives to sealing will not afford adequate protection; and

(4) address the factors governing sealing of documents reflected in controlling case law. E.g., *Ashcraft v. Conoco, Inc.*, 218 F.3d 288 (4th Cir. 2000); and *In re Knight Publishing Co.*, 743 F.2d 231 (4th Cir. 1984). A non-confidential descriptive index of the documents at issue shall be attached to the motion. A separately sealed attachment labeled “Confidential Information to be Submitted to Court in Connection with Motion to Seal” shall be submitted with the motion. This attachment shall contain the documents at issue for the Court’s in camera review and shall not be filed. The Court’s docket shall reflect that the motion and memorandum were filed and were supported by a sealed attachment submitted for in camera review.

(B) The Clerk shall provide public notice of the Motion to Seal in the manner directed by the Court. Absent direction to the contrary, this may be accomplished by docketing the motion in a manner that discloses its nature as a motion to seal.

(C) No settlement agreement filed with the court shall be sealed pursuant to the terms of this Rule.

District of South Dakota

No relevant local rule.

Eastern District of Tennessee

Analysis: The court must find that good cause exists before ordering a document to be placed under seal. Unless the court, upon motion, orders otherwise, a document filed under seal will be unsealed and placed in the case file thirty days following final disposition (including direct appeal) of the action. If the court orders that a document is to be maintained under seal longer than thirty days, the court order must set a date for unsealing the document.

**Eastern District of Tennessee Local Rule 26.2.
Sealing of Court Records.**

(a) *Public Record.* Except as otherwise provided by statute, rule or order, all pleadings and other papers of any nature filed with the Court (“Court Records”) shall become a part of the public record of this court.

(b) *Procedure.* Court Records or portions thereof shall not be placed under seal unless and except to the extent that the person seeking the sealing thereof shall have first obtained, for good cause shown, an order of the Court specifying those Court Records, categories of Court Records, or portions thereof which shall be placed under seal. The Court may, in its discretion, receive and review any document in camera without public disclosure thereof and, in connection with any such review, determine whether good cause exists for the sealing of the document. Unless the Court orders otherwise, the parties shall file with the Court redacted versions of any Court Record where only a portion thereof is to be placed under seal.

(c) *Criminal Matters.* . . .

(d) *Expiration of Order.* Court Records filed under seal in civil and criminal actions shall be maintained under seal for thirty (30) days following final disposition (including direct appeal) of the action. After that time, all sealed court records shall be unsealed and placed in the case file unless the Court, upon motion, orders that the Court Records be maintained under seal beyond the thirty (30) days. All such orders shall set a date for the unsealing of the Court Records.

Middle District of Tennessee

No relevant local rule.

Western District of Tennessee

No relevant local rule.

Eastern District of Texas

Analysis: No restriction on the court's authority to seal a document. A sealed document may not remain sealed indefinitely. Thirty days after the civil action has been finally disposed of by the appellate courts or thirty days from the date the appeal time lapsed, the clerk may destroy the paper original of the document after scanning. The clerk will maintain the database and prevent unauthorized access to the scanned document for the foreseeable future.

Eastern District of Texas Local Rule CV-79(a). Books and Records Kept by the Clerk. Disposition of Exhibits and/or Sealed Documents by the Clerk.

Thirty days after a civil action has been finally disposed of by the appellate courts or from the date the appeal time lapsed, the clerk is authorized to take the following actions:

(1) *Exhibits.* . . .

(2) *Sealed documents.* Scan the original documents into electronic images that are stored on the court's computer system in lieu of maintaining the original paper copies. The clerk shall ensure that the database of scanned images is maintained for the foreseeable future, and that no unauthorized access of the stored images occurs. Once a document has been scanned, the paper original will be destroyed.

Northern District of Texas

Analysis: No restriction on the court's authority to seal a document. A sealed document may not remain sealed indefinitely. Unless the court orders otherwise, a sealed document will be unsealed sixty days after final disposition of the case.

Northern District of Texas Local Rule 79.3. Ex Parte and Sealed Documents.

(a) Unless exempted by subsection (b) of this rule—

(1) An ex parte document, or a document that a party desires to be filed under seal, shall not be filed by the clerk under seal absent an order of a judge of the court directing the clerk to file the document under seal. The term "document," as used in this rule, means any pleading, motion, other paper, or physical item that the Federal Rules of Civil Procedure permit or require to be filed.

(2) A party who desires to file a document under seal must at the time the document is presented to the clerk for filing either present a motion to file the document under seal or demonstrate that a judge has ordered that the document be filed under seal. If no judge has been assigned to a case in which a motion is filed, the clerk may direct the motion to the duty judge or to another judge of the court for consideration.

(3) The clerk of court shall defer filing an ex parte document, or document that a party desires to be filed under seal, until a judge of the court has ruled on the motion to file the document under seal.

(b) The clerk shall file under seal any document that a statute or rule requires or permits to be so filed.

Northern District of Texas Local Rule 79.4. Disposition of Sealed Documents.

Unless an order of the court otherwise directs, all sealed documents will be deemed unsealed 60 days after final disposition of a case. A party who desires that such a document remain sealed must move for this relief before the expiration of the 60-day period. The clerk may store, transfer, or otherwise dispose of unsealed documents according to the procedure that governs publicly available court records.

Southern District of Texas

No relevant local rule.

Western District of Texas

No relevant local rule.

District of Utah

Analysis: The court must find that good cause has been shown before ordering a document to be sealed. A sealed document may not remain under seal indefinitely. Unless otherwise ordered by the court, a sealed document will be unsealed upon final disposition of the case.

District of Utah Local Civil Rule 5–2. Filing Cases and Documents Under Court Seal.

(a) *General Rule.* On motion of one or more parties and a showing of good cause, the court or, upon referral, a magistrate judge may order all or a portion of the documents filed in a civil case to be sealed.

(b) *Sealing of New Cases.*

(1) *On Ex Parte Motion*. A case may be sealed at the time it is filed upon ex parte motion of the plaintiff or petitioner and execution by the court of a written order. The case will be listed on the clerk's case index as *Sealed Plaintiff vs. Sealed Defendant*.

(2) *Civil Actions for False Claims*. When an individual files a civil action on behalf of the individual and the government alleging a violation of 31 U.S.C. §3729, the clerk will seal the complaint for a minimum of sixty (60) days. Extensions may be approved by the court on motion of the government.

(c) *Sealing of Pending Cases*. A pending case may be sealed at any time upon motion of either party and execution by the court of a written order. Unless the court otherwise orders, neither the clerk's automated case index nor the existing case docket will be modified.

(d) *Procedure for Filing Documents Under Seal*. Documents ordered sealed by the court or otherwise required to be sealed by statute must be placed unfolded in an envelope with a copy of the cover page of the document affixed to the outside of the envelope. The pleading caption on the cover page must include a notation that the document is being filed under court seal. The sealed document, together with a judge's copy prepared in the same manner, must be filed with the clerk. No document may be designated by any party as *Filed under Seal* or *Confidential* unless:

- (1) it is accompanied by a court order sealing the document;
- (2) it is being filed in a case that the court has ordered sealed; or
- (3) it contains material that is the subject of a protective order entered by the court.

(e) *Access to Sealed Cases and Documents*. Unless otherwise ordered by the court, the clerk will provide access to cases and document under court seal only on court order. Unless otherwise ordered by the court, the clerk will make no copies of sealed case files or documents.

(f) *Disposition of Sealed Documents*. Unless otherwise ordered by the court, any case file or documents under court seal that have not previously been unsealed by court order will be unsealed at the time of final disposition of the case.

District of Vermont

Analysis: No restriction on the court's authority to seal a document. A sealed document may remain sealed indefinitely; no durational limitations are imposed by this rule.

District of Vermont Local Rule 83.8. Sealed Documents.

(a) *Order Required*. All official files in the possession of the court are considered to be public documents available for inspection unless otherwise ordered. Cases or documents cannot be sealed without an order from the court.

(b) *Filing Procedure*. To request that a filing be sealed, a separate Motion to Seal must accompany the specific item to be sealed.

(c) *Documents Filed Under Protective Order*. Any party filing a prospectively sealed document must place the document in a sealed envelope and affix a copy of the document's cover page (with confidential information deleted) to the outside of the envelope. The party must designate the envelope with a conspicuous notation such as "DOCUMENTS SUBJECT TO PROTECTIVE ORDER," or the equivalent.

District Court for the Virgin Islands

No relevant local rule.

Eastern District of Virginia

No relevant local rule.

Western District of Virginia

Analysis: No restriction on the court's authority to seal a document. A sealed document may not remain sealed indefinitely. Unless a district judge or magistrate judge expressly orders otherwise, a sealed document will be unsealed within thirty days of the date that it was ordered sealed.

Western District of Virginia Local Rules, Part XIII.A. Standing Order in re Unsealing of Documents Placed Under Seal with the Court.

This Standing Order governs the unsealing of documents, pleadings and files (except presentence reports, pretrial service reports, psychiatric and psychological reports and any other matter required by statute or rule of court to be sealed) placed under seal with the Court in criminal, civil or miscellaneous matters unless the provisions of this Order are expressly countermanded by a District Judge or Magistrate Judge in a matter pending before him or her. Nothing in this Standing Order shall be construed to prevent a District Judge or Magistrate Judge from expressly excepting a document, pleading or file pending before him or her from this Standing Order. This Standing Order is not retroactive.

Unless a District Judge or Magistrate Judge of this Court expressly orders to the contrary in a matter pending before him or her, it is hereby ORDERED as follows as to documents, pleadings and files that have been ordered sealed:

(1) search warrants are to be unsealed within twenty-four (24) hours of execution;

(2) arrest warrants are to be unsealed after execution;

(3) indictments are to be unsealed within thirty (30) days of return of the indictment or when all defendants are in custody or summoned, whichever is sooner;

(4) criminal complaints are to be unsealed within thirty (30) days of issuance or when all defendants are in custody or summoned, whichever is sooner;

(5) motions to seal shall be unsealed when the documents, pleadings or files to which they pertain are unsealed;

(6) all other documents, pleadings and files are to be unsealed within thirty (30) days from the date of the order to seal; and

(7) each defendant shall be provided an unredacted copy of the charges against him or her even if the matter is otherwise sealed.

Unless a District Judge or Magistrate Judge expressly orders to the contrary in a matter pending before him or her, the sealing of any document, pleading or file shall be considered only upon written motion.

It is further ORDERED that the Clerk of the Court shall maintain a list of sealed matters assigned to each District Judge and Magistrate Judge for that Judge's review.

The Clerk is directed to enter this order in the order books for each division of this Court and to send certified copies to the District Judges, Magistrate Judges and United States Attorney for this District.

ENTERED this 19th day of December 1997.

Eastern District of Washington

No relevant local rule.

Western District of Washington

Analysis: In order to seal a document, the court must find that the strong presumption in favor of public access to the court's files and records has been overcome by a compelling showing that the interests of the public and the parties in protecting the document from public review outweigh this

presumption. A sealed document may not remain sealed indefinitely. If the court has ordered only the document in a civil action to be placed under seal, the court will return the sealed document to the submitting counsel or party after the case has terminated and the time for appeal has run. In civil actions in which the court ordered that the entire case file, including the document, be placed under seal, the court will destroy the sealed case file after the case has terminated, the time for appeal has run, and the parties have been given sixty days' notice.

Western District of Washington Local Civil Rule 5(g). Service and Filing of Pleadings and Other Papers. Sealing of Court Records.

(1) This rule sets forth a uniform procedure for sealing court files, cases, records, exhibits, specified documents, or materials in a court file or record. There is a strong presumption of public access to the court's files and records which may be overcome only on a compelling showing that the public's right of access is outweighed by the interests of the public and the parties in protecting files, records, or documents from public review. Nothing in this rule shall be construed to expand or restrict statutory provisions for the sealing of files, records, or documents.

(2) The court may order the sealing of any files and records on motion of any party, on stipulation and order, or on the court's own motion. If no defendant has appeared in the case, the motion to seal may be presented ex parte. The law requires, and the motion and the proposed order shall include, a clear statement of the facts justifying a seal and overcoming the strong presumption in favor of public access.

(3) Each document to be filed under seal must be submitted in a separate envelope, clearly identifying the enclosed document and stating that the document is "FILED UNDER SEAL." For example, if both the motion and the accompanying affidavit should be filed under seal, the two documents must be submitted in separate, clearly marked envelopes so that each may be entered on the docket. If only one exhibit or document needs to be filed under seal, only that exhibit or document should be submitted in an envelope.

(4) Sealed files and records, or any part thereof, shall remain sealed until the court orders unsealing on stipulation of the parties, motion by any party or intervenor, or the court's own motion. Any party opposing the unsealing must make a compelling showing that the interests of the parties in protecting files, records, or documents from

public review continue to outweigh the public's right of access.

(5) If the court orders the sealing of any files or documents pursuant to the above provisions, the clerk shall:

(A) file the order to seal;

(B) seal the file, record, or documents designated in the order to seal and secure it from public access;

(C) in civil actions in which only portions of the file have been placed under seal, return sealed documents to the submitting counsel or party after the case has concluded and the time for appeal has run;

(D) in civil actions in which the entire file has been placed under seal, destroy the sealed file after the case has concluded, the time for appeal has run, and the parties have been given sixty days' notice of the proposed destruction.

Northern District of West Virginia

No relevant local rule.

Southern District of West Virginia

No relevant local rule.

Eastern District of Wisconsin

Analysis: No restriction on the court's authority to seal a document. A sealed document may remain sealed indefinitely; no durational limitations are imposed by this rule.

Eastern District of Wisconsin General Local Rule 79.4. Confidential Matters.

(a) *Grand Jury Proceedings*. . . .

(b) All documents which a judge or magistrate judge has ordered to be treated as confidential must be filed in a sealed envelope conspicuously marked "SEALED".

(c) Subject to General L.R. 83.9(c) and Civil L.R. 26.4, the Court will consider all documents to have been filed publicly unless they are accompanied by a separate motion requesting that the documents, or portions thereof, be sealed by the Court.

(d) All documents which a party seeks to have treated as confidential, but as to which no sealing order has been entered, must be filed in a sealed envelope conspicuously marked "Request for Confidentiality Pending," together with a motion requesting an appropriate order. The separate motion for sealing must be publicly filed and must generally identify the documents contained in the sealed envelope. The documents must be transmitted by the Clerk of Court in a sealed envelope to the judge or magistrate judge, together with the moving papers. If the motion is denied, the documents must be filed by the Clerk of Court in an open file, unless otherwise ordered by the judge or magistrate judge assigned to the case.

Western District of Wisconsin

No relevant local rule.

District of Wyoming

No relevant local rule.

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Appendix C

Descriptions of Cases with Sealed Settlement Agreements

An examination of 288,846 federal civil cases terminated in 2001 and 2002 in 52 districts revealed 1,270 cases with sealed settlement agreements, a rate of 0.44%. Descriptions of these cases follow.²⁴ For each district we briefly summarize local rules and practices and provide statistics on how many cases we searched to find sealed settlement agreements. Districts are presented in alphabetical order; cases are presented within a district in order of filing date. Consolidated and companion cases are counted separately, but described together.

Middle District of Alabama

No relevant local rule.

Statistics: 3,237 cases in termination cohort; 80 docket sheets (2.5%) have the word “seal” in them; 4 complete docket sheets (0.12%) were reviewed; actual documents were examined for 3 cases (0.09%); 3 cases (0.09%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Principal Financial Group v. Principal Equity Mortgage Inc. (AL-M 2:00-cv-00326 filed 03/16/2000).

Action seeking injunctive and monetary relief for trademark infringement, dilution, unfair competition, and counterfeiting. After the parties agreed to settle and submit a final judgment and permanent injunction by consent to the court, the court ordered the parties to submit a joint stipulation of dismissal. The plaintiffs requested more time to finalize the settlement terms and inadvertently attached exhibits containing draft settlement papers, which were filed with the court. Because the draft settlement papers contained confidential information, the plaintiffs moved to have them sealed. The court granted the motion, and the parties filed under seal the settlement documents and the final judgment and permanent injunction by consent. The court approved the judgment and permanent injunction, ordered the clerk to ensure that they remain sealed, and retained jurisdiction over the case as needed to enforce the settlement. The case was closed but remains on the court’s administrative docket.

Robson v. Dale County Board of Education (AL-M 1:00-cv-01037 filed 08/02/2000).

Civil rights action by a substitute teacher for retaliation for exercising her First Amendment freedom of speech. The parties settled, and the court granted the parties’ joint stipulation to dismiss with prejudice the individual defendants (the principal and the school superintendent). The settlement agreement with the remaining defendant school board apparently was filed under seal, because the docket sheet indicates that after the court granted the parties’ sealed joint motion to seal, the case was closed pursuant to a sealed order and a document was filed under seal the same day.

Johnson v. Dothan Coca Cola Bottling Enterprises (AL-M 1:01-cv-00901 filed 07/20/2001).

Employment civil rights action by a black employee against a bottling company for race discrimination and retaliation. The parties settled, the court ordered costs to be taxed against the defendant, and the case was dismissed with prejudice. The defendant contested the bill of cost filed by the plaintiff and moved to file the parties’ confidential settlement agreement under seal to show that the parties had an agreement with respect to the payment of costs. The court granted the motion, and the defendant filed a copy of the confidential settlement agreement for in camera review by the court. Prior to an evidentiary hearing, the parties agreed to split payment of the costs, and the court closed the case.

24. Each case description reflects the status of the case file at the time of review, some time in 2002–2004. Matters pending at the time of review (appeals, for example) may have been resolved between the time of review and the conclusion of the study.

Northern District of Alabama

No relevant local rule.

Statistics: 7,042 cases in termination cohort; 3 docket sheets are sealed (0.04%)—all of these cases' disposition codes suggest sealed settlement agreements;²⁵ 745 unsealed docket sheets (11%) have the word "seal" in them; 26 complete docket sheets (0.37%) were reviewed; actual documents were examined for 24 cases (0.34%); 26 cases (0.37%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Woodruff v. City of Birmingham (AL-N 2:96-cv-02196 filed 08/21/1996).

Employment civil rights action for sex discrimination and retaliation by a female buildings inspector employed by the city. Pursuant to a sealed court order, judgment was entered for the plaintiff and the defendant was ordered to comply with the terms contained in the sealed order. Because no motion preceded the order, the sealed order probably incorporated the terms of a settlement agreement reached by the parties. Four years later, the plaintiff brought a motion to enforce the court order still under seal and a motion for contempt against the defendant. The court denied the plaintiff's motions and the case was closed.

Robinson v. Boohaker Schillaci (AL-N 2:96-cv-03198 filed 12/09/1996).

Contract action by a former shareholder/director/employee for breach of several agreements made with the defendant accounting corporation, including a buy-sell agreement. The defendant filed a counterclaim alleging that the plaintiff's breach of a non-compete provision was the reason for its refusal to honor the terms of its agreement. After a jury trial had commenced, the parties settled. Settlement terms were stated on the record, and the transcript was sealed. The case was dismissed.

Cahaba Pressure-Treated Forest Products v. OM Group (AL-N 7:97-cv-01917 filed 07/25/1997).

Fraud action. The docket sheet is sealed. The case was dismissed as settled.

Thomasson Lumber Co. v. Cahaba Pressure-Treated Forest Products (AL-N 7:98-cv-00043 filed 01/08/1998).

Contract action. The docket sheet is sealed. The case was dismissed as settled.

Pennsylvania National Mutual Casualty Insurance Co. v. Cahaba Pressure-Treated Forest Products (AL-N 2:98-cv-01261 filed 05/19/1998).

Insurance action. The docket sheet is sealed. The case was dismissed as settled.

Jones v. Samford University (AL-N 2:98-cv-02530 filed 10/06/1998).

Employment civil rights class action by female faculty and staff members alleging sex discrimination by the defendant university in compensation, tenure, hiring, and promotion. The court denied certification of the case as a class action. The parties settled, and the court dismissed the case with prejudice. The court sealed the transcript of the settlement proceedings.

Faddis v. Roehuf Restaurants Inc. (AL-N 2:99-cv-01214 filed 05/13/1999).

Class action under the Fair Labor Standards Act alleging that the defendant restaurant discriminated against female employees regarding wages. In addition, allegations of race and age discrimination, retaliation, and failure to pay overtime wages were brought by named plaintiffs. The court denied class certification. A settlement apparently was reached, because two weeks after the court dismissed the case with prejudice, the defendant moved to enforce the settlement and for sanctions. The court denied the defendant's motions and ordered the clerk to place the defendant's motion to enforce the settlement under seal. The case was closed.

Martin v. Davenport AME Zion Church (AL-N 4:99-cv-01908 filed 07/23/1999).

Personal injury action by a minor and her mother for molestation of the minor by the defendant pastor. The parties settled, and the case was dismissed without prejudice. Less than a month later the parties moved to reopen the case to accept the parties' petition for *pro ami* settlement to effectuate the settlement that involves the minor. *Pro ami* proceedings were held. The court filed its order regarding the proposed settlement and final judgment under seal.

25. Three cases settled.

Appendix C. Case Descriptions

Smith v. Cohen (AL-N 5:99-cv-02907 filed 10/29/1999).

Employment civil rights action against the Department of Defense for sex and race discrimination against a black female employee and retaliation for participation in the EEO process. The parties reached a confidential settlement agreement, which was sealed. The case was dismissed without prejudice.

Hawkins v. Electronic Data Systems Corp. (AL-N 2:99-cv-03451 filed 12/30/1999).

Employment discrimination action by black employees. The plaintiffs also brought claims under the Fair Labor Standards Act for unpaid overtime compensation. The parties negotiated a settlement agreement at a mediation session. Two weeks later the defendant moved to enforce the settlement agreement. Attached exhibits that contained the terms of the settlement agreement were filed under seal. The court granted the defendant's motion and the parties' stipulation to dismiss the case with prejudice.

IMI International Medical Innovations Inc. v. MQS Inc. (AL-N 2:00-cv-00131 filed 01/14/2000).

Contract action for incomplete performance. The case settled, and the court granted the plaintiff's motion to place the confidential settlement agreement under seal. The court also sealed a consent judgment.

DeSanto v. Howard (AL-N 2:00-cv-00171 filed 01/20/2000).

Personal injury action on behalf of a minor for inappropriate contact by an intoxicated passenger during a flight on the defendant airline. The parties settled. The court granted the defendant's motion to allow the filing of all future pleadings under seal until a proposed settlement was approved by the court, because the claims were filed on behalf of a minor. In support of its motion, the defendant disclosed that confidentiality of the settlement amount was a material element upon which it relied. The plaintiff's motion to approve the proposed settlement and the report of the guardian ad litem were filed under seal. The court approved the *pro ami* settlement and dismissed the case.

McWhorter v. Lawson State Community College (AL-N 2:00-cv-00401 filed 02/17/2000).

Employment action by a female professor against the defendant university for sex discrimination

and retaliation. The parties settled during court-ordered mediation, and the court dismissed the case without prejudice, retaining jurisdiction to enforce the parties' settlement agreement. The court ordered the mediation agreement, which was filed with the court, to be placed under seal.

Farr v. Newell Rubbermaid Inc. (AL-N 5:00-cv-00997 filed 04/18/2000).

Product liability action by a minor. The specific allegations of this case are not known because, as the assigned judge's docket clerk confirmed, the entire case file is sealed. The docket sheet indicates that the parties settled and that the settlement agreement was sealed. In addition, following a *pro ami* hearing, the court filed under seal a confidential order and approval of the minor's settlement. The court ordered the contents of the file sealed to preserve confidentiality. The case was closed.

Shrader v. Mallard (AL-N 4:00-cv-01050 filed 04/21/2000).

Civil rights action for sexual abuse by city jail employees while the plaintiff was detained following arrest. The parties settled, and the case was dismissed without prejudice. Four months later the parties filed a joint motion to seal the settlement agreement to maintain its confidentiality for the benefit of the parties' reputations. The court granted the joint motion, and the settlement agreement was sealed, with the exception that it could be produced to plaintiff's counsel in a separate suit against the same defendant.

Livingston v. City of Attalla (AL-N 4:00-cv-01989 filed 07/18/2000).

Personal injury action for sexual abuse by city jail employees. The parties settled and the case was dismissed without prejudice. Four months later the parties filed a joint motion to seal the settlement agreement to maintain its confidentiality for the benefit of the parties' reputations. The court granted the joint motion and filed the settlement agreement under seal.

Bell v. Jacksonville City Board of Education (AL-N 1:00-cv-02035 filed 07/21/2000).

Employment action by a female teacher against the board of education for sex and age discrimination in repeatedly denying the plaintiff promotions. Prior to opening statements at a jury trial, the parties announced settlement of all pending claims and issues. The terms of settlement were

Sealed Settlement Agreements

read into the record, and the settlement portion of the transcript was sealed. The case was dismissed, and the court reserved jurisdiction for thirty days for the filing of motions to enforce the settlement.

Jordan v. API Outdoors Inc. (AL-N 2:00-cv-02059 filed 07/24/2000).

Product liability action for serious injuries sustained in a fall when a climbing belt designed and manufactured by the defendant suddenly failed. The parties settled, and the court ordered the case dismissed without prejudice, retaining jurisdiction over the parties to enforce their settlement agreement. The court ordered that the parties' stipulation regarding the settlement agreement be filed under seal. The court granted the parties' stipulation to dismiss the case with prejudice.

EEOC v. Employers Mutual Casualty Co. (AL-N 2:00-cv-02605 filed 09/15/2000).

Employment action on behalf of a female employee of the defendant insurance company for failure to promote her because of her sex. The parties settled, and the defendant moved to allow the parties to file under seal the settlement agreement and the general release that was referenced in the proposed consent decree filed with the court. The court granted the defendant's motion. The court ordered the clerk to close the file, but the court retained jurisdiction either for the next four months to resolve any dispute that might arise out of administration of the consent decree, or until the defendant certified that the payment and training required under the consent decree were completed, whichever occurred first.

Brockway v. DaimlerChrysler Corp. (AL-N 5:00-cv-02970 filed 10/19/2000).

Employment action by a female employee for sex discrimination and sexual harassment. The defendant filed a motion to enforce a settlement agreement. Exhibits and a brief in support of the motion were filed under seal. The plaintiff's response to the motion also was filed under seal. The court denied the motion after an evidentiary hearing. All claims against the defendant were dismissed by summary judgment.

Reifenentsforgumsgesell Schaft mbH v. Oxy Tire Inc. (AL-N 2:00-cv-02977 filed 10/20/2000).

Contract action for breach of an agreement to make timely payments for tires and not to sell tires to certain countries. The parties settled, and the court granted their request to enter judgment

against the defendant under seal and for the judgment to remain under seal until the defendant defaulted in payment. The case was dismissed with prejudice. Seven months later the court granted the plaintiff's motion to unseal the judgment because the defendant failed to make the second installment payment.

Hill v. CVS Rx Services Inc. (AL-N 2:00-cv-03355 filed 11/21/2000).

Class action under the Fair Labor Standards Act by CVS pharmacists for failure to pay overtime wages. The parties settled and filed their confidential settlement and release agreement under seal with the court. The court also sealed the transcript of the fairness hearing and settlement conference. The court approved the settlement of class claims and dismissed the case with prejudice.

Wilson v. Saks Inc. (AL-N 2:01-cv-00237 filed 01/24/2001).

Employment action by a black employee for race discrimination and retaliatory discharge. The parties agreed on a confidential settlement agreement. Six days later the defendant moved to enforce the settlement agreement with sealed exhibits attached (letters confirming the settlement). The court granted the motion and dismissed the case.

Estate of Westboro v. PGT Trucking Inc. (AL-N 5:01-cv-00498 filed 02/23/2001).

Motor vehicle action for the wrongful killing of a driver (father) and a passenger (daughter), and for severe injuries sustained by another minor passenger (another daughter) when a tractor-trailer collided head on with the plaintiffs' vehicle. The parties settled. The plaintiffs filed under seal a motion for an order approving the *pro ami* settlement pertaining to the minor plaintiff. The court approved the terms of the *pro ami* settlement and granted the parties' stipulation and order of dismissal with prejudice.

Holcombe v. Therapeutic Programs Inc. (AL-N 2:01-cv-00918 filed 04/13/2001).

Employment action for racial discrimination and wrongful termination by a black employee of a corporation providing foster care services to the state of Alabama. The parties apparently settled, because the defendant moved to enforce the settlement. The court sealed the transcript of the hearing on the motion to enforce the settlement

agreement. The court's order dismissing the case with prejudice also was sealed.

EMCO Building Products Inc. v. ARES Corp. (AL-N 5:01-cv-01226 filed 05/14/2001).

Contract action for failure to pay a balance due for goods. After a jury trial had commenced, the case settled, and the settlement agreement as dictated into the court record was sealed. The court filed under seal a judgment by agreement of the parties terminating the case. The court granted the plaintiff's request to unseal the agreed order and judgment for the limited purpose of allowing it to be registered and recorded in another judicial district.

Southern District of Alabama

No relevant local rule.

Statistics: 2,015 cases in termination cohort; 1 docket sheet is sealed (0.05%)—this case's disposition code suggests no sealed settlement agreement;²⁶ 78 unsealed docket sheets (3.9%) have the word "seal" in them; 22 complete docket sheets (1.1%) were reviewed; actual documents were examined for 9 cases (0.45%); 9 cases (0.45%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

In re Amtrak "Sunset Limited" Train Crash (AL-S 1:94-cv-05000, MDL 1003 filed 03/02/1994), multidistrict litigation including *Schmidt v. CSX Transportation Inc.* (AL-S 1:94-cv-05015 filed 03/02/1994) and *Procaccini v. CSX Transportation Co.* (AL-S 1:94-cv-05017 filed 03/03/1994).

Personal injury and wrongful death actions arising from the "Sunset Limited" passenger train derailment and crash into Big Bayou Canot on September 22, 1993. The train struck a bridge girder displaced by the collision of a towboat and barges with the railroad bridge over Big Bayou Canot in Alabama. Cases filed by or on behalf of injured or deceased passengers or crew members were transferred by the MDL panel to the Southern District of Alabama and consolidated for pre-trial purposes. A master file was created for all pretrial proceedings and assigned docket numbers MDL 1003 and AL-S 94-05000.

The defendants were ordered to submit under seal lists of all settlements, and each settlement agreement was to be disclosed only if all parties to it agreed. In December 1998, a global settlement

was reached in the remaining 42 wrongful death actions, but it was contingent upon all of the wrongful death plaintiffs' approving the settlement. Each plaintiff's attorney previously settling a wrongful death case with one of the defendants was ordered to complete a "confidential case settlement questionnaire" and file it under seal with the court, after which the plaintiff's attorney would receive the terms of the proposed confidential global settlement and other necessary settlement documents. After all plaintiffs executed the appropriate releases, and the defendants filed a notice of their receipt, the plaintiff steering committee filed under seal a request for disbursement of the settlement funds. All forty-two remaining wrongful death actions were dismissed in March 1999.

Case 94-05015 was brought by a minor, and case 94-05017 was brought by the minor's mother. One of the defendants filed a motion to enforce a settlement in these two cases, which was later placed under seal by the court; the court denied the motion, and a jury trial was held in these two cases. In both cases final judgment was entered for the plaintiffs against one defendant and in favor of another defendant who had been granted summary judgment. The court dismissed the remaining claims in both cases pursuant to a sealed settlement agreement.

Strong v. City of Selma (AL-S 2:98-cv-00191 filed 02/27/1998).

Civil rights class action for police brutality against black men. The court dismissed the case as settled. Three days later the case was reopened, and the court gave the parties twenty days to file under seal a jointly proposed consent order embodying the terms of the confidential settlement agreement. The case was closed upon entry of the sealed consent order.

O'Gwynn v. Foley Police Department (AL-S 1:00-cv-00273 filed 03/31/2000).

Action by a mentally ill plaintiff for civil rights violations during her detention at the city jail. After summary judgment for the city, the plaintiff and the police officer entered into a confidential settlement agreement. Because the plaintiff was committed and found to be incompetent, a *pro ami* hearing was required under state law to determine the fairness of the settlement. The court granted the guardian ad litem's request to seal the motion to approve the settlement agreement. The court approved the settlement agreement and dismissed the case.

26. One voluntary dismissal.

Huber v. Tillman (AL-S 1:01-cv-00019 filed 01/05/2001).

Employment action by a female police officer for sex discrimination and retaliation, including retaliation for a previous religious discrimination charge. After summary judgment for the defendant on the retaliation claim, the parties reached a confidential settlement agreement. The plaintiff filed a motion to enforce it. Because the terms of the settlement were confidential, the court ordered the plaintiff to file under seal a supplemental motion setting forth the terms of the settlement agreement and the basis for her claim. A notice of voluntary dismissal was filed before the court ruled on the motion to enforce the settlement agreement.

Curry v. Kimberly Clark Paper Co. (AL-S 1:01-cv-00445 filed 06/20/2001).

Action under the National Labor Relations Act and the Labor and Management Relations Act arising out of theft of property from the plaintiff's place of employment. The court dismissed the case as settled and gave the parties thirty days to perfect their agreement. The plaintiff moved to enforce the settlement agreement after refusing to sign the general release. The defendants moved to enforce the settlement agreement and the general release. The motions were filed under seal pursuant to a confidentiality provision of the proposed settlement agreement. The parties agreed that the court's resolution of the settlement dispute would end the case. The court denied both motions. Pursuant to inherent authority to enforce settlements, the court ordered the plaintiff to sign a release and the defendants to pay the undisputed settlement amount.

EEOC v. Wal-Mart Stores Inc. (AL-S 1:01-cv-00522 filed 07/19/2001).

Employment action on behalf of female Wal-Mart employees for sexual harassment and retaliation for reporting the harassment to supervisory employees. In July 2002, the parties notified the court that the action had settled, and the court dismissed the case with prejudice. The settlement agreement included a confidential release. The transcript of the settlement agreement apparently was sealed, because in January 2003, the court granted the defendant's motion to unseal it.

Williams v. Davis & Feder PA (AL-S 1:02-cv-00188 filed 03/21/2002).

Legal malpractice action concerning the plaintiff's claim for medical complications caused by a diet drug. The plaintiff alleged that the defendants' false representations induced her to accept an inadequate settlement that did not compensate her for an undiscovered serious heart condition. Following settlement and a voluntary dismissal, the defendants moved for relief from judgment and to submit evidence under seal. The court ordered sealed all documents related to the defendants' motion. The court granted the defendants' motion for relief from judgment and ordered the parties to conform to the terms of the settlement agreement and release. The parties agreed that the court should have continuing jurisdiction over any alleged breach of the settlement agreement or violation of its terms. The case was dismissed with prejudice.

District of Arizona

Documents may remain sealed for no more than 23 years. D. Ariz. L.R. 1.3(d)-(f).

Statistics: 6,604 cases in termination cohort; 18 docket sheets are sealed (0.27%)—all of these cases' disposition codes suggest no sealed settlement agreements;²⁷ 347 unsealed docket sheets (5.3%) have the word "seal" in them; 32 complete docket sheets (0.48%) were reviewed; actual documents were examined for 21 cases (0.32%); 18 cases (0.27%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Grimes v. Golden Eagle Distributors Inc. (AZ 4:96-cv-00689 filed 11/26/1996).

Employment discrimination action by current and former employees for age discrimination, wrongful termination, and retaliation in violation of the Age Discrimination in Employment Act. Three plaintiffs agreed to dismiss their claims with prejudice in consideration of a confidential settlement agreement reached by each plaintiff with the defendant. One of the three plaintiffs filed a motion to enforce the agreement. The court granted the defendant's unopposed request to file the plaintiff's motion under seal as well as any future pleadings or papers containing confidential

27. One case remanded to state court, 10 cases dismissed for want of prosecution, 5 cases with judgments on motions before trial, 1 multidistrict litigation transfer, 1 "other" judgment.

Appendix C. Case Descriptions

data regarding the settlement agreement and/or negotiations. The parties stipulated to withdraw all pending motions, except for motions for attorney fees filed on behalf of two of the plaintiffs.

Morton v. United Parcel Service Inc. (AZ 2:96-cv-02813 filed 12/23/1996).

Employment discrimination action under the Americans with Disabilities Act for refusal to consider the plaintiff for a driver position because of her hearing disability and for failure to accommodate her disability, which resulted in a constructive discharge. The parties settled eight months after the case was reopened following the court of appeals' reversal of summary judgment for the defendant. The court ordered the record of the telephonic settlement agreement sealed. The parties stipulated to a court order providing for confidentiality of the settlement agreement and for dismissal of the case with prejudice.

Unisys Corp. v. Varilease Technology Group (AZ 2:98-cv-02251 filed 12/17/1998).

Copyright and trade secret action concerning maintenance and product support materials and diagnostic software. All parties to the case reached a confidential settlement agreement. Because of delay by one of the defendants in signing the stipulation for dismissal, the plaintiff filed under seal a motion to enforce the settlement agreement. Before the motion was considered, the necessary signatures were obtained, and the case was dismissed upon the filing of the stipulation to enter a permanent injunction and dismiss the claims with prejudice.

Progressive Electronics Inc. v. Aines Manufacturing Corp. (AZ 2:99-cv-01184 filed 06/30/1999).

Patent infringement action concerning an inductive amplifier used in the telephone service industries. The parties settled and filed a proposed consent judgment under seal. The court approved the sealed consent judgment.

Ransom v. Arizona (AZ 2:99-cv-01962 filed 11/02/1999).

Employment action by an African-American security officer for race discrimination and for retaliation for filing an internal complaint alleging a racially biased internal affairs investigation of the plaintiff. The case settled, and the court ordered the record of the terms of the settlement to be sealed.

Southwest Gas Corp. v. ONEOK Inc. (AZ 2:00-cv-00119 filed 01/24/2000), consolidated with *Southwest Gas Corp. v. Southern Union Co.* (AZ 2:00-cv-00452 filed 03/13/2000).

This is a consolidation of three cases, two of which were identified by our search. The lead case was not included because it has not been terminated. The two cases listed above are contract actions also alleging fraud regarding a merger agreement and a confidentiality agreement. These two cases settled. The court sealed the transcript of the settlement hearing. The settlement agreement subsequently was unsealed by stipulation, except for attachments to an exhibit.

Borenstein v. Finova Group (AZ 2:00-cv-00619 filed 04/06/2000).

Securities class action alleging false financial statements. A court-approved settlement agreement was filed unsealed, but a "supplemental agreement" was filed under seal and the court sealed the portion of the transcript of a telephonic settlement hearing pertaining to the supplemental agreement.

M&I Heat Transfer Products Ltd. v. VAW Systems Ltd. (AZ 2:00-cv-00908 filed 05/15/2000).

Patent infringement action. The plaintiff accepted the defendant's offer of judgment, which the court ordered to be filed under seal.

Gregory v. Assisted Living Concepts Inc. (AZ 2:00-cv-01339 filed 07/13/2000).

Personal injury action for physical and mental injuries, including a stroke, because of negligent care by a nursing home. The court permitted the parties to file their "Joint Motion for Expedited Approval of Settlement and Stipulation to Dismiss with Prejudice" and all exhibits under seal; on the same day the court approved the parties' settlement agreement and dismissed the action with prejudice.

Ritchie v. Yanchunis (AZ 2:00-cv-01533 filed 08/09/2000).

Personal injury action for legal malpractice in allowing the statute of limitation on an action for wrongful termination to lapse. The parties agreed to a confidential settlement agreement, and the court ordered the transcript of the settlement agreement filed under seal.

Noriega v. City of Scottsdale (AZ 2:00-cv-01646 filed 08/28/2000).

Employment discrimination action by ten current or former Hispanic employees, alleging retaliation for filing complaints with the EEOC. The court sealed a joint notice regarding the status of settlement discussions reached by the parties. The court granted the parties' stipulation to dismiss the case with prejudice.

FTC v. RJB Telcom Inc. (AZ 2:00-cv-02017 filed 10/25/2000).

Action under the Federal Trade Commission Act for an injunction to halt defendants' unauthorized billing for access to sexually explicit Web pages and Web sites. The court filed under seal two appendices to the stipulated final injunction. These appendices apparently "contain details on the efforts that will be made to eliminate or at least minimize potential for fraud and would be damaging if made available to those wishing to perpetrate a fraud."

Cieslinski v. Taurus International Manufacturing Inc. (AZ 4:00-cv-00712 filed 12/18/2000).

Personal injury action against the manufacturer of an allegedly defective firearm for serious physical injury suffered by the plaintiff when the firearm misfired, striking the plaintiff in the abdomen. The court sealed the record of the settlement conference. The court retained jurisdiction to enforce any settlement.

Biesiada v. American Financial Resources Inc. (AZ 2:01-cv-00511 filed 03/19/2001).

Action under the Fair Labor Standards Act by two former bank employees for unpaid wages. The case was dismissed pursuant to a sealed settlement agreement.

Hannan v. Pacific Indemnity Co. (AZ 4:01-cv-00471 filed 09/14/2001).

Insurance contract action for bad faith in handling the plaintiff's claim for a fire that partially destroyed her home. Apparently the parties settled their claims, because five months after the case was filed the court found good cause to file under seal the defendant's motion to enforce the settlement agreement. The case was dismissed with prejudice shortly thereafter.

Stephens v. Arizona Association of Community Health Centers (AZ 2:01-cv-01936 filed 10/10/2001).

Action under the Fair Labor Standards Act by a former employee of the Arizona Association of Community Health Centers for unpaid overtime wages. The case settled, and the court ordered the terms of the settlement to be sealed.

Ishmail v. Honeywell Inc. (AZ 2:01-cv-02355 filed 12/03/2001).

Employment action involving a machinist of Macedonian descent suing his former employer for race and age discrimination and wrongful termination. The case settled, and the court ordered the settlement agreement to be sealed.

Northern District of California²⁸

"No document shall be filed under seal except pursuant to a Court order that authorizes the sealing of the particular document or portion thereof and is narrowly tailored to seal only that material for which good cause to seal has been established." N.D. Cal. Civ. L.R. 79-5(b). "Documents may not be filed under seal pursuant to blanket protective orders covering multiple documents. Counsel should not attempt to seal entire pleadings or memoranda required to be filed pursuant to the Federal Rules of Civil Procedure or these Local Rules." *Id.* (commentary). Absent an order to the contrary, sealed documents are unsealed ten years after being sent to the records center. *Id.* R. 79-5(e).

Statistics: 12,140 cases in termination cohort; 11 docket sheets are sealed (0.09%)—the disposition codes for 8 of these cases suggest no sealed settlement agreements²⁹ and the disposition codes for 3 of these cases suggest sealed settlement agreements;³⁰ 635 unsealed docket sheets (5.2%) have the word "seal" in them; 146 complete docket sheets (1.2%) were reviewed; actual documents were examined for 82 cases (0.68%); 70 cases (0.58%) appear to have sealed settlement agreements.

28. This district is included in the study because of its good-cause rule.

29. One case transferred, 1 case dismissed for want of prosecution, 1 case dismissed for lack of jurisdiction, 1 judgment on motion before trial, 2 voluntary dismissals, 1 "other" dismissal, 1 "other" judgment.

30. Three cases settled.

Cases with Sealed Settlement Agreements

Selby v. National Railroad Passenger Corp. (CA-N 4:93-cv-04160 filed 11/23/1993).

Employment action by a female road foreman of engines for sex discrimination and sexual harassment. The jury returned a verdict for the defendant and the plaintiff appealed. The court of appeals found two errors in the judgment. The case ultimately settled. The settlement agreement was put on the record at a settlement conference, the transcript of which was filed under seal. An unsatisfied execution of judgment showed \$20,765.98 due, but the case subsequently was dismissed.

Margetis v. Avant! Corp. (CA-N 5:96-cv-20132 filed 12/15/1995).

Securities class action by investors, alleging that defendants' software products were based on misappropriated computer code. The court approved a \$35 million settlement and sealed a "supplemental agreement regarding requests for exclusion." The supplemental agreement, however, was filed unsealed.

Sun Microsystems Inc. v. Dataram Corp. (CA-N 4:02-cv-01010 filed 08/29/1996).

Patent action concerning single in-line memory modules. A settlement agreement was put on the record at a settlement conference before a magistrate judge. One month later, the defendant moved ex parte to preempt the plaintiff's planned motion before the district judge to enforce the settlement agreement, arguing that the district judge should be shielded from matters of settlement negotiations. The magistrate judge recused herself because she had become "too close to the parties and the issues in this case," and the motion to enforce was filed under seal and heard by a second magistrate judge. He denied the motion to enforce by sealed order. After three more months of litigation, the case was dismissed by stipulated sealed order. A year and a half later the defendant filed a sealed motion to enforce a settlement agreement. Six months later the case again was dismissed by stipulated order.

Taurus Impressions Inc. v. General Binding Corp. (CA-N 5:96-cv-21029 filed 12/10/1996).

Contract action for putting on hold a project to develop computer-controlled desktop hot stamping machines for personalizing folders, binders, etc. The case settled at a settlement conference.

The court sealed a stipulation to dismiss and agreement to transfer intellectual property.

Media Financial Group v. W Publishing Group (CA-N 3:97-cv-02343 filed 06/23/1997).

Fraud action alleging business reorganization to avoid \$1,251,883 in judgments from a New Jersey court for tortious interference with magazine accounts receivable. At a settlement conference, some defendants entered into a confidential settlement agreement with the plaintiffs and then moved for a determination of good-faith settlement. The motion was granted, and the action against the settling defendants was dismissed. The agreement was filed under seal. The court thereafter signed a stipulated judgment against the principal defendant for \$839,633.89.

Adobe Systems Inc. v. Image & Business Solutions Inc. (CA-N 5:97-cv-20979 filed 10/30/1997).

Designated a copyright action, the complaint alleges various forms of unfair competition arising from possession and sale of unlicensed copies of the plaintiff's software. The case was dismissed pursuant to a consent decree that provided injunctive relief but did not specify any recovery of damages. The plaintiff filed an ex parte motion to reopen the case, alleging violations of the agreement. A declaration supporting the motion was sealed. The defendant's opposition also was sealed. The matter ultimately was resolved.

Xecom Inc. v. Xecom Corp. (CA-N 5:97-cv-21099 filed 11/24/1997).

Trademark action by a manufacturer of telecommunications equipment. The court awarded the plaintiff a default judgment and permanent injunction. The defendant's motion to set aside the judgment was denied. Before the plaintiff filed a motion for fees and damages, the case settled at a settlement conference, and the agreement was put on the record under seal. The following month the action was stayed by the defendant's bankruptcy. Three years later the court ordered the parties to show cause why the dormant case should not be dismissed and then dismissed it.

Lawrence v. Cessna Aircraft Co. (CA-N 3:98-cv-02837 filed 07/17/1998).

Airplane action alleging severe burns because the plaintiff was unable to escape from a crashed plane manufactured by the defendant. The case settled. The court sealed the minutes of the hearing on settlement approval.

Sealed Settlement Agreements

Amersham Pharmacia Biotech Inc. v. Perkin-Elmer Corp. (CA-N 3:98-cv-04167 filed 09/08/1998);
Amersham Pharmacia Biotech Inc. v. Applera Corp. (CA-N 3:00-cv-04707 filed 12/18/2000).

Patent actions concerning DNA sequencing techniques. The actions apparently were dismissed pursuant to sealed settlement agreements.

Berarducci v. General Electric Co. (CA-N 3:98-cv-03448 filed 09/09/1998).

Labor litigation for wrongful termination and age discrimination. The case settled pursuant to a settlement agreement, which was filed under seal.

EEOC v. C. & M. Packing Inc. (CA-N 5:98-cv-20975 filed 09/24/1998).

Employment action for sex discrimination and retaliation on behalf of two named employees and a class. The case settled pursuant to a consent decree. Two exhibits to the decree were filed under seal. One was a written reprimand for a named male employee. The second exhibit specified how much of the \$90,000 settlement each of four women would get.

Affymetrix Inc. v. Synteni Inc. (CA-N 5:99-cv-21164 filed 11/24/1998).

Patent action concerning "high density array technology for gene expression monitoring." The case apparently settled, and the plaintiff was granted a motion to file under seal a motion for entry of final judgment.

Za-Za Inc. v. Eastman Chemical Co. (CA-N 3:98-cv-04886 filed 12/22/1998).

Antitrust consolidated class action alleging an international conspiracy to fix prices on food preservatives known as sorbates. (The consolidated action is titled *In re Sorbates Direct Purchaser Antitrust Litigation*.) The Justice Department pursued criminal actions separately. Over the course of litigation, all defendants settled; settlements totaled \$96,478,000. The court sealed a "side letter to settlement agreement" with one defendant.

Marketel International Inc. v. Priceline.com (CA-N 3:99-cv-00161 filed 01/19/1999).

Designated a copyright action, this is an action for unfair competition and misappropriation of trade secrets in electronic travel auctions. The parties engaged in settlement negotiations. The plaintiff believed that an agreement was reached, but the defendant did not. The plaintiff sought permis-

sion to file under seal an amended complaint pleading existence of the agreement. The amended complaint was filed under seal, and the parties litigated under seal a restraining order on the defendant's issuing an initial public offering as a violation of the settlement agreement. The plaintiff subsequently withdrew its claim of settlement and filed an unsealed second amended complaint. A third amended complaint was filed later, and the court granted the defendant summary judgment on many of the claims. The plaintiff agreed to dismiss the remaining claims so that it could appeal the partial summary judgment. The court of appeals affirmed.

Sony Computer Entertainment Inc. v. Connectix Corp. (CA-N 3:99-cv-00390 filed 01/27/1999).

Copyright action by the makers of the PlayStation against the makers of the Virtual Game Station, which was designed to emulate the PlayStation on Apple computers. On the morning of trial the parties settled. "The parties submitted to the court a sealed Order of Intent which will be lodged with" the judge. The transcript of proceedings discloses that the plaintiff decided to buy certain intellectual property rights from the defendant. The minutes for a subsequent settlement conference state that the case did not settle. The defendant filed under seal a motion to enforce the settlement agreement. Opposition and reply papers also were filed under seal. The court granted the motion. The case was dismissed by stipulation.

Arlow v. Novato Police Department (CA-N 3:99-cv-02272 filed 05/18/1999).

Designated a prison-conditions action, this is an action by a prisoner for an illegal arrest and beating by police officers prior to confinement. The case settled. The court granted the parties' request to file the settlement agreement under seal. The case was dismissed by stipulation.

Insituform Technologies Inc. v. Ultraliner Inc. (CA-N 5:01-cv-20599 filed 05/21/1999), consolidated with *Ultraliner Inc. v. Nupipe Inc.* (CA-N 5:01-cv-20601 filed 09/08/1999).

Patent actions concerning PVC pipe liners. The actions were resolved by consent judgment and permanent injunction, and a stipulation of facts and conclusions of law were filed under seal.

Appendix C. Case Descriptions

Provident Life and Accident Insurance Co. v. Khan (CA-N 3:99-cv-02479 filed 05/25/1999).

Insurance action for restitution of disability benefits paid upon discovery that the defendant was unable to work because of a suspended medical license, not because of disability. The case settled at a settlement conference, but the following month the plaintiff filed a sealed motion to enforce the settlement agreement. The court granted the motion and sanctioned the defendant \$720. A magistrate judge's report and recommendation discloses that the settlement agreement essentially entailed a payment of \$450,000 to the defendant in exchange for her surrendering the insurance policy.

Martin v. John F. Kennedy University (CA-N 3:99-cv-02902 filed 06/15/1999).

Pro se civil rights action by a disabled black female law student against her law school, alleging various forms of mistreatment. The case was dismissed pursuant to a sealed settlement agreement.

Guy F. Atkinson Co. of California v. PriceWaterhouse-Coopers LLP (CA-N 3:99-cv-04334 filed 09/23/1999).

Bankruptcy withdrawal alleging negligence in financial management and monitoring. The plaintiffs settled with some defendants, and a motion for good-faith settlement was litigated under seal and apparently granted by sealed order. The following year the action against the remaining defendant was dismissed as settled.

Sanchez v. Safeway Inc. (CA-N 4:99-cv-05035 filed 11/22/1999).

Civil rights action by a customer against a supermarket for sexual assault by an employee. The plaintiff alleged that the employee grabbed her breast and buttock and asked her to feel his erection. The defendant claimed the employee, who had earlier refused the plaintiff's invitation for a date, merely engaged in verbal pleasantries and refused the plaintiff's hug. During discovery, the plaintiff revealed that her minor daughter may have claims against the defendants as well. The plaintiff was appointed guardian ad litem for her daughter, and the case was dismissed pursuant to a sealed settlement agreement.

United National Insurance Co. v. TIG Insurance Co. (CA-N 3:00-cv-00058 filed 01/06/2000).

Insurance action by one insurance company against another, alleging that the defendant was liable for two payments of \$2 million instead of one. The terms of settlement were put on the record at a settlement conference, the transcript of which was filed under seal.

Foster v. Columbia Good Samaritan Health Systems (CA-N 5:00-cv-20116 filed 01/31/2000).

Employment action for failure to accommodate a back injury. The plaintiff alleged that she was injured while working for the defendant as a radiological technologist and was not hired for other hospital openings that would accommodate her injury. The terms of settlement were put on the record at a settlement conference, and the tape of the conference was ordered sealed.

Adobe Systems Inc. v. Dallas Computer Inc. (CA-N 5:00-cv-20236 filed 03/02/2000).

Copyright action for sale of unauthorized copies of software. The case was dismissed upon a stipulated permanent injunction and a judgment of \$2,433,386.05 in favor of the plaintiff. The court granted the plaintiff's request to file the injunction and judgment under seal, but several unsealed copies are in the court's file and the docket sheet discloses the amount of judgment.

Evoke Software Corp. v. Evoke Communications Inc. (CA-N 3:00-cv-00965 filed 03/17/2000).

Trademark action over use of the name "Evoke." The defendant received permission to file under seal an amended answer with counterclaims and a motion to enforce a settlement agreement. Opposition and reply papers on the motion to enforce also were filed under seal. The motion was denied. The court subsequently granted the plaintiff a preliminary injunction, and the defendant appealed. The case settled while on appeal.

Adobe Systems Inc. v. Publitek Inc. (CA-N 5:00-cv-20375 filed 04/05/2000).

Copyright action for unauthorized distribution of the plaintiff's software. The action was dismissed pursuant to a sealed stipulated injunction. Correspondence in the file refers to settlement payments as well.

Sealed Settlement Agreements

American Motorists Insurance Co. v. Neighbor (CA-N 3:00-cv-01321 filed 04/14/2000).

Contract action by the issuer of a performance bond for indemnity of liability resulting from a developer's bankruptcy. The defendant filed a third-party complaint against the city. The case was dismissed pursuant to a confidential settlement agreement, which was filed under seal.

Hardy v. Alaska Air Group (CA-N 3:00-cv-01878 filed 05/24/2000); *Estate of Choate v. Alaska Airlines Inc.* (CA-N 3:00-cv-02737 filed 08/01/2000); *Estate of Lake v. Alaska Airlines Inc.* (CA-N 3:00-cv-03127 filed 08/29/2000); *Estate of Forshee v. Alaska Air Group* (CA-N 3:00-cv-03332 filed 09/14/2000).

Airplane wrongful death actions against the airline, the airplane's manufacturers, and manufacturers of the airplane's parts. The case was consolidated with others as part of a multidistrict litigation, *In re Air Crash Off Point Mugu* (MDL 1343). The cases were dismissed pursuant to sealed settlement agreements approved by the court.

Perkins v. Sortwell (CA-N 4:00-cv-01920 filed 05/26/2000).

Shareholders' derivative action alleging improper hiding of financial difficulties. The case was consolidated with *Steiner v. Aurora Foods Inc.* (CA-N 4:00-cv-00602 filed 02/22/2000), a class action on behalf of more than 3,000 shareholders. A filed stipulation of settlement specified changes in corporate governance, former officers' surrender of \$12.6 to \$15.0 million in shares, recovery of \$26 million from their insurance policies, and \$350,000 in fees and expenses for plaintiffs' attorneys. More specific details were spelled out in "definitive agreements" with individual defendants, which were filed under seal, because the defendants relied upon that level of confidentiality in reaching the agreements.

Penley v. Vales (CA-N 3:00-cv-02147 filed 06/16/2000).

Civil rights action for conspiracy to prevent the plaintiff's observation of protests against Neiman Marcus for selling clothes made from animals "killed through gassing, trapping, and anal electrocution." The case settled, and the settlement agreement was put on the record of a settlement conference. The transcript of the conference was filed under seal.

Marques v. North Beach Pizza Inc. (CA-N 3:00-cv-02200 filed 06/21/2000).

Action under the Fair Labor Standards Act by two pizza delivery drivers, alleging that their compensation by commission, although they were not responsible for sales, deprived them of overtime compensation. The case was consolidated with an action by a third driver, and the actions settled for \$45,000. The plaintiffs were awarded \$78,649 in fees and \$1,538.02 in costs. A dispute arose over a payment plan, and a letter from the defendant was construed as a motion to enforce the settlement agreement, sealed, and denied. The court subsequently ordered a specific payment plan.

Bravo Corp. v. Concept Designs Inc. (CA-N 3:00-cv-02285 filed 06/28/2000).

Trademark action challenging the defendant's use of the plaintiff's Kryptonics trademark in marketing the defendant's wheel spinner. Kryptonics is a trademark for skateboard and in-line skate wheels. The action was dismissed pursuant to a sealed settlement agreement.

Moreno v. Dolores Heights Property Inc. (CA-N 3:00-cv-02308 filed 06/29/2000).

Action under the Fair Labor Standards Act for failure to pay an immigrant residential maintenance and renovation laborer minimum wage and overtime. A confidential settlement was reached at a settlement conference, and a conference exhibit—presumably the settlement agreement—was filed under seal. The transcript of the conference also was filed under seal.

Oracle Corp. v. Moellhoff (CA-N 3:00-cv-02789 filed 08/04/2000).

Statutory action for judicial determination of responsibilities under a long-term equity incentive plan for a terminated vice president. The case settled at a settlement conference, and the confidential terms were put on the record. Subsequently the plaintiff filed a sealed motion to resolve a settlement dispute, but the matter was resolved without court action and the case was dismissed.

Sealed Plaintiff v. Sealed Defendant (CA-N 4:00-cv-02945 filed 08/14/2000).

Statutory action. The docket sheet is sealed. The case was dismissed as settled.

Appendix C. Case Descriptions

Vallis v. CNF Transportation Inc. (CA-N 4:00-cv-04226 filed 11/14/2000).

Class action under the Fair Labor Standards Act on behalf of freight operations supervisors for unpaid overtime compensation. The class claims were dismissed by stipulation, and the individual claims were dismissed pursuant to a sealed settlement agreement.

Choi v. Doctor's Associates (CA-N 5:00-cv-21173 filed 11/17/2000); *Ounniyom v. Doctor's Associates* (CA-N 5:00-cv-21174 filed 11/17/2000).

Civil rights actions claiming barriers to persons with disabilities in Subway restaurants violated the Americans with Disabilities Act. The cases settled, and the settlement agreement, which specified changes to the defendants' restaurants, was filed. The amounts of recovery by twenty individuals were filed under seal.

Cerpas v. University of California, San Francisco (CA-N 3:00-cv-04505 filed 12/01/2000).

Employment action by a customer service representative claiming that her supervisor coerced her into accompanying him to a motel room for sex. The case settled at a settlement conference, and the confidential settlement agreement was placed on the record. The reporter's transcript was filed under seal.

Jones v. National Association of Letter Carriers (CA-N 3:00-cv-04637 filed 12/11/2000).

Civil rights action for failure to accommodate disabilities in union activities. The case was dismissed pursuant to a confidential settlement agreement. The court retained jurisdiction for ninety days to enforce the agreement. Nearly eight months after the dismissal, the plaintiff sent the court a letter asking for help in resolving settlement issues. The court filed the letter under seal and determined it no longer had jurisdiction over the case.

Hornes v. County of Alameda (CA-N 3:01-cv-00914 filed 03/05/2001); *Hornes v. City of Oakland* (CA-N 3:01-cv-01998 filed 05/22/2001).

Civil rights actions for wrongful killing by a police officer. One action was by the decedent's mother, and the other was by his wife and children. The actions were dismissed pursuant to a sealed minor's settlement agreement, approved by the court. An unsealed stipulation stated that the plaintiffs would recover nothing from the county.

Orsino v. Hartford Life and Accident Insurance Co. (CA-N 3:01-cv-01091 filed 03/16/2001).

ERISA action for denial of disability benefits because of a disagreement over whether the plaintiff suffered from depression or chronic fatigue syndrome. A settlement was placed on the record at a settlement conference, and the reporter's transcript was sealed.

Sealed Plaintiff v. Sealed Defendant (CA-N 3:01-cv-01156 filed 03/21/2001).

Statutory action. The docket sheet is sealed. The case was dismissed as settled.

RCN Telecom Services Inc. v. David (CA-N 3:01-cv-01181 filed 03/22/2001).

Rent, lease, and ejectment action involving a dispute as to whether commercial tenants were occupying more space than leased, especially on the roof. The parties filed a joint motion to approve a settlement agreement, which was filed under seal "so as to protect their privacy interests and trade secrets." The court approved the settlement, and the case was dismissed. Six months later it was reopened and the case continues.

Folkens v. Wyland (CA-N 3:01-cv-01241 filed 03/27/2001).

Copyright action by a pen-and-ink illustrator for misappropriation of his work. The parties filed a sealed settlement agreement, but the case continued and went to trial. It appears that the settlement agreement resolved some issues of liability, and the trial was over damages.

Food.com Inc. v. QuikOrder Inc. (CA-N 3:01-cv-01251 filed 03/27/2001).

Patent action concerning a method for ordering products on-line. The case was dismissed pursuant to a sealed settlement agreement.

Buffo v. Henkel Corp. (CA-N 3:01-cv-01442 filed 04/12/2001).

Employment action for insufficient payment of retirement benefits upon employment termination. A certification of early neutral evaluation was filed under seal, and an order dismissing the case was filed under seal the following day. Two months later an unsealed order dismissing the case was filed.

Sealed Settlement Agreements

SanDisk Corp. v. Viking Components Inc. (CA-N 3:01-cv-01816 filed 05/01/2001).

Patent infringement action concerning electronic flash memory cards. The parties stipulated to an injunction preventing the defendant from selling flash memory cards that include any of enumerated models of flash memory controllers. The stipulated injunction states that the court will retain jurisdiction to enforce a settlement agreement to be filed under seal and incorporated by reference into the injunction. The day after the judge signed the stipulated injunction, a settlement agreement was filed under seal pursuant to an order granting permission to do so.

Fresh Express Inc. v. Bravo Packing Inc. (CA-N 5:01-cv-20743 filed 05/15/2001).

Patent action concerning a method for washing lettuce. The case was consolidated with *Fresh Express Inc. v. Elioco Produce Inc.* (CA-N 5:01-cv-20747). The original action was dismissed pursuant to "a confidential Settlement and License Agreement which contains information that is not generally known to the public and which Fresh Express and Bravo would, in the ordinary course of business, not disclose to competitors or other third parties. The confidentiality of the information contained in the Settlement and License Agreement cannot adequately be maintained so as to protect the interests of Fresh Express and Bravo in maintaining its confidentiality unless this information is kept from public disclosure." Thereafter the consolidated action similarly was dismissed, and the sealed settlement agreement was filed in the lead case's file.

Bruntjen v. Liberty Mutual Insurance Co. (CA-N 4:01-cv-01982 filed 05/21/2001).

RICO action for fraudulent solicitation of a \$500,000 investment in a scheme to develop energy-related business interests in the Far East. All defendants except a law firm allegedly involved in the scheme were voluntarily dismissed pursuant to a confidential settlement agreement. Settling defendants sought a bar order protecting them from liability to the remaining law firm defendant. The law firm complained that the fairness of the settlement could not be evaluated unless presented to the court. Settling defendants' reply brief specified terms of settlement, which were redacted from the public file copy. A sealed, presumably unredacted, version of the brief also was filed. The court granted the bar order and dismissed the remaining claims against the law

firm. Both plaintiffs and the law firm appealed. The case settled on appeal.

Caymus Vineyards v. Lisa Frank Inc. (CA-N 3:01-cv-02131 filed 05/31/2001).

Trademark infringement action. According to the complaint, the defendant liked the plaintiff's Caymus wine so much, she named her dog Caymus, and used her dog Caymus to market "Caymus" toys and related products for children. The case was dismissed pursuant to a sealed settlement agreement.

Pickern v. Best Western Inn at the Square (CA-N 4:01-cv-02202 filed 06/06/2001).

Civil rights action for failure to remove architectural barriers to persons with physical disabilities at the defendants' hotel. The case was dismissed pursuant to a sealed settlement agreement.

Bryant v. Rich (CA-N 3:01-cv-02613 filed 07/09/2001).

Personal injury action for unauthorized and untrue statements about the plaintiff in the defendants' advertising materials extolling the health benefits of their methylsulfonylmethane products. The parties reached a confidential settlement agreement during trial, and the agreement was filed under seal. The plaintiff paid jury costs of \$2,403.11.

Lawton v. Prison Health Services (CA-N 4:01-cv-02761 filed 07/19/2001).

Designated a labor and management relations action, this is an employment action alleging race and age discrimination in failure to promote an African-American woman. An oral settlement was reached and the case was provisionally dismissed, but the plaintiff repudiated her oral settlement and the court agreed to vacate the dismissal. The case subsequently settled at a settlement conference, the minutes for which read, "Case settled. Court's Exhibit A received into evidence and is sealed. Settlement placed on the record and is confidential." Exhibit A was filed under seal the same day.

Sealed Plaintiff v. Sealed Defendant (CA-N 3:01-cv-02928 filed 07/27/2001).

Contract action. The docket sheet is sealed. The case was dismissed as settled.

Appendix C. Case Descriptions

Unobskey v. Taubman (CA-N 3:01-cv-03171 filed 08/17/2001).

Contract action for indemnification of tax liability. The complaint alleges that the indicted former chair of Sotheby's had participated in a real estate scheme a decade previously that the IRS now claims involved almost \$1 billion in underreported income to a partnership. The complaint alleges that he agreed to indemnify the plaintiff partner for such circumstances, but now repudiates that agreement. The case settled. The plaintiff asked the court to sign a stipulated order directing the defendant not to dispose of property securing the agreement. Thereafter the court ordered that a letter from the plaintiff be construed as a motion to interpret the settlement agreement. The court ordered the letter sealed. Subsequent letters were construed as opposition and reply briefs, and they also were sealed. At a sealed telephonic hearing, the court denied the motion. A subsequent letter from the plaintiff asked for assistance in enforcing the settlement agreement. This letter was not sealed, and it includes a copy of the agreement. The letter states that the defendant agreed to post art worth \$19.5 million to secure his indemnification responsibilities, but had so far designated art worth only \$11.56 million.

Kent v. DaimlerChrysler Corp. (CA-N 3:01-cv-03293 filed 08/28/2001).

Class action under the Magnuson-Moss Warranty Act alleging that the Jeep's automatic transmission has "an unreasonably dangerous propensity to self shift from park into reverse." The action was dismissed pursuant to a sealed settlement agreement approved by the court.

Peninsula Creamery v. Fischer (CA-N 5:01-cv-20887 filed 09/20/2001).

Trademark action alleging that the defendant, Peninsula Fountain and Grill, which was licensed by the plaintiff to operate a downtown Palo Alto restaurant, opened up a similarly named Stanford Shopping Center restaurant without a license. The case settled, and the transcript for the successful settlement conference was filed under seal.

Christopher S. v. Orchard Union School District (CA-N 5:01-cv-21197 filed 09/20/2001).

Designated a statutory action for civil rights of a handicapped child, this is a suit for \$39,416.30 in attorney fees and costs in an administrative action. (The parties settled the case for \$28,000.) The

case was dismissed pursuant to a sealed settlement agreement approved by the court.

Arrow Electronics Inc. v. Redback Networks Inc. (CA-N 5:01-cv-20918 filed 09/28/2001).

Contract action for amounts due on electronic components. The action was dismissed pursuant to a sealed joint stipulation.

EEOC v. Coastal Valley Management Inc. (CA-N 5:01-cv-21105 filed 11/28/2001).

Employment action on behalf of four women for sexual harassment, including unwanted sexual advances. The women intervened on behalf of a class. The case settled, and the court issued a consent decree stating the defendant's denial of the allegations but reciting the defendant's agreement to pay the plaintiffs \$200,000. The court retained jurisdiction to enforce the decree for two years. The allocation of the settlement to the four women and their attorneys is stated in a sealed attachment. In addition, the sealed attachment states what other class members would receive.

Cooper v. UNUM Life Insurance Co. (CA-N 3:02-cv-01478 filed 03/26/2002).

Insurance action for denial of long-term disability benefits for Parkinson's disease. The case settled at a settlement conference. The settlement agreement was designated confidential, and the transcript of the conference was filed under seal.

Brooke v. Sydran Services Inc. (CA-N 3:02-cv-02151 filed 05/02/2002).

Action under the Fair Labor Standards Act by a Burger King assistant manager for unpaid overtime wages. The action was dismissed pursuant to a sealed consent decree.

Moore v. Yeast (CA-N 5:02-cv-02297 filed 05/13/2002).

Copyright action concerning ownership of computer software code. This case illustrates an interesting interplay among the parties and the court over what should be sealed and how to accomplish that.

Three months after the case was dismissed as settled, the plaintiffs filed a motion to enforce the settlement agreement, alleging that the defendants failed to properly notify a third party of the terms of the intellectual property agreement. The plaintiffs moved to attach a copy of the settlement agreement without seal, because "disclosure of the terms of the Settlement Agreement would not

release confidential trade secrets or compromise national security.” The defendants responded that the plaintiffs’ “attempt to file the Settlement Agreement without Seal is in violation of the confidentiality provision of the Settlement Agreement.” The court ordered the defendants to “file a declaration from a competent witness setting forth the specific facts that justify protection under Federal Rules of Civil Procedure 26(c),” admonishing that “[b]road allegations of harm, however, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test” (quoting *Beckman Industries Inc. v. International Insurance Co.*, 966 F.2d 470, 476 (9th Cir. 1992)).

The court said that the plaintiffs should have lodged the settlement agreement with the court with a request to file it under seal pursuant to Local Rule 79-5, stating that the request was based solely on the opponents’ claim of confidentiality. The docket sheet shows that five days later the court received a request to file the settlement agreement under seal and a notice of lodgment of the settlement agreement. The docket sheet entry states that the latter document was filed under seal, although there does not appear to be a document number for the filing.

The court denied the plaintiffs’ motion to enforce the agreement on the merits and also on jurisdictional grounds. Because the original case was over and the court did not retain jurisdiction to enforce the agreement, and there did not appear to be independent jurisdiction over the enforcement action, the court lacked subject-matter jurisdiction over the motion.

District of Delaware

The court’s local rule on sealing pertains only to administrative details. See D. Del. L.R. 5.3.

Statistics: 2,250 cases in termination cohort; 213 docket sheets (9.5%) have the word “seal” in them; 13 complete docket sheets (0.58%) were reviewed; actual documents were examined for 9 cases (0.40%); 9 cases (0.40%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Interactive Channel Technologies Inc. v. Worldgate Communications Inc. (DE 1:98-cv-00257 filed 05/11/1998).

Patent infringement action for selling a product that permits cable television providers to offer Internet access to their subscribers over existing cable infrastructure. The parties informed the court in September of a settlement, but between September and February the parties reached three

different settlement agreements. In March the defendants filed a motion under seal to enforce one of these agreements. The court agreed to enforce the second settlement agreement. The parties filed the second settlement agreement under seal, and the court dismissed the action with prejudice in accordance with the terms of the stipulation of dismissal attached to this settlement agreement.

Advanced Energy Industries Inc. v. Astec America Inc. (DE 1:98-cv-00450 filed 07/31/1998).

Patent infringement action involving power conversion products for plasma-based thin film process technologies. After the parties settled, but before they filed a stipulation of dismissal, the court dismissed the case with leave to reopen. Prior to finalizing their settlement, the parties’ requested reopening of the case. Two weeks later the parties signed a settlement agreement that included a provision requiring the parties to submit the settlement agreement and proposed consent judgment to the court under seal. The court approved the consent judgment and closed the case.

Elonex IP Holdings Ltd. v. MAG Technology Co. (DE 1:99-cv-00338 filed 05/28/1999).

One of several consolidated patent infringement actions concerning methods of reducing power consumption in computer systems and monitors. In this case, the parties agreed to a consent judgment in favor of the plaintiffs. The court closed the case but retained jurisdiction to enforce the settlement agreement. Four months later the plaintiffs filed a brief under seal in support of a motion to enforce the settlement agreement and hold the defendants in contempt. The court approved a supplemental consent judgment retained under seal by the court and dismissed the plaintiffs’ motion to enforce the settlement as moot.

Barnes v. Town of Elsmere (DE 1:99-cv-00472 filed 07/23/1999).

Civil rights action against a fire company for indefinitely suspending the plaintiff firefighter for his membership in the Pagan Motorcycle Club. The parties settled and filed their settlement agreement and proposed order governing confidentiality with the court under seal. The court signed the order and dismissed the case with prejudice.

National Office Partners Ltd. Partnership v. Hyatt Corp. (DE 1:00-cv-00478 filed 05/12/2000).

Antitrust litigation concerning management of the plaintiffs' hotel. The plaintiffs alleged that the defendant received undisclosed kickbacks from vendors. The parties settled and submitted a consent order of dismissal to the court incorporating by reference the settlement agreement. The court sealed the settlement agreement, granted the consent order of dismissal, and closed the case, retaining jurisdiction to enforce the terms and provisions of the settlement agreement.

France Telecom v. Compaq Computer Corp. (DE 1:00-cv-00967 filed 11/16/2000).

Patent infringement action concerning MPEG-2 video compression. During a teleconference the parties informed the court that they reached a settlement in principle but wanted to stay the case instead of entering a stipulated dismissal. The court stayed the case, sealed the transcript of the teleconference, and ordered the parties to submit biweekly status reports of their settlement negotiations. These status reports on settlement negotiations were placed under seal when received by the court. Eight months later the court entered the parties' stipulation of dismissal with prejudice and ordered the case closed.

Housey Pharmaceuticals Inc. v. Boehringer-Ingelheim Pharmaceuticals Inc. (DE 1:00-cv-01002 filed 11/30/2000).

Patent infringement action concerning cell-based technology. The court granted the parties' stipulation of dismissal with prejudice and placed it under seal.

Jupiter Media Metrix Inc. v. NetRatings Inc. (DE 1:01-cv-00193 filed 03/27/2001).

Patent infringement action concerning a method for logging and reporting on-line activity of computer users in the United States. Five months after two of the defendants were dismissed without prejudice pursuant to a joint stipulation, the remaining parties settled and agreed to dismiss the case with prejudice. The parties filed a copy of the settlement agreement under seal and consented to allow the court to reserve jurisdiction over the case in order to enforce the terms of the settlement agreement. The case was closed.

Oratec Interventions Inc. v. Radionics Inc. (DE 1:01-cv-00558 filed 08/15/2001).

Patent infringement action concerning an apparatus for treating annular fissures of intervertebral disks. Seven months after one of the two defendants was voluntarily dismissed, the plaintiff informed the court that an oral settlement agreement had been reached with the remaining defendant. Pursuant to an order marked "confidential filed under seal," the court agreed to stay the case for sixty days to permit the parties to finalize negotiations. One month later the plaintiff filed a motion under seal to enforce the settlement agreement. Before the motion was decided, the court granted the parties' stipulation and dismissal with prejudice, and closed the case.

District of the District of Columbia

"Absent statutory authority, no cases or documents may be sealed without an order from the Court." D.D.C. L. Civ. R. 5.1(j)(1).

Statistics: 5,368 cases in termination cohort; 5 docket sheets are sealed (0.09%)—the disposition codes for 3 of these cases suggest no sealed settlement agreements³¹ and the disposition codes for 2 of these cases suggest sealed settlement agreements;³² 469 unsealed docket sheets (8.7%) have the word "seal" in them; 39 complete docket sheets (0.73%) were reviewed; actual documents were examined for 35 cases (0.65%); 28 cases (0.52%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Sharma v. Washington Metropolitan Area Transit Authority (DC 1:94-cv-00305 filed 02/16/1994).

Employment discrimination action for failure to promote, harassment, and retaliation. The parties submitted their settlement agreement with the court to be incorporated into a dismissal with prejudice, but asked that the agreement be sealed to preserve confidentiality. The court complied.

Kolstad v. American Dental Association (DC 1:94-cv-01578 filed 07/19/1994); *Kolstad v. American Dental Association* (DC 1:97-cv-00306 filed 02/14/1997).

Employment actions for sex discrimination. The first suit alleged a discriminatory failure to pro-

31. Two judgments on motions before trial, 1 "other" dismissal.

32. Two cases settled.

Sealed Settlement Agreements

mote. The second suit alleged constructive termination in retaliation for the first suit. It appears that the parties reached a global settlement. Stipulated dismissals with unspecified attachments were filed under seal on the same day in both cases.

Sims v. Browner (DC 1:97-cv-00570 filed 03/21/1997).

Employment action against the Environmental Protection Agency for sex, age, and disability discrimination. The plaintiff filed a motion to enforce an alleged settlement agreement. A letter purporting to set forth the terms of settlement—which primarily provided for reassignment, work-at-home privileges, and retraction of discipline from her personnel file—was attached to the motion. Subsequently, the court granted motions to seal several related documents, including a brief in opposition to the motion to enforce and a motion for a protective order.

Scott v. District of Columbia (DC 1:98-cv-01645 filed 06/29/1998).

Civil rights action against the District of Columbia and its Department of Corrections for a prison murder brought by the decedent's estate and only child. The complaint alleged that the department knew or should have known that the victim was in danger from another inmate but failed to prevent his murder. The parties settled and submitted the settlement agreement under seal for the court's approval, specifically citing D.C. Code §21-120(a), which requires court approval of settlements in suits brought on behalf of minors. The court approved it.

BMC – Benchmark Management Co. v. Meristar Hospitality Corp. (DC 1:98-cv-02394 filed 10/05/1998).

Contract, unjust enrichment, and fraud action arising out of a failed commercial relationship between a real estate holding company and a property management firm. The parties settled after a jury trial. The settlement agreement was filed under seal. A stipulation of dismissal was then filed under seal and "fiated" by the judge.

Lukas Nace Gutierrez & Sachs v. Havens (DC 1:99-cv-00395 filed 02/19/1999).

Contract action to recover unpaid legal fees. The plaintiff filed a motion to enforce a mediated settlement agreement and attached a handwritten agreement, signed by both parties, that called for

a general release of all claims in exchange for an undisclosed cash payment. Later, the parties submitted their own draft settlement agreements intended to implement that earlier, less detailed agreement. Those draft settlement agreements were placed under seal.

William M. Mercer Inc. v. Mulder (DC 1:99-cv-00435 filed 02/24/1999).

Disability insurance fraud action against an insured employee and her alleged co-conspirator psychiatrist. The complaint alleges that the psychiatrist fabricated a diagnosis of "major depression" so that the patient would qualify for short-term disability. The parties apparently settled during a status conference on the eve of trial. The court sealed the record of that proceeding. Later, the court sealed a series of documents arising out of the defendant's motion to enforce that settlement agreement. Finally, the court, upon consent motion by the parties, ordered that the complaint and defendant Mulder's answer and counterclaim be sealed. (The complaint, however, remains in the open court file.)

Nick Chorak Mowing v. United States (DC 1:99-cv-00587 filed 03/08/1999).

Contract action. The docket sheet is sealed. The action was dismissed as settled.

Lewis v. Booz-Allen & Hamilton Inc. (DC 1:99-cv-00713 filed 03/23/1999).

Employment action for race discrimination against a worldwide consulting firm by an African-American former technology consultant. A stipulation of voluntary dismissal, signed by all parties, and an order dismissing the case with prejudice were filed under seal on the same day shortly before trial.

L.L. v. Chimes District of Columbia Inc. (DC 1:99-cv-03277 filed 12/10/1999).

Pseudonymous personal injury action for the sexual assault of a mentally and physically disabled person. The defendant is a private company that employs mentally and physically disabled persons to provide building maintenance to third parties. The plaintiff, a mentally retarded 34-year-old woman, was raped by a nonimpaired co-worker who had a considerable criminal record and who was alleged to have been repeatedly violent and insubordinate during his employment with the defendant. The case concluded with a

Appendix C. Case Descriptions

stipulated order filed under seal shortly before trial.

Reddick v. Georgetown University Hospital (DC 1:99-cv-03377 filed 12/20/1999).

Medical malpractice action for the death of one twin in utero and severe mental and physical disabilities of the other twin born live. The parties settled and submitted the settlement agreement under seal for the court's approval. The court approved it.

Groenfeldt v. George Washington University (DC 1:99-cv-03470 filed 12/29/1999).

Medical malpractice wrongful death action for failure to diagnose a cancer while it was still treatable. The plaintiffs include two surviving children. The parties settled and submitted the settlement agreement under seal for the court's approval. The court approved it.

Komori Corp. v. Akiyama Printing Machine Manufacturing Co. (DC 1:00-cv-00432 filed 03/02/2000).

Designated a copyright action, this is really an action for declaration of noninfringement of the defendant's patent by the plaintiffs' offset printers that print multiple colors on both sides during a single pass through the press. The parties settled privately. Earlier in the suit, the plaintiffs had filed an apparent settlement agreement under seal as part of a motion to enforce it.

Jennings v. Family Management Services Inc. (DC 1:00-cv-00434 filed 03/02/2000).

Fraud action against a nursing company, a financial management company, and banks. The claims alleged various abusive financial dealings with an elderly woman. The suit resulted in a consent decree approving a private settlement agreement, which was filed under seal.

National Federation of the Blind v. Chevy Chase Bank (DC 1:00-cv-01167 filed 05/24/2000).

Civil rights action under the Americans with Disabilities Act to require installation of ATM machines accessible to the blind. The parties settled privately. Earlier in the suit, the plaintiffs filed a settlement agreement with the court under seal, although subsequent documents show that settlement negotiations continued thereafter.

Poindexter v. May Department Stores (DC 1:00-cv-01238 filed 05/31/2000).

Class action under the Fair Labor Standards Act on behalf of assistant buyers and media coordinators for overtime payments. The parties settled and sought approval of the settlement agreement from the court, attaching the agreement under seal. The court approved it.

Grant v. Riley (DC 1:00-cv-01595 filed 07/05/2000).

Employment discrimination class action against the Department of Education. The parties settled and submitted the settlement agreement to the court for approval. The court approved it. While the settlement agreement itself was public, the court sealed a list of the twenty-four individuals who would receive promotions as part of the settlement.

Washington-Baltimore Newspaper Guild v. Bureau of National Affairs (DC 1:00-cv-02045 filed 08/24/2000).

Labor and management relations action to compel arbitration. The employer had refused to proceed with arbitration based on a putative settlement of the underlying grievance. In seeking to compel arbitration, the union filed the alleged settlement materials with the court and then moved that they be sealed. The court sealed them. The parties subsequently settled the action pursuant to a settlement agreement, which was not filed.

Simmons v. Small Business Administration (DC 1:00-cv-02274 filed 09/22/2000).

Employment discrimination action against the Small Business Administration. The SBA asserted that it had settled these claims, moved to dismiss, and attached the settlement agreements under seal. The court granted the motion that they be kept under seal and granted the motion to dismiss.

Allen v. Soza and Co. (DC 1:00-cv-02726 filed 11/13/2000).

Employment discrimination action against a private employer and the Coast Guard. One party moved to enforce a settlement agreement with the plaintiff. By order of the court, this motion was filed under seal. Ultimately, the court granted the plaintiff's motion to voluntarily dismiss the case without prejudice, also explicitly preserving the right of the defendants to claim settlement in any subsequent action.

Sealed Settlement Agreements

Conanan v. Tanoue (DC 1:00-cv-03091 filed 12/22/2000).

Employment class action against the Federal Deposit Insurance Corporation for race discrimination. The parties proposed to resolve the suit via consent decree, which was submitted to the court. The settlement called for the payment of \$12 million in damages to class members and \$2 million in attorney fees. What the court sealed was the number of persons who could opt out of the settlement pursuant to the consent decree. The court ultimately accepted the consent decree and approved final distribution of the settlement proceeds.

Groobert v. President and Directors of Georgetown College (DC 1:01-cv-00235 filed 01/30/2001).

Medical malpractice action for failure to diagnose and treat kidney failure. The husband of the deceased sued on behalf of the deceased, himself, and their minor child. The parties settled. The court sealed all materials related to the minor's settlement and "[a]ny and all other pleadings, records or correspondence relating to the parties' agreement to resolve and dismiss this case."

Engel v. Equifax Inc. (DC 1:01-cv-00882 filed 04/17/2001).

Statutory action. The docket sheet is sealed. The action was dismissed as settled.

United States v. 3d Systems Corp. (DC 1:01-cv-01237 filed 06/06/2001).

Antitrust action to prevent a leading technology company from acquiring its most significant competitor. The court approved a proposed final judgment that required divestment. The court sealed two appendices to the proposed judgment that related to pending patent applications.

Cooper v. Devereux Foundation (DC 1:01-cv-02325 filed 11/06/2001).

Assault action against a private residential treatment facility for coerced sexual intercourse with a minor resident by one of the staff members. The parties filed their settlement agreement under seal and sought approval for dismissal with prejudice. The court approved. While that particular settlement agreement was sealed, other settlement materials exist in the case file.

Kosen v. American Express Financial Advisors Inc. (DC 1:02-cv-00082 filed 01/17/2002).

Employment class action for systematic discrimination against women who applied for or obtained financial advisor positions. The suit was filed as a settlement class; the proposed settlement/consent decree was filed the day after the complaint was filed. The judge entered an order certifying the class and approving the consent decree, which provides for extensive injunctive relief and a compensation fund of more than \$31 million. Subsequently several documents relating to disbursement of the monetary relief were filed under seal.

Cerveceria Modelo SA v. Hudnall (DC 1:02-cv-01586 filed 08/09/2002).

Trademark infringement action by the makers of Corona beer against a pornographic Web site that was using Corona marks and images, including images of sexual acts with Corona beer bottles. The parties settled and sought a stipulated judgment and permanent injunction. When the court asked to see the settlement agreement as part of its review of the stipulated judgment, the parties asked for it to be sealed. The court sealed it, and subsequently entered the stipulated judgment and injunction.

Middle District of Florida

No relevant local rule.

Statistics: 13,678 cases in termination cohort; 17 docket sheets are sealed (0.12%)—the disposition code for 1 of these cases suggests no sealed settlement agreement³³ and an examination of the other 16 docket sheets revealed no sealed settlement agreements;³⁴ 513 unsealed docket sheets (3.8%) have the word "seal" in them; 103 complete docket sheets (0.75%) were reviewed; actual documents were examined for 43 cases (0.31%); 36 cases (0.26%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Scarborough v. Medical Engineering Corp. (FL-M 8:97-cv-02266 filed 09/18/1997).

Personal injury case involving aluminum poisoning by breast implants. A settlement agreement was reached during mediation. The court denied the plaintiff's motion to set aside the me-

33. One statistical closing.

34. Two of these cases were settled.

Appendix C. Case Descriptions

diation agreement due to mediator bias. A sealed settlement agreement was filed with the defendants' motion to enforce a prior order requiring the plaintiff to sign a release. The case was dismissed with prejudice conditioned on immediate payment of the settlement and signing of the release by the plaintiff.

United States ex rel. Carroll v. Living Centers of America Inc. (FL-M 8:97-cv-02600 filed 10/23/1997).

Qui tam action under the False Claims Act for fraudulent Medicare billing against a provider of nursing homes. The government's notice to intervene reported a settlement agreement had been reached. The court ordered that all contents of the court's file remain under seal (except the complaint and the notice to intervene). A sealed settlement agreement apparently was filed.

Burnette v. Cooker Restaurant Corp. (FL-M 8:99-cv-00734 filed 03/29/1999).

Class action under the Fair Labor Standards Act by restaurant employees for failure to pay minimum wage and overtime wages. The case was dismissed pursuant to a sealed settlement agreement. Five weeks later the court granted the plaintiffs' motion to enforce the settlement agreement. The final document in the case reports that the defendant filed for bankruptcy.

United States ex rel. Williams v. NCS Healthcare Inc. (FL-M 8:99-cv-01556 filed 07/06/1999).

Qui tam action under the False Claims Act against a provider of pharmaceutical services for fraudulent Medicare billing. A sealed document was filed the same day that the case was dismissed. In the final order of dismissal the court ordered that all documents remain under seal (except the complaint and the notice of election to decline intervention). A sealed settlement agreement apparently was filed.

Lambert Corp. v. Water Bonnet Manufacturing Inc. (FL-M 6:00-cv-00010 filed 01/04/2000).

Action seeking declaratory judgment under CERCLA for causing pollution on the plaintiff's property. On the third day of a bench trial, a stipulated settlement agreement was made between the plaintiff and one of the defendants. A sealed settlement agreement was filed. The court also issued orders pertaining to final arguments regarding the remaining defendant, and the case

was dismissed in the defendant's favor nearly eight months later.

Hemphill v. Helmtech Inc. (FL-M 5:00-cv-00045 filed 01/18/2000).

Product liability action in which the plaintiff suffered severe head injuries in a motorcycle accident while wearing a helmet manufactured by the defendant. A sealed settlement agreement was filed. The court denied the plaintiff's motion to enforce the settlement agreement and for sanctions, because payment of \$2,320,542 had been received. The court retained jurisdiction for sixty days to enforce the terms of the settlement agreement.

United States ex rel. Gambrell v. Laboratory Corp. of America (FL-M 8:00-cv-00397 filed 02/25/2000).

Qui tam action under the False Claims Act against a provider of laboratory services for fraudulent Medicare billing. All documents in the case file (except the complaint) were filed under seal.

Jabs v. Manatee Memorial Hospital (FL-M 8:00-cv-00420 filed 03/01/2000).

Medical malpractice case involving the negligent care of a newborn with hypotension and respiratory problems, which caused permanent brain damage. The court placed under seal the plaintiff's motion for approval of the minor's settlement, the order granting the motion, the guardian ad litem report, and the release. The supplemental report of the guardian ad litem reports a settlement amount of \$1,736,716.

Wheeler v. First Colony Life Insurance Co. (FL-M 8:00-cv-00695 filed 04/12/2000).

Contract class action alleging fraud and breach of common law duties in the sale and subsequent servicing of life insurance policies. The plaintiff never filed a motion to certify the class. The order dismissing the case approved a confidential settlement agreement. The same day the case was dismissed two sealed documents were filed under seal. A sealed settlement agreement apparently was filed.

Florida Conference Association of Seventh-Day Adventists v. Royal Venture Cruise Line Inc. (FL-M 6:00-cv-00895 filed 07/13/2000).

Admiralty action involving a deposit of \$120,000 for a cruise, which the cruise company failed to return after it went out of business. A sealed settlement agreement was filed. The settlement amount of \$300,000 was noted in the stipulated

Sealed Settlement Agreements

final judgment. The court retained jurisdiction to enforce the terms of the settlement agreement.

Russell v. Baxter Healthcare Corp. (FL-M 6:00-cv-01134 filed 08/28/2000).

Product liability action involving a minor who contracted hepatitis C from the defendant's intravenous immunoglobulin product. The court granted the motion to approve the settlement and ordered the transcript and record of the settlement sealed.

TV/COM International Inc. v. MediaOne of Greater Florida Inc. (FL-M 3:00-cv-01045 filed 09/19/2000).

Patent infringement action concerning a "multi-layer encryption system for broadcast of encrypted information." Two sealed settlement agreements were filed. The court retained jurisdiction to enforce the terms of the settlement agreements.

Woolbright v. Capris Furniture Industries Inc. (FL-M 5:00-cv-00315 filed 10/02/2000).

Employment action in which a furniture store employee sued her former employer for sexual harassment and retaliation. A sealed settlement agreement was filed by the defendant. The court retained jurisdiction to enforce the terms of the settlement agreement.

Brackett v. United Healthcare Insurance Co. (FL-M 8:00-cv-02112 filed 10/13/2000).

ERISA action for wrongful denial of coverage for speech therapy for the plaintiff's brain-injured child. A sealed settlement agreement was filed.

Artcraft Electric Ltd. v. Classic Lighting Corp. (FL-M 3:00-cv-01166 filed 10/18/2000).

Copyright action involving the production, distribution, and sale of glassware products that are direct copies of the plaintiff's glassware. A sealed settlement agreement was filed. The court retained jurisdiction to enforce the terms of the settlement agreement.

Anthony v. Community Hospice of Northeast Florida Inc. (FL-M 3:00-cv-01239 filed 11/08/2000).

Class action under the Fair Labor Standards Act by kitchen and nursing employees for failure to pay overtime wages. A sealed settlement agreement was filed. The court retained jurisdiction for thirty days to enforce the terms of the settlement agreement.

Morrow v. Town of Oakland (FL-M 6:00-cv-01514 filed 11/13/2000).

Employment action by a chief of police for age discrimination and wrongful termination. A sealed document was filed the day of the settlement conference. A sealed settlement agreement apparently was filed.

Thiruchelvam v. Humana Medical Plan Inc. (FL-M 6:00-cv-01542 filed 11/16/2000).

Employment action by eight doctors against a health insurance company, alleging that they were terminated from their primary care agreements because of their race. The plaintiffs filed a motion to enforce the oral settlement agreement reached during mediation. One week after the motion was filed, two sealed documents were filed. Two days later, a settlement conference was held. The case was dismissed as settled, and the court retained jurisdiction to enforce the settlement agreement.

Palermo v. United Parcel Service Inc. (FL-M 8:00-cv-02395 filed 11/22/2000).

Action under the Americans with Disabilities Act, Family Medical Leave Act, and Fair Labor Standards Act by a supervisor against his former employer for failure to pay overtime wages, discrimination, retaliation, and wrongful termination because of his stress disorder. A sealed settlement agreement was filed as an attachment to a joint motion for a protective order. The case was dismissed as settled.

Wallendy v. Kanji (FL-M 8:01-cv-00323 filed 02/13/2001).

Action under the Americans with Disabilities Act for an injunction requiring the defendant to remove from its commercial property architectural barriers to the physically disabled. A portion of the settlement agreement containing attorney fees and costs was filed under seal.

Delgado v. Hillsborough Community College (FL-M 8:01-cv-00514 filed 03/09/2001).

Employment action by a Hispanic security officer for race discrimination and retaliation for filing an EEOC complaint. A sealed settlement agreement was filed. Two months after the case was dismissed, the plaintiff filed a notice of the defendant's noncompliance. One month later, the plaintiff reported that the defendant had complied with the settlement agreement.

Appendix C. Case Descriptions

Hanshaw v. Princess U.S. Holdings Inc. (FL-M 8:01-cv-01045 filed 06/01/2001).

Personal injury action involving an injury sustained when the plaintiff's wheelchair was thrown backwards while entering the gangway of the defendant's passenger ship. After the court ordered mediation, the case was dismissed without prejudice and "subject to the right of the parties within 60 days to submit a stipulated form of final order or judgment." Six days after the case was dismissed, a sealed document was filed. Two months later, a final order granted the joint stipulation for dismissal with prejudice. A sealed settlement agreement apparently was filed.

Erway v. Mayport Wholesale Seafood Inc. (FL-M 3:01-cv-00733 filed 06/27/2001).

Employment action by a supervisor for sexual harassment and retaliation. The case was dismissed as settled. A sealed settlement agreement was filed as an attachment to the plaintiff's motion to enforce the settlement agreement. The court denied the motion.

Mishoe v. City of Bartow (FL-M 8:01-cv-01303 filed 07/10/2001).

Employment action for wrongful termination in retaliation for supporting a co-worker's sexual harassment claim. A sealed document was filed about a month after the case was dismissed without prejudice, and the parties were given sixty days to submit a stipulated form of final order or judgment.

Shuey v. Information and Display Systems Inc. (FL-M 3:01-cv-00797 filed 07/13/2001).

Action under the Fair Labor Standards Act by an inventory logistics coordinator for failure to pay overtime wages. A sealed settlement agreement was filed. The court retained jurisdiction to enforce the terms of the settlement agreement.

Hunter v. Albertson's Inc. (FL-M 6:01-cv-00866 filed 07/20/2001).

Class action under the Fair Labor Standards Act by grocery store employees for failure to pay overtime wages. A sealed settlement agreement was filed.

Konecranes Inc. v. Leach (FL-M 3:01-cv-00917 filed 08/09/2001).

Contract action involving breach of an employee noncompetition and confidentiality agreement. A

sealed settlement agreement was filed. The court granted the plaintiff's motion for a permanent injunction against the use of client lists and trade secrets. The court retained jurisdiction to enforce the terms of the settlement agreement.

Access for America Inc. v. Hall (FL-M 8:01-cv-01734 filed 09/07/2001).

Action under the Americans with Disabilities Act for an injunction requiring the defendant to remove from its commercial property architectural barriers to the physically disabled. A sealed document was filed ten days after the motion to approve a consent decree. The court retained jurisdiction to enforce the consent decree.

Access for America Inc. v. World Continents Inc. (FL-M 8:01-cv-01736 filed 09/07/2001).

Action under the Americans with Disabilities Act for an injunction requiring the defendant to remove from its commercial property architectural barriers to the physically disabled. A sealed settlement agreement was filed. In the order of dismissal, the court awarded the plaintiff \$2,500 to cover legal fees, expert fees, costs, and reinspection costs.

Hernandez v. Central Beef Industries LLC (FL-M 5:01-cv-00323 filed 09/27/2001).

Wrongful termination action under the Family Medical Leave Act seeking reinstatement and repayment of employment benefits. A sealed settlement agreement was filed by the defendant. The court retained jurisdiction to enforce the terms of the settlement agreement.

DirecTV Inc. v. Lamothe (FL-M 8:01-cv-01923 filed 10/09/2001).

Action under the Federal Communication Act seeking injunctive relief and compensation for unlawful sale of signal theft devices. Eighteen days before the case was dismissed a sealed document was filed. The court dismissed the case without prejudice, and held that the parties could "re-open the action within sixty (60) days upon good cause." The court also ordered a permanent injunction enjoining the defendant from manufacturing or selling signal theft devices.

Harwell v. Groover (FL-M 3:01-cv-01179 filed 10/12/2001).

Shareholder derivative action involving breach of fiduciary duty and usurpation of corporate op-

portunity. A sealed settlement agreement was filed.

Access for America Inc. v. G&G Properties LLC (FL-M 8:02-cv-00212 filed 02/05/2002).

Action under the Americans with Disabilities Act for an injunction requiring the defendant to remove from its shopping plaza architectural barriers to the physically disabled. In the consent decree the defendant agreed to modify its facilities to make them readily accessible to the disabled. In a stipulated agreement the court approved the fees and costs in camera under seal.

Tremaroli v. Information and Display Systems Inc. (FL-M 3:02-cv-00315 filed 04/01/2002).

Action under the Fair Labor Standards Act by an electronics technician for failure to pay overtime wages. A sealed settlement agreement was filed.

Violet v. Designers' Press Inc. (FL-M 6:02-cv-00658 filed 06/06/2002).

Employment action in which a woman sued her former employer for sexual harassment and retaliation. Settlement was reached during the settlement conference. The portion of the record containing the terms of the settlement was sealed.

Cummings v. Timberland Security Corp. (FL-M 8:02-cv-01227 filed 07/10/2002).

Class action under the Fair Labor Standards Act by a security officer for failure to pay overtime wages. A sealed settlement agreement was filed.

Northern District of Florida

No relevant local rule.

Statistics: 3,045 cases in termination cohort; 2 docket sheets are sealed (0.07%)—the disposition code for 1 of these cases suggests no sealed settlement agreement³⁵ and the disposition code for 1 of these cases suggests a sealed settlement agreement;³⁶ 160 unsealed docket sheets (5.3%) have the word “seal” in them; 11 complete docket sheets (0.36%) were reviewed; actual documents were examined for 5 cases (0.16%); 5 cases (0.16%) appear to have sealed settlement agreements.

35. One “other” dismissal.

36. One case settled.

Cases with Sealed Settlement Agreements

United States v. Board of Regents (FL-N 4:93-cv-40226 filed 06/25/1993).

Statutory action. The docket sheet is sealed. The case was dismissed as settled.

United States ex rel. Andres v. Florida Clinical Practice Associates (FL-N 1:96-cv-00116 filed 06/25/1996).

Qui tam action under the False Claims Act for fraudulent Medicare billing. Many filings in this case are under seal, including the settlement agreement, but not the complaint.

Rzepka v. DaimlerChrysler Corp. (FL-N 5:00-cv-00023 filed 02/01/2000).

Motor vehicle action against the manufacturer and distributor of the plaintiffs’ Dodge Caravan and another driver for wrongful death in a roll-over accident. Plaintiffs alleged that design defects caused the car’s plastic roof to cave in, windows to burst, and restraint system to fail. A sealed settlement agreement was filed.

Thomas v. Florida Power Corp. (FL-N 4:00-cv-00231 filed 06/14/2000).

Employment discrimination case alleging a hostile work environment on the basis of race. The harassment included the hanging of two rope nooses in the workplace. A sealed settlement agreement was attached to the consent order of dismissal.

Blankenship v. Turner (FL-N 1:01-cv-00052 filed 05/16/2001).

Employment discrimination case involving sexual harassment by a former deputy sheriff. The plaintiff alleged that some employees of the Sheriff’s Department made inappropriate and unwelcome sexual advances toward her and that after she reported the harassment she was made a target of ridicule and retaliation. At the pretrial conference a settlement agreement was reached, and the announcement and transcript of the settlement agreement were sealed.

Southern District of Florida

“Unless the Court’s sealing order permits the matter to remain sealed permanently, the Clerk will dispose of the sealed matter upon expiration of the time specified in the Court’s sealing order by unsealing, destroying, or returning the matter to the filing party.” S.D. Fla. Gen. L.R. 5.4.D. “Absent extraordinary circumstances, no matter

sealed pursuant to this rule may remain sealed for longer than five (5) years from the date of filing.” *Id.* R. 5.4.B.2.

Statistics: 15,928 cases in termination cohort; 16 docket sheets are sealed (0.10%)—the disposition codes for 15 of these cases suggest no sealed settlement agreements³⁷ and the disposition code for 1 of these cases suggests a sealed settlement agreement;³⁸ 669 docket sheets (4.2%) have the word “seal” in them; 260 complete docket sheets (1.6%) were reviewed; actual documents were examined for 128 cases (0.80%); 111 cases (0.70%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Brandt v. Deloitte & Touche LLP (FL-S 1:93-cv-01830 filed 09/21/1993).

Personal property damage action by a bankrupt bank against an accounting firm that allegedly failed to exercise reasonable care in performing accounting and auditing services. The final entry on the docket sheet notes that a sealed document was filed the same day the court reported that a settlement conference was canceled.

Arnold Palmer Enterprises v. Gotta Have It Golf Collectibles (FL-S 1:97-cv-00978 filed 04/14/1997).

Trademark infringement action involving sale of unlicensed photographs and false reproductions. A sealed document was filed a week before the case was dismissed. In the order of dismissal the court retained jurisdiction to enforce the settlement agreement. A sealed settlement agreement apparently was filed.

United States ex rel. Ayers v. Tenet Healthcare Corp. (FL-S 1:97-cv-02507 filed 08/05/1997).

Qui tam action under the False Claims Act for fraudulent Medicare billing. Many filings in this case are under seal, including the settlement agreement, but not the complaint.

Parris v. Miami Herald Publishing Co. (FL-S 1:97-cv-02524 filed 08/05/1997).

Wrongful termination action under the Family Medical Leave Act. Seventeen days after the settlement conference, a sealed document was filed and the case was dismissed. Four days after the

case was dismissed, an amended order of dismissal was filed stating that the court would retain jurisdiction to enforce the terms of the settlement agreement. A sealed settlement agreement apparently was filed.

Estate of Sosa v. American Airlines Inc. (FL-S 1:97-cv-03863 filed 12/03/1997).

Airplane action for wrongful death of a passenger on a flight that crashed at the Cali, Colombia, airport, allegedly due to lack of ground navigational aids. The case settled for \$1 million, and details of the settlement were provided in the guardian ad litem report. A sealed document was filed the same day the case was dismissed. A sealed settlement agreement apparently was filed.

United States ex rel. Airon v. University of Miami Inc. (FL-S 1:97-cv-04304 filed 12/19/1997).

Qui tam action under the False Claims Act for fraudulent Medicare billing. A sealed document was filed four days prior to an order dismissing the case. In the order for dismissal “all other presently existing contents of the Court’s file” (except the complaint) were to remain sealed. A sealed settlement agreement apparently was filed.

United Parcel Service of America Inc. v. Lynn Strickland Tires Inc. (FL-S 1:98-cv-00992 filed 05/10/1998).

Contract action involving tire-related services. A sealed settlement agreement was filed. The court approved the settlement, retained jurisdiction to enforce the settlement agreement, and closed the case. One of the defendants filed a motion to reopen the case and unseal the settlement agreement because the defendant was not a party to the agreement and never received a copy of it. The court reopened the case, vacated the order approving the settlement, and unsealed the settlement agreement, but ordered that “the parties shall maintain the confidentiality of the document and use it only to promote further settlement.” The defendant who had settled with the plaintiff was dismissed. The final judgment against the remaining defendant was in the amount of \$18,712.

Rando v. Slingsby Aviation Ltd. (FL-S 1:98-cv-02224 filed 09/22/1998).

Wrongful death action alleging that a faulty fuel system caused the crash of a Firefly Aircraft, which killed an Air Force Academy cadet. The case was dismissed as to the distributor of the air-

37. One judgment on motion before trial, 4 voluntary dismissals, 4 “other” dismissals, 4 “other” judgments, 2 statistical closings.

38. One consent judgment.

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plane. A joint stipulation of dismissal was ordered for the manufacturer of the fuel-injection system. A sealed document was filed two days prior to dismissal. A sealed settlement agreement apparently was filed. Two years later a settlement agreement was reached with the manufacturer of the airplane, but this agreement was not filed. In the order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement.

Casey v. Windmere-Durable Holdings Inc. (FL-S 1:98-cv-02273 filed 09/29/1998).

Securities class action for the fraudulent misrepresentation of financial condition, causing artificial inflation of the company's stock price. The settlement agreement provided \$10.5 million to the class. A supplemental agreement was filed under seal.

United States ex rel. Christensen v. Preferred Healthcare Consultants Inc. (FL-S 1:98-cv-03021 filed 12/10/1998).

Qui tam action under the False Claims Act for fraudulent Medicare billing by health care providers. Two days before the case was dismissed a sealed document was filed. A sealed settlement agreement apparently was filed.

Martin v. Underwood Karcher & Karcher PA (FL-S 1:99-cv-01440 filed 05/19/1999).

Employment action for sexual harassment and for wrongful termination after the plaintiff reported the harassment. A sealed document was filed six days before the joint stipulation of dismissal. In the order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement. A sealed settlement agreement apparently was filed.

First Impressions Design and Management Inc. v. All That Style Interiors Inc. (FL-S 1:99-cv-02353 filed 08/26/1999).

Patent action alleging that the defendant marketed and sold a theater-style chair and falsely represented this product as identical to the plaintiff's "CineLounger." In the order of dismissal the court approved the settlement agreement. A sealed document was filed the same day the case was dismissed. A sealed settlement agreement apparently was filed.

Oviedo v. Crystal Art of Florida Inc. (FL-S 1:99-cv-02391 filed 08/31/1999).

Action under the Fair Labor Standards Act by a crystal art assembler for failure to pay overtime wages. A sealed settlement agreement was filed.

Martin v. Thermo Electron Corp. (FL-S 1:99-cv-02547 filed 09/22/1999).

Contract action for breach of a master distributor agreement. A sealed document was filed two weeks after the settlement conference and two weeks before the joint stipulation to dismiss. A sealed settlement agreement apparently was filed.

United States ex rel. Alford v. Bon-Bone Medical Imaging Inc. (FL-S 9:99-cv-08841 filed 10/08/1999).

Qui tam action under the False Claims Act for fraudulent Medicare billing. Sealed documents were filed the same day the case was dismissed.

Island Developers Ltd. v. Martin Lumber and Cedar Co. (FL-S 1:99-cv-02969 filed 11/03/1999).

Contract action involving breach of implied warranty when defective wood windows were installed. In the order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement. Two months after the case was dismissed, a sealed document was filed the same day the plaintiff filed a motion to expedite enforcement of the settlement agreement. A sealed settlement agreement apparently was filed. The court denied the motion for oral argument, and the plaintiff withdrew the motion to expedite enforcement, because the parties resolved the issue.

In re Hays v. Martinengo (FL-S 1:99-cv-03000 filed 11/08/1999).

Statutory action in admiralty by owners of a motorboat for exoneration from or limitation of liability for an accident that killed three people. A sealed document was filed four days after the order approving the settlement. A sealed settlement agreement apparently was filed.

Estate of Regalado v. Airmark Engines Inc. (FL-S 0:99-cv-07579 filed 11/29/1999); *Estate of Acevedo v. Airmark Engines Inc.* (FL-S 0:99-cv-07580 filed 11/29/1999).

Two airplane personal injury and product liability actions for wrongful death against the manufacturer and distributor of an aircraft for installing an incorrect fuel-pump system that caused the aircraft to crash, killing the pilot. The court ap-

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pointed a guardian ad litem to approve the settlement agreement with the decedent's minor child. In the minutes of the motion to approve a settlement hearing, it was noted that the "parties will file settlement under seal." In the order dismissing the case, the court retained jurisdiction for sixty days to enforce the terms of the settlement agreement. A sealed document was filed one week after the case was dismissed. A sealed settlement agreement apparently was filed.

Hofstein v. Coastal Leasing Inc. (FL-S 0:99-cv-07620 filed 12/10/1999).

Employment action by a portfolio manager against her former employer for wrongful termination based on her pregnancy. The plaintiff's motion to enforce the settlement agreement was filed under seal. The court denied the motion and entered a final judgment in favor of the defendant.

Gornescu v. United Cable Communications Group (FL-S 0:99-cv-07637 filed 12/15/1999).

Action under the Fair Labor Standards Act by a cable company employee for failure to pay overtime wages. A sealed settlement agreement was filed.

DC Comics v. Burglar Alarm Technicians Inc. (FL-S 0:99-cv-07641 filed 12/16/1999).

Copyright action involving the "Batman" logo against a burglar alarm company. A sealed settlement agreement was filed as an attachment to the order of dismissal.

Zurich-American Insurance Co. v. Perez (FL-S 1:00-cv-00559 filed 02/10/2000).

Action for declaratory judgment regarding disputes over an insurance contract in which the distributor demanded a refund of the deposit on undelivered vehicles. A sealed document was filed three days before the case was dismissed. The order of dismissal refers to a "Confidential Settlement Agreement and Release." A sealed settlement agreement apparently was filed.

Guillen v. Northwest Airlines Inc. (FL-S 1:00-cv-01300 filed 04/06/2000).

Action for damages for personal injuries suffered by a three-year-old child when a flight attendant spilled hot coffee on her. In the guardian ad litem's report, the settlement amount of \$145,000 was disclosed. The sealed settlement agreement

was filed as an attachment to the guardian's report.

Jacobs v. Pine Crest Preparatory School Inc. (FL-S 0:00-cv-06564 filed 04/21/2000).

Employment action for wrongful termination of a teacher based on sex and age. A sealed settlement agreement was filed. In the order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement.

Williams v. Office Depot Inc. (FL-S 1:00-cv-01466 filed 04/24/2000).

Employment civil rights action in which a black plaintiff sued a former employer for race discrimination and wrongful termination. One day after the stipulation of dismissal was filed, a sealed document was filed. In the order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement. A sealed settlement agreement apparently was filed.

Johns v. Viking Life-Saving Equipment (America) Inc. (FL-S 1:00-cv-01998 filed 06/05/2000).

Class action under the Fair Labor Standards Act for failure to pay overtime wages. A sealed document was filed one week before the case was dismissed. The order of dismissal approved the settlement agreement. A sealed settlement agreement apparently was filed.

Mencia v. Crystal Art of Florida Inc. (FL-S 1:00-cv-02053 filed 06/08/2000).

Class action under the Fair Labor Standards Act by warehouse employees for failure to pay overtime wages. A sealed settlement agreement was filed.

Sakr v. University of Miami (FL-S 1:00-cv-02294 filed 06/28/2000).

Action under the Americans with Disabilities Act alleging that the defendant dismissed the plaintiff from a doctoral program on account of his disability. The plaintiff's counsel filed an emergency motion to enforce the settlement agreement, alleging that the plaintiff had agreed to accept the settlement reached at the settlement conference but later refused to sign the agreement. The defendant filed an emergency motion to seal the settlement agreement and filed a sealed copy of the agreement. The motion to enforce the settlement agreement was denied. Subsequently, the court granted the defendant's motion for summary judgment. The plaintiff filed an appeal one

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month after the case was dismissed, and the appeal currently is pending.

Tessier v. J.C. Penney Inc. (FL-S 0:00-cv-07080 filed 07/31/2000).

Employment discrimination action by an Italian man alleging a hostile work environment. The plaintiff alleged that he was harassed after he complained about hazardous working conditions. The defendant filed a sealed motion to enforce the settlement agreement. The court denied the motion to enforce because the plaintiff never signed the settlement agreement. Four months later the case was dismissed as settled.

Dolan v. Ancicare PPO Inc. (FL-S 0:00-cv-07099 filed 08/03/2000).

Employment discrimination case based on sexual harassment and retaliation. The joint stipulation for dismissal asked the court to retain jurisdiction to enforce the settlement agreement. One month after the case was dismissed, a sealed document was filed. A sealed settlement agreement apparently was filed.

Estate of Runnels v. City of Miami (FL-S 1:00-cv-02930 filed 08/10/2000).

Civil rights action for wrongful death that occurred when a police officer killed a man threatening to commit suicide. The decedent was alone in his house when the police officer shot him through a window. A sealed document was filed one week before the notice of settlement. A sealed settlement agreement apparently was filed.

Association for Disabled Americans v. Beekman Towers Inc. (FL-S 1:00-cv-02951 filed 08/14/2000).

Civil rights action under the Americans with Disabilities Act for an injunction requiring the defendant to remove from its hotel architectural barriers to the physically disabled. A sealed settlement agreement was filed. The court retained jurisdiction to enforce the terms of the settlement agreement.

Rivera v. Lentine Marine Inc. (FL-S 2:00-cv-14266 filed 08/30/2000).

Action under the Fair Labor Standards Act by a mechanic for failure to pay minimum wage and overtime wages. A sealed settlement agreement was filed.

American Disability Association v. Mavis Development Corp. (FL-S 0:00-cv-07278 filed 09/05/2000).

Civil rights action under the Americans with Disabilities Act for an injunction requiring the defendant to remove from its commercial property architectural barriers to the physically disabled. A sealed document was filed two days before the case was dismissed. In the order dismissing the case the court retained jurisdiction to enforce the stipulation for settlement. A sealed settlement agreement apparently was filed.

Genao v. Joe Allen Miami Beach LLC (FL-S 1:00-cv-03689 filed 10/02/2000).

Class action under the Fair Labor Standards Act by kitchen workers for failure to pay minimum wage and overtime wages. A sealed settlement agreement was filed.

Singh-Chaitan v. Nova Southeastern University Inc. (FL-S 1:00-cv-04553 filed 11/30/2000).

Employment action by a black office manager against a former employer for race discrimination. In the order of dismissal the court retained jurisdiction to enforce the settlement agreement. A sealed settlement agreement was filed as an attachment to the plaintiff's motion to enforce it. The parties were unable to agree on a separate agreement that was to be the final settlement agreement, so the plaintiff wanted to enforce the original settlement agreement. The defendant filed a motion to compel a settlement agreement with a revised confidentiality provision. The court granted the plaintiff's motion to enforce the original settlement agreement and denied the defendant's motion to compel a revised settlement agreement. The defendant filed a revised sealed settlement agreement as an attachment to a renewed motion to compel a settlement agreement. The defendant objected to the court order enforcing the original settlement agreement, and the court heard oral argument on this issue. After oral argument the parties amicably resolved the dispute involving the confidentiality clause. The court retained jurisdiction to enforce the terms of the settlement agreement.

Ballantini v. Royal Caribbean Cruises Ltd. (FL-S 1:00-cv-04755 filed 12/14/2000).

Admiralty action for personal injury that occurred when the plaintiff fell down some stairs while a passenger on the defendant's cruise ship. A settlement for \$110,000 was noted in the minutes of

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the settlement conference. The transcript of the settlement conference was sealed. The court retained jurisdiction for thirty days to enforce the settlement agreement.

Darch v. Café Iguana Inc. (FL-S 1:00-cv-04813 filed 12/18/2000).

Class action under the Fair Labor Standards Act by restaurant workers for failure to pay minimum wage and overtime wages. A sealed document was filed two weeks after the notice of settlement was filed by the plaintiffs. A sealed settlement agreement apparently was filed.

United States v. Kantor (FL-S 0:00-cv-07851 filed 12/19/2000).

Action under the False Claims Act for fraudulent Medicare billing. A sealed document was filed three days before the case was dismissed. A sealed settlement agreement apparently was filed.

Barnuevo v. BNP Paribas (FL-S 1:01-cv-00005 filed 01/02/2001).

Action under the Fair Labor Standards Act by a bank employee for failure to pay overtime wages. A sealed document was filed the same day the case was dismissed. In the order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement. A sealed settlement agreement apparently was filed.

Egli v. Martino Tire Co. of Royal Palm Beach (FL-S 9:01-cv-08013 filed 01/04/2001).

Action under the Fair Labor Standards Act by an automobile repair shop employee for failure to pay overtime wages. A sealed settlement agreement was filed. The order of dismissal stated that "the documents filed under seal shall remain under seal until the closing of this case, at which time they shall be destroyed."

Weiss v. Russell J. Ferraro Jr. and Associates (FL-S 2:01-cv-14025 filed 01/22/2001).

Action under the Fair Labor Standards Act by a legal assistant for failure to pay overtime wages. A sealed settlement agreement was filed.

Rodriguez v. Fresh King Inc. (FL-S 1:01-cv-00304 filed 01/23/2001).

Class action under the Fair Labor Standards Act by warehouse employees for failure to pay overtime wages. A sealed document was filed the

same day the case was dismissed. A sealed settlement agreement apparently was filed.

Artcom Technologies Corp. v. Mastec Inc. (FL-S 1:01-cv-00351 filed 01/29/2001).

RICO action involving a management buyout with allegations of conversion, fraud, and breach of fiduciary duty. A sealed settlement agreement was filed. In the order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement.

Biosample Inc. v. Biosamplex Inc. (FL-S 9:01-cv-08107 filed 02/06/2001).

Trademark action concerning the sale of "biological products." The court ordered a permanent injunction against the defendant's use of the trademark Biosamplex. A sealed settlement agreement was filed. In the order of dismissal the court retained jurisdiction to enforce the injunction and settlement agreement.

Stortini v. LDC General Contracting Inc. (FL-S 1:01-cv-00531 filed 02/09/2001).

Action under the Fair Labor Standards Act by a construction worker for failure to pay overtime wages. A sealed settlement agreement was filed. In the order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement.

Flores v. Albertson's Inc. (FL-S 1:01-cv-00534 filed 02/09/2001).

Class action under the Fair Labor Standards Act by grocery store employees for failure to pay overtime wages. A sealed document was filed two days before the case was dismissed. In the order of dismissal the court approved the settlement agreement. A sealed settlement agreement apparently was filed.

Doe v. Metropolitan Dade County Public Health Trust (FL-S 1:01-cv-00546 filed 02/12/2001).

Civil rights action arising from refusal to disclose a minor's AIDS diagnosis to the minor. A sealed document was filed the same day the case was dismissed. In the order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement. A sealed settlement agreement apparently was filed.

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Access Now Inc. v. Winn-Dixie Stores Inc. (FL-S 1:01-cv-00764 filed 02/21/2001).

Civil rights action under the Americans with Disabilities Act for an injunction requiring the defendant to remove from its grocery stores architectural barriers to the physically disabled. A sealed document was filed one day before the case was dismissed. In the order of dismissal the settlement was approved and the court ordered that the settlement agreement be returned to the parties rather than be permanently under seal.

Pierre-Louis v. Archon Residential Management LP (FL-S 1:01-cv-00794 filed 02/22/2001).

Employment action by a black maintenance worker against his former employer for race discrimination and wrongful termination. A sealed document was filed five days before the case was dismissed. In the order of dismissal the court approved the settlement agreement and retained jurisdiction to enforce the settlement agreement. A sealed settlement agreement apparently was filed.

Jones v. Air Compressor Works Inc. (FL-S 9:01-cv-08164 filed 02/23/2001).

Action under the Fair Labor Standards Act by an office manager for failure to pay overtime wages. A sealed document was filed on the same day the case was dismissed. The order dismissing the case approved the settlement agreement. A sealed settlement agreement apparently was filed.

Taks v. Martinique 2-Owners' Association (FL-S 9:01-cv-08199 filed 03/05/2001).

Employment action by a general manager alleging a hostile work environment as a result of sexual harassment and alleging wrongful termination on the basis of age and disability. In the order of dismissal the court approved the settlement agreement and granted a motion to file it under seal.

Thomas v. Johnny Rockets Group (FL-S 1:01-cv-01067 filed 03/19/2001).

Class action under the Fair Labor Standards Act by restaurant employees for failure to pay minimum wage. The case was dismissed as settled, and the court retained jurisdiction to enforce the settlement agreement. Six months after the case was dismissed the plaintiff filed a motion to enforce the settlement agreement. A sealed document, presumably the settlement agreement, was filed the same day.

Planet Solutions v. European Cosmetics and Research Lab Inc. (FL-S 0:01-cv-06448 filed 03/21/2001).

Trademark action under the Uniform Trade Secrets Act involving trade secrets for cleaning products. The complaint also included Florida statutory and common law claims. In August 2002, seventeen days after the order granting a stay pending arbitration, the court granted the joint stipulation of dismissal and permanent injunction. In March 2003, the defendant filed a motion to seal the settlement agreement so that the court could rule upon the motion to vacate the permanent injunction on grounds that the plaintiff breached the terms of the confidential settlement agreement. A sealed settlement agreement was filed along with the motion to vacate. No other documents were filed in the case.

Vigo v. American Sales and Management Organization Corp. (FL-S 1:01-cv-01245 filed 03/26/2001).

Action under the Fair Labor Standards Act by a security guard for failure to pay overtime wages. A sealed settlement agreement was filed. In the amended order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement.

Lil' Joe Records Inc. v. Worldwide Pants Inc. (FL-S 1:01-cv-01377 filed 04/05/2001).

Copyright action involving the use of a sound recording on "The Late Late Show with Craig Kilborn." A sealed document was filed five days before the notice of settlement was filed. The court retained jurisdiction for sixty days to enforce the settlement agreement. A sealed settlement agreement apparently was filed.

Aguilera v. Quail Investments Inc. (FL-S 1:01-cv-01384 filed 04/06/2001).

Class action under the Fair Labor Standards Act by restaurant employees for failure to pay overtime wages. A sealed document was filed the same day the case was dismissed. A sealed settlement agreement apparently was filed.

Brito v. Shoma Development Corp. (FL-S 1:01-cv-01421 filed 04/10/2001).

Class action under the Fair Labor Standards Act for failure to pay overtime wages. A sealed settlement agreement was filed as an attachment to the notice of stipulation for voluntary dismissal. In the order approving settlement, the court or-

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dered that the settlement agreement remain under seal until the case was dismissed.

Carlucci v. Thermo Electron Corp. (FL-S 1:01-cv-01680 filed 04/24/2001).

Personal injury action against the manufacturer and owner of an X-ray unit the plaintiff serviced. The plaintiff's wrist was broken when the scissor arm casting broke, causing the arm and tube head to fall. A sealed settlement agreement was attached to the defendants' motion to enforce the settlement agreement. The case was dismissed as settled before the court ruled on the motion to enforce.

Signal Communications LLC v. Motorola Inc. (FL-S 0:01-cv-06676 filed 04/25/2001).

Contract action involving breach of a noncompetition covenant in an agreement to purchase assets of a two-way radio service division. The joint stipulation of dismissal notes that the parties entered into a separate settlement agreement. A sealed document was filed three days before the case was dismissed. In the order of dismissal the court retained jurisdiction to enforce the settlement agreement. A sealed settlement agreement apparently was filed.

Seiko Kabushiki Kaisha v. Swiss Watch International Inc. (FL-S 0:01-cv-06732 filed 05/02/2001).

Infringement action for use of the trademarks "Seiko" and "Pulsar." A sealed settlement agreement was filed.

Sealed Plaintiff v. Sealed Defendant (FL-S 0:01-cv-01845 filed 05/04/2001).

Commerce action. The docket sheet is sealed. The case was resolved by consent judgment.

Taylor v. Arrowpac Inc. (FL-S 1:01-cv-01948 filed 05/11/2001).

Employment civil rights action by a black plaintiff for race discrimination. A sealed settlement agreement was filed, and the plaintiff asked for the enforcement of the settlement agreement eleven days later. The day after the motion to enforce the settlement agreement was filed, the motion was withdrawn. In the final order of dismissal the court retained jurisdiction for ninety days to enforce the terms of the settlement agreement.

Harrington v. Twin City Fire Insurance Co. (FL-S 9:01-cv-08442 filed 05/16/2001).

Insurance action for bad faith in not offering policy limits to resolve an automobile negligence claim. The court approved a settlement and sealed the settlement agreement. The court retained jurisdiction to enforce the settlement agreement.

Velazquez v. SoftNetGaming Inc. (FL-S 1:01-cv-02011 filed 05/17/2001).

Action under the Fair Labor Standards Act for failure to pay overtime wages. The case was dismissed as settled, and the court retained jurisdiction to enforce the settlement agreement. Two months after the case was dismissed, the plaintiff filed a motion to enforce the settlement agreement under seal. Another sealed document, presumably the settlement agreement, was filed the same day.

Medley Industria Farmaceutica SA v. Da Matta (FL-S 1:01-cv-02132 filed 05/24/2001).

Action for breach of contract involving repayment for sponsorship and support of the defendant's career as a race car driver. A sealed document was filed one day before the joint stipulation of dismissal was filed. In the order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement. A sealed settlement agreement apparently was filed.

Israel v. Mayrsohn International Trading Co. (FL-S 1:01-cv-02172 filed 05/25/2001).

Employment action under the Americans with Disabilities Act by a disabled employee alleging wrongful termination. A sealed document was filed on the same day the case was dismissed. In the order of dismissal the court retained jurisdiction only to enforce the terms of the settlement agreement. A sealed settlement agreement apparently was filed. Three months after the case was dismissed, the final judgment ordered that the defendant pay \$15,876 to the plaintiff.

Morkos Group v. Amoco Oil Co. (FL-S 0:01-cv-06911 filed 05/29/2001).

Contract action for breach of "Right of First Option to Purchase when Available for Sale" by an independent contractor for a gasoline station. The sealed settlement agreement was filed as an exhibit to the notice regarding settlement. In the order dismissing the case, the court retained jurisdiction to enforce the terms of the settlement agreement. On the same day the case was dis-

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missed the court granted the defendant's motion to enforce the settlement agreement. The plaintiff filed an appeal five months after the case was dismissed, and the appeal currently is pending.

Fort Lauderdale Auto Leasing Corp. v. Sunshine Auto Rentals Inc. (FL-S 1:01-cv-02682 filed 06/25/2001).

Trademark action concerning the use of the service mark "Sunshine" by a rental car company. The court granted the parties' joint motion for a stipulated permanent injunction. A sealed settlement agreement was filed.

Dede v. City Furniture Inc. (FL-S 1:01-cv-02696 filed 06/25/2001).

Class action under the Fair Labor Standards Act by furniture store employees for failure to pay overtime wages. A sealed settlement agreement was filed.

Vargas v. Shoma Development Corp. (FL-S 1:01-cv-02738 filed 06/27/2001).

Action under the Fair Labor Standards Act by a construction worker for failure to pay minimum wage and overtime wages. A sealed settlement agreement was filed.

Fleurimond v. United Enterprises of Southeast Florida Inc. (FL-S 1:01-cv-02938 filed 07/06/2001).

Class action under the Fair Labor Standards Act by construction workers for failure to pay overtime wages. The confidential settlement agreement was filed under seal with a motion to enforce the settlement agreement. The court denied the motion to enforce on the grounds that the defendant had satisfied its obligations. The parties' request that the settlement agreement be returned was granted. The court ordered that the motion to file the settlement agreement under seal be unsealed and that the docket entry referring to a "sealed document" also be unsealed to reflect that the sealed document was a settlement agreement.

National Installers Inc. v. Harris (FL-S 1:01-cv-02964 filed 07/06/2001).

Action for declaratory judgment under the Fair Labor Standards Act for failure to pay overtime wages. A joint stipulation of settlement ordered that the "Settlement Agreement is to remain permanently under seal."

Tapia v. Extendicare Homes Inc. (FL-S 1:01-cv-03104 filed 07/17/2001).

Class action under the Fair Labor Standards Act for failure to pay overtime wages. A sealed document was filed on the same day the case was dismissed. A sealed settlement agreement apparently was filed.

Eugene v. Pep Boys – Many Moe & Jack Inc. (FL-S 1:01-cv-03171 filed 07/19/2001).

Civil rights employment action by a black assistant store manager against his former employer for race discrimination. The parties settled the case during mediation. The plaintiff filed a motion to enforce the settlement agreement. The defendants filed under seal a response to the plaintiff's motion, because it contained information on the confidential terms of the settlement. The court dismissed the case pursuant to a joint stipulation and retained jurisdiction to enforce the settlement agreement.

Tyson v. Martino Tire Co. of Royal Palm Beach (FL-S 9:01-cv-08661 filed 07/19/2001).

Class action under the Fair Labor Standards Act by service managers of an auto repair shop for failure to pay overtime wages. A sealed settlement agreement was filed. In the order of dismissal the court retained jurisdiction to enforce the terms of the settlement agreement.

Giraldo v. One World Inc. (FL-S 1:01-cv-03172 filed 07/20/2001).

Action under the Fair Labor Standards Act for failure to pay overtime wages and for retaliatory discharge after the plaintiff complained of non-payment. A sealed settlement agreement was attached to the motion for fees and costs.

Washington v. School Board of Miami-Dade County (FL-S 1:01-cv-03343 filed 07/30/2001).

Employment action by a substitute teacher against a school district and a high school principal for sexual harassment. Two sealed documents were filed eight days before the parties filed a joint notice of status of settlement documents. The notice stated that the parties had agreed on the terms of the settlement and were in the process of executing the agreements. The case was dismissed as settled, and the court retained jurisdiction for sixty days to enforce the settlement agreement.

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Palco Labs Inc. v. Vitalcare Group (FL-S 1:01-cv-03480 filed 08/10/2001).

Patent infringement case involving an adjustable tip for a blood lancet device. The court granted the plaintiff's motion for permanent injunction. A sealed settlement agreement was filed, and the order of dismissal noted that the settlement agreement will be unsealed on June 4, 2006.

McConnell v. Capri Miami Beach Condo Hotel Inc. (FL-S 1:01-cv-03572 filed 08/20/2001).

Civil rights action under the Pregnancy Discrimination Act for wrongful termination. The case was dismissed in April 2002, and the court retained jurisdiction to enforce the terms of the settlement agreement. In May 2002, a sealed settlement agreement was attached to the first motion to enforce an agreement to pay the plaintiff \$89,500. The court placed a lien on a property of the defendant's sister company as security. In July 2002, there was a renewed motion to enforce the settlement agreement, claiming \$57,000 still due. In December 2002, a third motion to enforce the settlement agreement sought sanctions for an unpaid outstanding judgment of \$51,000. The last document on the docket sheet, filed in February 2003, is a plaintiff's memorandum concerning the effect on the outstanding judgment of the defendant's sister company's bankruptcy.

Mastercard International Inc. v. T&T Sports Marketing Ltd. (FL-S 1:01-cv-03632 filed 08/24/2001).

Contract action involving fraudulent misrepresentations and breaches of material provisions in a written contract for media promotional rights to a sporting event. A sealed settlement agreement was filed.

Stubbs v. Art Express 30 Minute Custom Framing Inc. (FL-S 1:01-cv-03760 filed 09/05/2001).

Action under the Fair Labor Standards Act by an employee of a custom art framing business for failure to pay overtime wages. A sealed document was filed two days before the case was dismissed. The order of dismissal approved the settlement agreement. A sealed settlement agreement apparently was filed.

Sanchez v. Drusco Inc. (FL-S 1:01-cv-03796 filed 09/07/2001).

Class action under the Fair Labor Standards Act by employees of an export company for failure to pay overtime wages. Three weeks after the case

was dismissed, the court granted a motion to extend time to sign settlement papers. A sealed document was filed one day after the order to extend time. A sealed settlement agreement apparently was filed.

BestNet Communications Corp. v. Infinity Financial Group (FL-S 0:01-cv-07483 filed 09/17/2001).

Securities case involving false representation in connection with the purchase of 100,000 shares of common stock. The plaintiff filed a sealed motion to enforce the settlement agreement. The court retained jurisdiction for sixty days to enforce the terms of settlement.

Rivera v. KB Toy of Florida Inc. (FL-S 0:01-cv-07607 filed 10/17/2001).

Class action under the Fair Labor Standards Act by assistant store managers for failure to pay overtime wages. A sealed document was filed two days before the case was dismissed. In the final order of dismissal, the court stated it considered the settlement agreement before dismissing the case. A sealed settlement agreement apparently was filed.

Yeung v. Far & Wide Travel Corp. (FL-S 1:01-cv-04373 filed 10/24/2001).

Contract action for breach of a restrictive covenant that included a noncompetition clause. The parties filed a joint motion to seal a settlement agreement. The sealed settlement agreement was filed. The court denied the motion to seal and returned the settlement agreement to the parties. The court approved the \$2,936,550 settlement.

Alvarez v. Professional Aviation Management Inc. (FL-S 1:01-cv-04444 filed 10/30/2001).

Action under the Fair Labor Standards Act by a flight dispatcher for failure to pay overtime wages. A sealed settlement agreement was filed. In the order of dismissal, the court retained jurisdiction to enforce the terms of the settlement agreement.

Siegel v. Office Depot Inc. (FL-S 1:01-cv-04566 filed 11/06/2001).

Civil rights employment action by a copy center manager alleging demotion because of age. A settlement agreement was reached during mediation. The case was dismissed as settled. A sealed document was filed the same day the case was dismissed. A sealed settlement agreement apparently was filed.

Sealed Settlement Agreements

Sarabia v. PeopLease Corp. (FL-S 1:01-cv-04870 filed 11/30/2001).

Class action under the Fair Labor Standards Act for failure to pay overtime wages. A sealed settlement agreement was filed. The court retained jurisdiction to enforce the settlement agreement.

Baumgarten v. Children's Psychiatric Center Inc. (FL-S 1:01-cv-05040 filed 12/17/2001).

Action under the Fair Labor Standards Act by a psychiatric aide for failure to pay minimum and overtime wages. A sealed settlement agreement was filed.

Fishman v. American Media Inc. (FL-S 9:02-cv-80042 filed 01/16/2002).

Class action under the Fair Labor Standards Act by newspaper employees for failure to pay overtime wages. A sealed settlement agreement was filed. The court ordered that the settlement agreement remain sealed for five years, at which time it will be returned to the defendant.

Marinano v. Miller & Bechert PA (FL-S 0:02-cv-60089 filed 1/22/2002).

Class action under the Fair Labor Standards Act for failure to pay overtime wages. A sealed settlement agreement was filed as an attachment to the motion to seal the settlement agreement. Parties asked the court to destroy the motion to seal, the motion to approve the sealed settlement agreement, and the settlement agreement when the court entered the order to dismiss. In the order dismissing the case, the court retained jurisdiction to enforce the terms of the settlement agreement for sixty days, but did not mention destroying any documents.

White v. Cowcat Enterprises Inc. (FL-S 9:02-cv-80075 filed 01/31/2002).

Class action under the Fair Labor Standards Act by employees of an addiction treatment program for failure to pay overtime wages. Two sealed documents were filed one day before the court approved the settlement and retained jurisdiction to enforce the settlement agreement. A sealed settlement agreement apparently was filed.

Nuñez v. Acosta Tractors Inc. (FL-S 1:02-cv-20417 filed 02/06/2002).

Action under the Fair Labor Standards Act by a dirt digger operator for failure to pay overtime wages. In the order of dismissal the court retained

jurisdiction to enforce the terms of the settlement agreement for sixty days. Sealed documents were filed four and eleven days after the case was dismissed. A sealed settlement agreement apparently was filed.

Wilson v. Señor Frogs Inc. (FL-S 1:02-cv-20516 filed 02/15/2002).

Class action under the Fair Labor Standards Act by restaurant workers for failure to pay minimum and overtime wages. A sealed settlement agreement was filed with the motion to approve it. The court approved the settlement but denied the motion to seal the settlement agreement.

Puig v. Florida Sol Systems Inc. (FL-S 1:02-cv-20663 filed 03/04/2002).

Class action under the Fair Labor Standards Act for failure to pay overtime wages. A sealed settlement agreement was filed. The court approved the settlement and said it would destroy the settlement agreement.

Webster v. Urbieta (FL-S 1:02-cv-20838 filed 03/18/2002).

Civil rights action against the owner of a gas station for denial of service to the black plaintiff and his two minor children because of their race. Three sealed documents were filed within two weeks of the case's close. A sealed settlement agreement apparently was filed.

Navigators Insurance Co. v. Seaboard Marine Ltd. (FL-S 1:02-cv-20867 filed 03/20/2002).

Contract action in admiralty for loss resulting from defendant's failure to properly load and stow cargo. Five months after the case was dismissed as settled, a sealed document was filed.

VARIG SA v. Nijankin (FL-S 1:02-cv-20960 filed 03/28/2002).

RICO action for breach of fiduciary duty to recover damages for the defendant's receipt of commissions, bribes, and kickbacks from the plaintiff's contractors. A sealed document was filed one day before the case was dismissed. The court retained jurisdiction to enforce the settlement agreement.

Hernandez v. Children's Psychiatric Center Inc. (FL-S 1:02-cv-20961 filed 03/28/2002).

Action under the Fair Labor Standards Act for failure to pay minimum and overtime wages. A

Appendix C. Case Descriptions

sealed settlement agreement was filed as an attachment to the defendant's motion to approve and seal it. Six days later the court denied the motion to seal. The settlement agreement was returned to the defendant. The defendant filed a motion for reconsideration of the motion to seal or in the alternative to review the settlement in camera. The court granted an in camera review. The court approved the settlement and dismissed the case.

Reyes Cigars SA v. Adworks of Boca Raton Inc. (FL-S 9:02-cv-80290 filed 04/30/2002).

Contract action against an advertising company for intentionally shutting down the plaintiff's e-commerce Web site in breach of an agreement that the plaintiff would own the rights to the site. The plaintiff's request for injunctive relief to reinstate the Web site was denied. A sealed document was filed four days before the case was dismissed. A sealed settlement agreement apparently was filed.

Fernandez v. G.F.B. Enterprises LLC (FL-S 1:02-cv-21563 filed 05/24/2002).

Class action under the Fair Labor Standards Act for failure to pay overtime wages. A sealed settlement agreement was filed. The court approved the settlement and dismissed the case.

Steinberg v. Michaud Buschmann Mittlemark Millian Blitz & Warren PA (FL-S 9:02-cv-80523 filed 06/06/2002).

Class action under the Fair Labor Standards Act for failure to pay overtime wages. The case settled during mediation. The case was dismissed without prejudice, and the court retained jurisdiction for sixty days to enter judgment or final order of dismissal. One month later a sealed document was filed. The court has yet to enter an order of dismissal.

Plasencia v. Hanjin Shipping Co. (FL-S 1:02-cv-21968 filed 07/03/2002).

Class action under the Fair Labor Standards Act for failure to pay overtime wages. A sealed settlement agreement was filed as an attachment to the defendant's motion to file it under seal. The case was dismissed as settled.

Abascal v. Univision Network LP (FL-S 1:02-cv-22092 filed 07/17/2002).

Class action under the Fair Labor Standards Act by sales employees for failure to pay overtime wages. A sealed settlement agreement was filed.

The court approved the settlement and ordered that the settlement agreement be unsealed December 5, 2007.

Charmant v. L & M Fisheries Inc. (FL-S 0:02-cv-61141 filed 08/15/2002).

Class action under the Fair Labor Standards Act for failure to pay overtime wages. A sealed settlement agreement was filed. The parties filed a joint stipulation of dismissal and asked the court to retain jurisdiction to enforce the settlement agreement. The case was closed, but no order of dismissal was filed. Five sealed documents were filed the same day the case was closed. A sealed settlement agreement apparently was filed.

Wool v. Tokyo Bowl Inc. (FL-S 1:02-cv-22442 filed 08/19/2002).

Class action under the Fair Labor Standards Act by restaurant employees for failure to pay overtime wages. A sealed settlement agreement was filed as an attachment to a joint motion to seal it. Eight days later the court denied the motion to seal and returned the settlement agreement to counsel. The case has not been closed, and no order of dismissal has been filed.

Shred-it USA Inc. v. Tejo (FL-S 1:02-cv-22494 filed 08/22/2002).

Contract action for breach of a confidentiality and noncompetition agreement. A sealed settlement agreement was attached to the defendant's motion to enforce it. The court granted the motion.

Chong v. D&E Building Maintenance Inc. (FL-S 1:02-cv-22534 filed 08/27/2002).

Action under the Fair Labor Standards Act by a maintenance worker for failure to pay overtime wages. A sealed settlement agreement was filed. The court approved the settlement and dismissed the case.

Pizza Hut Inc. v. Grossman (FL-S 1:02-cv-23192 filed 10/29/2002).

Trademark infringement action by Pizza Hut against the owner of the domain name "piza-hut.com." A sealed settlement agreement was filed. A consent judgment ordered a permanent injunction against the defendant's use of the domain name. The court retained jurisdiction for sixty days to enforce the settlement agreement.

District of Guam

No relevant local rule.

Statistics: 130 cases in termination cohort; 7 docket sheets (5.4%) have the word “seal” in them; 3 complete docket sheets (2.3%) were reviewed; actual documents were examined for 1 case (0.77%); 1 case (0.77%) appears to have a sealed settlement agreement.

Case with a Sealed Settlement Agreement

Blaz v. van der Pyl (GU 1:00-cv-00014 filed 03/31/2000).

ERISA action by a former dental employee for failure to provide pension documents, for wrongful termination in retaliation for a request to examine pension documents, and for wrongfully attempting to withhold pension funds in satisfaction of the plaintiff’s personal debt to her employer. The defendants countersued for conversion of patients’ bill payments to the plaintiff’s personal use. The case settled at a court-mediated settlement conference, and a sealed document was filed that day. Two days later, the court dismissed the action pursuant to the settlement agreement, which was incorporated by reference into the notice of dismissal.

District of Hawaii

No relevant local rule.

Statistics: 1,752 cases in termination cohort; 2 docket sheets are sealed (0.11%)—the disposition code for 1 of these cases suggests no sealed settlement agreement³⁹ and the disposition code for 1 of these cases suggests a sealed settlement agreement;⁴⁰ 458 unsealed docket sheets (26%) have the word “seal” in them; 42 complete docket sheets (2.4%) were reviewed; actual documents were examined for 40 cases (2.3%); 38 cases (2.2%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Kon v. Goto (HI 1:96-cv-00340 filed 04/09/1996).

ERISA class action by retired employees for breach of fiduciary duty. A sealed settlement agreement was filed. Two months after final approval of the settlement, the plaintiff filed a motion to enforce the settlement agreement. The court granted the motion and ordered the defendant to pay \$453,802. Subsequently, the defendant was held in civil contempt and jailed twice for not

truthfully disclosing his financial records. The defendant filed for bankruptcy, but the bankruptcy case was dismissed. One year later, the final judgment was ordered against the defendant. The court retained jurisdiction over this judgment for one year.

Tanaka v. First Hawaiian Bank (HI 1:96-cv-00734 filed 09/04/1996).

RICO action for breach of fiduciary duty involving the estate of the plaintiff’s deceased father. On the eleventh day of a jury trial a sealed settlement agreement was filed. A default judgment was ordered against one of the defendants for \$2,613,906.

R&R of Hawaii Inc. v. Union Oil Co. of California (HI 1:97-cv-00248 filed 03/14/1997).

Real property case alleging soil contamination by storage tanks left by the defendant, who was the previous owner. The settlement was placed on the record under seal during a settlement conference.

Arrington v. Wong (HI 1:98-cv-00357 filed 05/04/1998), consolidated with *Arrington v. Wong* (HI 1:99-cv-00782 filed 11/09/1999).

The first case is designated a statutory action, and the second, a medical malpractice case. These cases were brought by the estate and relatives of a man (including his minor grandchild) who died of respiratory failure allegedly because he was refused care by the defendants at their medical care facility, which was the closest. The settlement was placed on the record under seal during a settlement conference.

Cyanotech Corp. v. Aquasearch Inc. (HI 1:98-cv-00600 filed 07/13/1998).

Patent noninfringement case concerning a method to control a microorganism growth process. The defendant’s motion to enforce the settlement agreement was sealed and denied by the court.

Lesane v. Hawaiian Airlines (HI 1:98-cv-00735 filed 09/01/1998); *Lesane v. Hawaiian Airlines* (HI 1:01-cv-00024 filed 01/03/2001).

Employment action by a black mechanic for race discrimination. The hearing on the defendant’s motion to enforce the settlement agreement was sealed. The court granted the motion to enforce the settlement agreement.

39. One “other” dismissal.

40. One case settled.

Appendix C. Case Descriptions

Castle & Cooke Properties Inc. v. BHP Hawaii Inc. (HI 1:98-cv-00923 filed 11/17/1998).

Environmental case in which hazardous chemicals and petroleum products allegedly migrated from the defendant's property to the plaintiff's property, causing contamination of groundwater and soil. An unexecuted sealed settlement agreement was filed.

Casimiro v. Allstate (HI 1:99-cv-00527 filed 07/22/1999).

Insurance action. The docket sheet is sealed. The case was dismissed as settled.

EEOC v. Safeway Inc. (HI 1:99-cv-00593 filed 08/25/1999).

Employment action on behalf of a man alleging sexual harassment and wrongful termination. The settlement agreement was placed on the record under seal during a settlement conference. The case was terminated by a consent decree that was in effect until February 26, 2003.

Silva v. Scott (HI 1:99-cv-00636 filed 09/16/1999).

Civil rights action by an undergraduate student against her professor and adviser and his employer for sexual harassment. On the sixth day of jury deliberation, a settlement was reached. The settlement was placed on the record under seal during a settlement conference.

Turner v. GTE Corp. (HI 1:99-cv-00652 filed 09/22/1999).

Civil rights action by a secretary for sexual harassment and wrongful termination. The settlement was placed on the record under seal during a settlement conference.

City & County of Honolulu v. Estate of Campbell (HI 1:99-cv-00670 filed 09/30/1999).

Environmental case under CERCLA, seeking compensation for the cleanup of the plaintiff's property, which allegedly was contaminated by hazardous chemicals during the defendant's ownership of the property. The settlement was placed on the record under seal during a settlement conference.

King v. Gannett Co. (HI 1:99-cv-00686 filed 10/06/1999), consolidated with *Hawaii v. Gannett Pacific Corp.* (HI 1:99-cv-00687 filed 10/06/1999).

Antitrust action by a group of newspaper subscribers and the state of Hawaii to prevent the

defendant from closing down one of the two daily newspapers in general circulation in Honolulu. A sealed settlement agreement was filed.

Taylor v. Kaneshiro (HI 1:99-cv-00909 filed 12/13/1999).

Prisoner civil rights action by the mother of a man who allegedly died because prison officials did not seek immediate emergency medical treatment for his self-inflicted wounds. The settlement was placed on the record under seal during a settlement conference. Eight months after settlement, the court ordered the defendant to pay the amount of settlement. The minutes of a status conference regarding dismissal notes a settlement amount of \$200,000.

Giobbi v. Lahaina Divers Inc. (HI 1:00-cv-00005 filed 01/04/2000).

Personal injury action by a woman who was injured by a boat propeller while swimming. The settlement was placed on the record under seal during a settlement conference.

Hilo Fish Co. v. Kowalski (HI 1:00-cv-00185 filed 03/06/2000).

Patent case involving a process for freezing seafood. A partial settlement agreement was filed under seal as an attachment to the minutes of a settlement conference. Six months later the settlement was placed on the record during another settlement conference. The court ordered a consent judgment and permanent injunction in favor of the defendants.

Redmond v. Ackerson (HI 1:00-cv-00444 filed 06/27/2000).

Civil rights action by a disabled black man alleging harassment by his homeowner's association after he complained about a revoked parking permit for his handicap-equipped van. A sealed settlement agreement was filed.

Hermes International v. High-Class Hawaii LLC (HI 1:00-cv-00518 filed 07/26/2000).

Trademark infringement case involving fraudulent reproductions of the plaintiff's "Kelly bag" designs. The case was dismissed, and a permanent injunction was granted in a confidential order filed under seal.

Sealed Settlement Agreements

Quitog v. Piney (HI 1:00-cv-00629 filed 09/26/2000).

Housing case under the Americans with Disabilities Act and the Fair Housing Act by a disabled woman against her landlord for threatening to evict her for having too many caregivers staying overnight in her apartment. The settlement was placed on the record under seal during a settlement conference.

Wolken-Vierra v. Allstate Insurance Co. (HI 1:00-cv-00721 filed 11/03/2000).

Insurance action for bad faith involving an insured who caused the death of the plaintiff's husband in a motor vehicle accident. The defendant failed to secure a release of claims of settlement in the plaintiff's earlier case against it. The insured was forced to continue as a defendant in that case and later assigned rights to the plaintiff to sue for the \$480,000 judgment (which included \$350,000 for the decedent's minor child). The defendant's motion for approval of settlement was filed under seal and granted by the court.

Arnott v. United Airlines Inc. (HI 1:00-cv-00731 filed 11/09/2000).

Railway Labor Act action by a female flight attendant against her employer for violating the terms of the collective bargaining agreement by not processing her workers' compensation benefits. The settlement was placed on the record under seal during a settlement conference.

Noice v. Ameriquest Mortgage Co. (HI 1:01-cv-00036 filed 01/11/2001).

Truth-in-Lending Act case involving a consumer transaction in which the defendant allegedly misrepresented the financial terms and conditions of a loan. The settlement was placed on the record under seal during a settlement conference.

Beach v. See's Candies Inc. (HI 1:01-cv-00047 filed 01/17/2001).

Employment action by a female store manager for discrimination and wrongful termination. The settlement was placed on the record under seal during a settlement conference.

Bertuccio v. Longs Drug Stores California Inc. (HI 1:01-cv-00052 filed 01/18/2001).

Personal injury case alleging that the plaintiff suffered a knee injury when he slipped and fell in the defendant's store. The settlement was placed on

the record under seal during a settlement conference.

Richardson v. Longs Drug Stores California Inc. (HI 1:01-cv-00101 filed 02/08/2001).

Personal injury case alleging that the plaintiff suffered a back injury when hit by a hand truck in the defendant's store. The settlement was placed on the record under seal during a settlement conference.

Fuchs v. Tokyu Corp. (HI 1:01-cv-00165 filed 03/09/2001).

Real property case for breach of a purchase and sale agreement for a parcel of land. A sealed settlement agreement was filed.

Pachuta v. UnumProvident Corp. (HI 1:01-cv-00199 filed 03/28/2001).

Insurance action by a physician with Alzheimer's disease for breach of a disability insurance policy. All documents pertaining to the plaintiff's motion to enforce the settlement agreement were sealed. A new settlement agreement was reached, and the plaintiff withdrew the motion.

Continental Casualty Co. v. CPA Consulting Group (HI 1:01-cv-00200 filed 03/28/2001).

Insurance interpleader action concerning disputed funds of an insurance policy. The settlement was placed on the record under seal during a settlement conference.

Rowe v. Cutter Ford Inc. (HI 1:01-cv-00209 filed 03/30/2001).

Contract case alleging that the defendant failed to properly deliver all disclosures about a used car. The settlement was placed on the record under seal during a settlement conference.

Newinsky v. Maui Radiology Consultants LLP (HI 1:01-cv-00223 filed 04/05/2001).

Labor action under the Americans with Disabilities Act, Family Medical Leave Act, and ERISA, by an MRI technician who became disabled while on the job. The defendant allegedly failed to accommodate his disability, failed to notify him of FMLA applicability, and denied him retirement benefits. The settlement was placed on the record under seal during a settlement conference.

Jaress & Leong v. Continental Casualty Co. (HI 1:01-cv-00266 filed 04/24/2001).

Contract action claiming that the defendant settled claims of fraud, misrepresentation, and malpractice against the plaintiff without his consent. The defendant's motion for approval of settlement was filed under seal. The defendant's motion to oppose the plaintiff's motion to enforce the settlement agreement was filed under seal. The court denied the plaintiff's motion to enforce the settlement agreement.

State Farm Fire & Casualty Co. v. Eilers (HI 1:01-cv-00306 filed 05/11/2001).

Insurance action seeking a binding declaration by the court that the plaintiff is not obligated under the insurance policies of the defendant's employer to defend or indemnify it against a claim of defamation and discrimination. The settlement was placed on the record under seal during a settlement conference.

Herrmann v. Kaiser Permanente (HI 1:01-cv-00767 filed 11/15/2001), consolidated with *Herrmann v. Kaiser Permanente* (HI 1:01-cv-00813 filed 12/07/2001).

Employment and civil rights actions by a doctor for wrongful termination of hospital privileges. The settlement was placed on the record under seal during a settlement conference.

Hogue v. Emmis Television License Corp. of Honolulu (HI 1:02-cv-00046 filed 01/18/2002).

Employment action by a white sportscaster for age and race discrimination and wrongful termination. The settlement was placed on the record under seal during a settlement conference.

District of Idaho

Absent a court order to the contrary, sealed documents are returned to the submitting party at the end of the case. D. Idaho L.R. 5.3(f). Court staff members have observed that after they started making electronic images of court files available in 1998, parties have more often requested that settlement agreements be filed under seal.

Statistics: 1,350 cases in termination cohort; 6 docket sheets are sealed (0.44%)—all of these cases' disposition codes suggest no sealed settle-

ment agreements;⁴¹ 440 unsealed docket sheets (33%) have the word "seal" in them; 10 complete docket sheets (0.74%) were reviewed; actual documents were examined for 5 cases (0.37%); 4 cases (0.30%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Bursch v. Residential Funding Corp. (ID 3:99-cv-00385 filed 09/03/1999).

Class action under the Truth in Lending Act by plaintiffs who entered into loan transactions pursuant to a home sales program under which the defendants allegedly "marked up" the cost of construction materials. Following mediation the parties agreed to a confidential settlement agreement, and pursuant to Local Civil Rule 5.3, the court sealed the agreement.

EEOC v. J.R. Simplot Co. (ID 1:99-cv-00439 filed 09/30/1999).

Employment discrimination case challenging an English language reading skills test as having an adverse impact on Hispanic and Asian-American employees and applicants. The court approved a consent decree, which was not sealed. Provisions of the consent decree required the EEOC to file with the court as a separate exhibit the specific amount of lost wages and interest each claimant was entitled to and a list of claimants who timely returned the claim form. One year later the court agreed to seal the exhibit and incorporate it as part of the consent decree.

Estate of Shinski v. McDonnell-Douglas Corp. (ID 1:00-cv-00280 filed 05/23/2000).

Product liability action against the manufacturer of a helicopter for wrongful death in a crash resulting from the engine's failing suddenly. The court approved and sealed the settlement agreement.

McKee v. Young (ID 1:00-cv-00713 filed 12/08/2000).

Motor vehicle action against a truck driver and the truck's owner for injuries sustained when the semi-truck and trailer rear-ended the plaintiff's vehicle. A stipulation of compromise and settlement was filed and sealed.

41. One judgment on motion before trial, 2 judgments on jury verdicts, 1 multidistrict litigation transfer, 2 voluntary dismissals.

Northern District of Illinois⁴²

The Northern District of Illinois distinguishes “restricted” documents, to which access has been restricted, from “sealed” documents, which are actually in sealed enclosures so that access requires the breaking of a seal. N.D. Ill. L.R. 26.2(a). A document may be restricted upon a showing of good cause. *Id.* R. 26.2(b). With good cause the document’s docket entry may “show only that a restricted document was filed without any notation indicating its nature.” *Id.* R. 26.2(c). Absent an order to the contrary, document restrictions are lifted sixty-three days after the case is over. *Id.* R. 26.2(e). Restricted documents may be returned to the parties or destroyed, but they may not remain restricted for more than twenty years. *Id.*

Statistics: 19,378 cases in termination cohort; 649 docket sheets (3.3%) have the word “seal” in them; 99 complete docket sheets (0.51%) were reviewed; actual documents were examined for 80 cases (0.41%); 72 cases (0.37%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Poole v. Alpha Therapeutic Corp. (IL-N 1:86-cv-07623 filed 10/08/1986).

Product liability action by a hemophiliac against manufacturers of blood products for failure to screen and test for the AIDS virus, which resulted in his contracting the virus. He died during the course of the trial, and his wife and children continued the case. Two defendants settled, and the settlement agreement was approved by the court and filed under seal. Three other defendants ultimately settled, but the agreements were not filed with the court. The remaining defendant also settled. This agreement, including the specific amounts to be distributed to the children, was not sealed.

Wilson v. Wilson (IL-N 1:89-cv-09620 filed 12/29/1989).

Personal property damage action concerning family trusts. One family member was dismissed pursuant to a sealed settlement agreement approved by the court. The plaintiff reached an apparent settlement agreement with the remaining defendants in open court for \$1.2 million. A dispute over this agreement arose. Both the district court and the court of appeals ruled for the plain-

tiff in his motion to enforce the agreement. The plaintiff obtained substitute counsel, and his former attorneys moved to enforce a later settlement agreement. The court granted the motion, releasing \$175,000 to the attorneys. The case finally terminated by stipulated dismissal.

Pivot Point International Inc. v. Charlene Products Inc. (IL-N 1:90-cv-06933 filed 11/29/1990).

Copyright action for the unauthorized marketing of exact reproductions of the plaintiff’s “Mara Sculpture,” “an artistically sculpted mannequin head which is unlike any other to the extent that this artist’s sculpture is extremely lifelike and pleasing in appearance.” The plaintiff filed a motion to enforce an oral settlement agreement, with one exhibit filed under seal. Another document was filed under seal on the day the defendants’ response was due. The plaintiff’s reply brief was filed unsealed, and it lays out terms of the alleged settlement agreement, along with proposed changes to satisfy the defendants’ objections. The agreement required that the defendants cease their copyright infringement, but permitted them to sell current inventory, and it made no mention of monetary terms. An exhibit to the plaintiff’s brief was filed under seal. The court held the copyright invalid and dismissed the complaint. The plaintiff appealed, and the matter remains before the court of appeals.

Geneva Assurance Syndicate v. Medical Emergency Services Associates (IL-N 1:92-cv-01652 filed 03/06/1992).

Insurance action by six plaintiffs against 120 defendants concerning medical malpractice insurance pooling. During the course of litigation a sealed document was filed the same day as a motion to dismiss one of the defendants. The motion was granted that day by minute order. Later in the litigation the plaintiffs filed a motion to enforce a settlement agreement with other defendants. The memorandum was filed under seal. The case ultimately was resolved by settlement with all parties.

DeKalb Genetics Corp. v. Pioneer Hi-Bred International Inc. (IL-N 3:96-cv-50112 filed 04/30/1996), consolidated with *DeKalb Genetics Corp. v. Pioneer Hi-Bred International Inc.* (IL-N 3:96-cv-50239 filed 07/23/1996), *DeKalb Genetics Corp. v. Pioneer Hi-Bred International Inc.* (IL-N 3:98-cv-50186 filed 06/19/1998), *DeKalb Genetics Corp. v. Pioneer Hi-Bred International Inc.* (IL-N 3:99-cv-50212 filed 07/01/1999), and *DeKalb*

42. This district is included in the study because of its good-cause rule.

Appendix C. Case Descriptions

Genetics Corp. v. Pioneer Hi-Bred International Inc. (IL-N 3:99-cv-50385 filed 11/23/1999); *Pioneer Hi-Bred International Inc. v. DeKalb Genetics Corp.* (IL-N 3:00-cv-050201 filed 06/07/2000), consolidated with *Pioneer Hi-Bred International Inc. v. Monsanto Co.* (IL-N 3:01-cv-050219 filed 07/10/2001).

Patent infringement actions between a producer and seller of corn seed and its competitors. The cases settled. The court granted the defendants' sealed motion to enforce the settlement agreement.

Jensen v. Oliver (IL-N 1:97-cv-01018 filed 02/13/1997).

Fraud action by an investor against a corporation's managing shareholder for using corporate money to pay for unauthorized personal expenses and converting all the corporation's assets and transferring them to a competing company he owned. The case settled. The settlement terms were stated on the record, and the transcript of the proceedings was filed under seal.

College Inn Partners v. Deby Inc. (IL-N 1:97-cv-02989 filed 04/25/1997).

Environmental action concerning the continuing contamination of the plaintiffs' land by the defendants' dry cleaning establishment and their underground petroleum storage tanks. The parties entered into a confidential settlement agreement. The defendants filed a motion to enforce it. The memorandum in support of their motion was restricted.

Santelli v. Electro-Motive (IL-N 1:97-cv-05702 filed 08/12/1997).

Designated a civil rights action, this is a Title VII employment discrimination action by a female welder against an automobile manufacturer, alleging that she was repeatedly denied equal opportunity in training, pay, and promotion because of her sex. The case settled. The defendant's brief in support of its motion to enforce the settlement agreement and the plaintiff's response were placed under seal for a period of two years. The defendant's motion reveals that the plaintiff rejected a \$7,000 check tendered by the defendant. The court granted the defendant's motion to enforce the settlement agreement and directed the plaintiff to accept the check.

Scott v. Steingold (IL-N 1:97-cv-07871 filed 11/12/1997).

RICO action alleging nationwide schemes to sell unregistered securities in wireless cable and specialized mobile radio systems. Some of the defendants settled, and the court granted them leave to file the settlement agreement under seal. The remaining defendant also settled. The court-approved settlement was stricken from the docket and court record.

Bavaro v. Grand Victoria Casino (IL-N 1:97-cv-07921 filed 11/13/1997).

Marine action against a riverboat casino by an employee for failure to provide a safe work environment, which caused her to injure herself on a stairway. She alleged that she was fired in anticipation of a lawsuit. The case settled. The court order regarding the settlement was restricted.

Nystrom v. Associated Plastic Fabricators Inc. (IL-N 1:98-cv-00134 filed 01/09/1998), consolidated with *Malachowski v. Associated Plastic Fabrications Inc.* (IL-N 1:98-cv-04282 filed 07/13/1998) and *Herman v. Peper* (IL-N 1:99-cv-04275 filed 06/28/1999).

ERISA actions concerning a company's failure to transfer former employees' vested benefits into their designated IRAs. Some of the parties settled, and the court granted the plaintiffs' oral motion to seal the settlement document and agreement; however, some of the terms of the settlement agreement, including the agreed amount of \$850,000, are stated in the court order recognizing the oral settlement. The plaintiffs' motion to enforce the settlement agreement was withdrawn after one defendant filed for bankruptcy. The remaining defendants ultimately settled.

Coilcraft Inc. v. Instructor Warehouse (IL-N 1:98-cv-00140 filed 01/09/1998).

Trademark infringement action by a manufacturer of electronic components against an unauthorized distributor. The case was dismissed as settled. The court's consent judgment order was restricted.

EEOC v. Foster Wheeler (IL-N 1:98-cv-01601 filed 03/17/1998).

Employment class action alleging race and sex discrimination. According to the docket sheet, the case settled as to the lead individual plaintiff, and a motion for entry of a protective order covering confidential settlement terms was filed under seal. But a minute order states that "payment amounts

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to individuals identified on Exhibits B & C" would be \$11,666.65 per individual. The final judgment states that the lead individual plaintiff will receive \$25,000, each of seven other named plaintiffs will receive either \$10,000 or \$15,000, and a union defendant will pay punitive damages of \$50,000, with \$20,000 going to the lead plaintiff and \$30,000 to be divided among the other class members. Both the EEOC and the lead plaintiff were awarded fees.

Soros Associates v. Trafalgar House Construction India Ltd. (IL-N 1:98-cv-01807 filed 03/24/1998).

Breach of contract action by a construction engineer seeking payment for additional work. The case was dismissed as settled. The terms of the settlement agreement were filed under seal.

L.R. Oliver & Co. v. B&J Manufacturing Co. (IL-N 1:98-cv-04268 filed 06/10/1998).

Breach of contract action by a manufacturer of grit coatings against a rival for failure to pay royalties pursuant to an oral agreement. The case was dismissed as settled. The transcript of the proceedings containing the terms of the agreement was filed under seal.

Midwest Community Health Service Inc. v. American United Life Insurance Co. (IL-N 1:98-cv-06128 filed 09/30/1998).

ERISA action alleging breach of fiduciary duty for failure to disclose the impact on the plaintiff's plans of an asset transfer. The case was dismissed as settled. The plaintiffs filed the confidential settlement agreement under seal.

Erickson v. Baxter Healthcare Inc. (IL-N 1:99-cv-00426 filed 01/26/1999).

Product liability action on behalf of a hemophiliac against manufacturers of blood products for failure to screen and test for the AIDS virus and Hepatitis C, which resulted in his contracting the viruses and dying. The parties entered into a confidential settlement agreement. The court granted the plaintiff's motion to submit the statement of settlement under seal. The court approved the settlement and the distribution of proceeds to a minor survivor.

Tracy v. Jewel Food Stores Inc. (IL-N 1:99-cv-02736 filed 04/26/1999).

Patent infringement action concerning disposable diapers. One of the defendants settled and filed a restricted memorandum in support of the motion

to enforce the oral settlement agreement. In a sealed order, the court granted the defendant's motion. The order later was unsealed and made part of the public record. The case ultimately was dismissed as settled.

Wise v. McNeil Pharmaceutical (IL-N 1:99-cv-03852 filed 06/10/1999).

Product liability action on behalf of a minor with cystic fibrosis against drug manufacturers for failing to detect the toxic effects of drugs that resulted in fibrosing colonopathy disease. The case settled. The court order approving the settlement and the distribution of proceeds from the minor's settlement was restricted. However, documents reveal that \$200,000 from the gross amount of the settlement proceeds was paid to the minor's parents for family purposes.

CoolSavings.com Inc. v. Brightstreet.com Inc. (IL-N 1:99-cv-05499 filed 08/23/1999).

Patent infringement action concerning targeted electronic certificates such as coupons. The case settled. The terms of the settlement were stated on the record at a settlement conference and placed under seal. The court temporarily unsealed the transcript so that the parties could order copies of it. The transcript then was resealed. The parties were unable to reduce the terms of the settlement to writing. The court examined several competing documents claimed to accurately reflect the settlement agreement, some of which were unsealed and contained parts of the settlement transcript. The court ultimately agreed with the plaintiff's version of the settlement agreement. The defendants appealed, and the court of appeals affirmed the court's decision.

Fitzpatrick v. Daewoo Motor America Inc. (IL-N 1:99-cv-05557 filed 08/25/1999).

Employment action against a Korean automobile company alleging pervasive racial harassment, including the use of especially vile racial epithets. The case settled. The court granted the parties' oral motion to place the settlement terms under seal.

Pappas v. Hartford Life Insurance Co. (IL-N 1:99-cv-05612 filed 08/27/1999).

Insurance action concerning the defendants' sales practices in marketing and selling whole life and universal life policies. The case settled. The settlement transcripts were sealed.

Appendix C. Case Descriptions

March v. Greater Rockford Airport Authority (IL-N 3:99-cv-50297 filed 09/10/1999).

Designated a civil rights action, this is an employment action by an African-American female security officer for race and sex discrimination in accommodating her pregnancy. The plaintiff filed a motion to clarify the settlement agreement, and the defendant filed a motion to enforce it. The controversy apparently involved the scope of liability release. At the hearing, the parties put the settlement agreement on the record, and the court sealed the tape of the hearing.

Motor Coach Industries Ltd. v. SMC Corp. (IL-N 1:99-cv-06578 filed 10/06/1999).

Patent action concerning a "stairway for a motor coach." The action was dismissed pursuant to a settlement agreement filed under seal.

Rucker v. Streetwise Inc. (IL-N 1:99-cv-07195 filed 11/04/1999).

Action under the Fair Labor Standards Act by an office assistant alleging that the newspaper publisher who employed her failed to pay her overtime wages. The case settled. The settlement was restricted. The case was appealed and ultimately dismissed as settled.

Recycling Sciences International Inc. v. Soil Restoration and Recycling LLC (IL-N 1:00-cv-00311 filed 01/18/2000).

Patent infringement action concerning soil remediation processes. The case was dismissed as settled. The settlement was filed under seal and redacted as to settlement amount.

Hightower v. Commonwealth Edison Co. (IL-N 1:00-cv-00689 filed 02/03/2000).

Title VII employment action by an African-American radiation protection manager alleging that the electric company intentionally subjected him to unequal and discriminatory treatment because of his race and color. The case settled. The settlement agreement was stated on the record. The settlement agreement and the audiotape of the settlement proceedings were sealed.

Nelson v. Sotheby's Inc. (IL-N 1:00-cv-01590 filed 03/16/2000).

Personal property damage action concerning the conversion of a painting. The case was dismissed as settled. The court ordered that the cassette tape of the settlement conference and any transcript

prepared from the cassette tape be placed under seal.

Heel-O-Matic Inc. v. GP Manufacturing LLC (IL-N 1:00-cv-01818 filed 03/24/2000).

Patent infringement action concerning an apparatus for rope training. The case settled. The defendants filed a motion to reinstate the action for breach of the settlement agreement. The defendants' supplemental memorandum and exhibits in support of their motion are restricted.

Bagnall v. Freeman Decorating (IL-N 1:00-cv-01922 filed 03/30/2000).

Employment action alleging violation of the Americans with Disabilities Act for terminating and refusing to rehire the plaintiff based on his perceived disability. The case settled. The plaintiff later filed a sealed motion to enforce the settlement agreement.

Godinez v. Eagle Insurance Agency (IL-N 1:00-cv-01987 filed 03/31/2000); consolidated on appeal with *Jones v. American Ambassador Casualty Co.* (IL-N 1:00-cv-05973 filed 09/28/2000).

Section 1981 actions by and on behalf of minority customers of an insurance company alleging that they paid money for substandard insurance coverage and were not compensated for automobile losses ordinarily covered by standard automobile insurance policies. The court held that the plaintiffs' civil rights claims were barred by the McCarran-Ferguson Act, which forbids federal courts from intervening in the regulation of insurance by states. The plaintiffs appealed. The case settled. The case was remanded to the district court to certify approval of the settlement. The settlement agreement was filed under seal.

Denison Hydraulics Inc. v. Veljan Hydrair Ltd. (IL-N 1:00-cv-02022 filed 04/04/2000).

Trademark infringement action by a manufacturer of hydraulic pumps. The case settled. The court ordered that the confidential settlement agreement remain under seal for twenty years and thereafter be destroyed.

Devlieg Bullard II Inc. v. Ivan Doverspike Co. (IL-N 1:00-cv-05260 filed 08/25/2000).

Patent infringement action by a manufacturer of multiple spindle machines. The case settled. The court sealed the transcript of the proceedings that memorialized the confidential settlement agreement.

Sealed Settlement Agreements

Leadership Council for Metropolitan Open Communities Inc. v. Buczek (IL-N 1:00-cv-05851 filed 09/22/2000).

Housing discrimination action on behalf of an African-American family, alleging that the defendant refused to rent to them because of their three minor children. The case settled. The audiotape of the settlement proceedings outlining the terms of the agreement was placed under seal. The consent decree also was sealed. The court later granted the plaintiffs' motion to lift the seal restricting publication of the consent decree.

Royal Source Inc. v. Puri-Clean Enterprises Inc. (IL-N 1:00-cv-06603 filed 10/24/2000).

Trademark infringement action by a manufacturer of nutritional and dietary supplements against competitors. The case settled. The court granted the plaintiff's motion to file under seal exhibits to its motion to enforce the settlement agreement. The defendants requested that the court order be vacated, because they never agreed to the plaintiff's version of the settlement terms. The court denied the defendants' motion. The case ultimately was dismissed as settled.

Pressner v. Target Corp. (IL-N 1:00-cv-06636 filed 10/25/2000).

Title VII employment action alleging sex discrimination and retaliation for supporting a co-worker's lawsuit against the retail store defendant. The case settled. The tape of the settlement proceedings was sealed.

Collier v. Greater Rockford Airport Authority (IL-N 3:00-cv-50416 filed 11/21/2000).

Action under the Fair Labor Standards Act concerning an airport's failure to pay employees overtime wages. The case was dismissed as settled with respect to all plaintiffs except one. That plaintiff ultimately settled for \$11,000, and the settlement agreement was filed under seal as an exhibit.

Viravakin v. Sara Lee Branded Foods (IL-N 1:00-cv-07677 filed 12/07/2000).

Title VII employment action by an Asian accounts payable clerk independent contractor alleging that over the span of four years she was overlooked for several employment opportunities because of her race and national origin. The case settled. The transcript and tape of the settlement proceedings were sealed.

188 LLC v. Trinity Industries Inc. (IL-N 1:00-cv-07993 filed 12/21/2000).

Breach of contract action concerning the negligent repair of railroad cars. The case settled. Both parties filed restricted motions to enforce the settlement agreement. The plaintiff filed for bankruptcy and motions were deemed moot.

Johnstone v. Wabick (IL-N 1:01-cv-00577 filed 01/29/2001).

Civil rights action by shareholders against trust managers concerning fraudulent transfers that resulted in a \$7 million loss for shareholders. The case settled. The court granted the plaintiffs' request to file the stipulated judgment against the defendants under seal. The judgment later was unsealed, revealing that the defendant had to pay plaintiffs \$1,050,000.

Poly-Plating Inc. v. Hi-Grade Welding and Manufacturing Inc. (IL-N 1:00-cv-00772 filed 02/05/2001).

Trademark infringement action by a manufacturer of surface coating metals. The case settled. The court placed the transcript and tape of the settlement proceedings under seal.

Anderson Medical Supply Inc. v. Chevron Phillips Chemical Co. (IL-N 1:01-cv-01388 filed 02/27/2001).

Trademark infringement action concerning a breathing mask for children requiring asthma aerosol medication. The case settled. The tape of the settlement proceedings was placed under seal.

Robert Half International Inc v. Wong (IL-N 1:01-cv-01489 filed 03/02/2001).

Breach of contract action alleging misappropriation of trade secrets by former employees of a recruitment company. The case settled. The court sealed the defendants' motion to enter judgment based on the settlement agreement. The case was dismissed as settled.

Juno Lighting Inc. v. Bartco Lighting (IL-N 1:01-cv-01498 filed 03/02/2001).

Patent infringement action by a lighting manufacturer. The case settled. The settlement agreement was filed under seal.

Appendix C. Case Descriptions

Leherer Flaherty & Canavan P.C. v. Mesirov Financial Inc. (IL-N 1:01-cv-01643 filed 03/08/2001).

ERISA action alleging that the defendant failed to diversify and tend to the corporation's retirement and pension plan, which resulted in severe losses. The case settled. The terms of the settlement agreement were stated on the record and placed under seal.

Lawson Products Inc. v. Chromate Industrial Corp. (IL-N 1:01-cv-01793 filed 03/14/2001).

Contract action by manufacturers of industrial fasteners seeking to enjoin their competitor from soliciting their employees and encouraging them to breach their employment agreements by misappropriating trade secrets. The case settled. The settlement agreement was filed under seal.

Hegy v. Community Counseling Center of Fox Valley (IL-N 1:01-cv-02288 filed 04/02/2001).

Civil rights action by the defendant's former executive director alleging that she was locked out of her office by the board of directors because of age discrimination. The case settled. The transcript of the settlement conference was sealed.

Fruit of the Loom Inc. v. Gildan Activewear Inc. (IL-N 1:01-cv-02315 filed 04/04/2001).

Contract action to enjoin the misappropriation of the plaintiff's trade secrets. The case settled. The final settlement agreement was subject to the bankruptcy court's approval. The consent order was filed under seal.

Hibo v. Kehoe Palmer Djordjevic Service Center P.C. (IL-N 1:01-cv-02475 filed 04/09/2001).

Title VII employment discrimination action by a Filipino lab technician against an internal medicine and ambulatory patient consulting corporation, alleging wrongful discharge based on national origin. The case settled. The transcript tape of the settlement conference was sealed.

Hellman v. Econovo Ltd. & Trade Trust Ltd. (IL-N 1:01-cv-02613 filed 04/13/2001).

Breach of contract action by a chief development officer alleging that he was not properly compensated after being terminated without cause. The case settled. The terms of the settlement were stated on the record and placed under seal.

Nu-Wool Co. v. Certainteed Corp. (IL-N 1:01-cv-03691 filed 05/18/2001).

Statutory action by a manufacturer of cellulose insulation products against a manufacturer of fiberglass insulation products, alleging that the defendant, in an attempt to thwart competition, produced and distributed false advertisements about the dangers of cellulose insulation. The case settled. The settlement and release agreement is restricted.

Johnson v. Board of Trustees of the University of Illinois (IL-N 1:01-cv-03774 filed 05/22/2001).

Employment action alleging that the defendant breached the sealed settlement agreement, entered into in a previous action, by changing the plaintiff's job description and requiring him to report to workers he previously supervised. The court ordered that the settlement agreement remain under seal. The case was ultimately dismissed as settled.

Evanston Materials Consulting Corp. v. Dancor Inc. (IL-N 1:01-cv-06077 filed 08/08/2001).

Patent action by a material coatings research company against a consulting corporation, alleging that the defendants had no claim to the work performed under a grant. The parties entered into an "interim settlement agreement," which was sealed and approved by the court. The case ultimately was dismissed as settled.

Mitchell v. American Express TBS (IL-N 1:01-cv-06225 filed 08/14/2001).

Title VII employment action alleging sexual harassment, retaliatory conduct, and constructive discharge. The case settled. The terms of the settlement were stated on the record, and the tape was placed under seal.

Tibor v. Connaissance Consulting LLC (IL-N 1:01-cv-07207 filed 09/18/2001).

Contract action by an account executive and salesman against a technology consulting company for failure to provide him with written notice of its intent to terminate him and for refusing to pay him commissions owed. The case settled. The settlement agreement was filed under seal.

AOC LLC v. Applied Composites Corp. (IL-N 1:01-cv-07689 filed 10/04/2001).

Breach of contract action by a polyester and resins manufacturer against a customer for nonpayment.

The case settled. The court granted the defendant's oral motion to seal the settlement agreement.

Fox v. Yellow Freight System Inc. (IL-N 1:01-cv-07827 filed 10/10/2001).

Wrongful termination action alleging race and age discrimination. The case settled. The terms of the settlement were stated on the record and placed under seal.

Nolden v. TCI of Illinois Inc. (IL-N 1:01-cv-09335 filed 12/06/2001).

Employment action alleging wrongful discrimination because of the plaintiff's disability. The parties reached a settlement and placed the terms of the settlement on the record and under seal.

V & S Vin & Spirit Aktiebolag v. Cracovia Brands Inc. (IL-N 1:01-cv-09923 filed 12/27/2001).

Trademark infringement action by a vodka manufacturer against a competitor. The case settled. Although the confidential settlement agreement was filed under seal, it can be found attached to the plaintiff's notice of filing.

Career Holdings Inc. v. Finnigan (IL-N 1:02-cv-02746 filed 04/16/2002).

Fraud action seeking an injunction preventing a senior employee from going to work for a competitor until his knowledge of the recruitment solutions company's trade secrets is significantly less current. The case settled. The agreed order dismissing the case was sealed.

Corporate Express Office Products Inc. v. Schoepke (IL-N 1:02-cv-05076 filed 07/18/2002).

Contract action seeking to enjoin employees from working for a competitor of office supplies and using trade secrets. The case settled. The plaintiff filed a motion to enforce the settlement agreement. The motion contains terms of the settlement agreement, including an injunction against contacting the plaintiff's customers for a period of nine months. Two days later, the court granted the plaintiff's oral motion to file exhibits under seal.

Martinez v. City of Chicago (IL-N 1:02-cv-05093 filed 07/18/2002).

Employment action by a mailroom assistant alleging sexual harassment. The case settled. The

transcript of the settlement conference was filed under seal.

Shen Wei (USA) Inc. v. Kimberly-Clark Corp. (IL-N 1:02-cv-05196 filed 07/23/2002).

Patent infringement action by manufacturers of moisturizing therapeutic gloves against a competitor. The case settled. The plaintiffs filed a restricted motion to enforce the settlement agreement.

Northern District of Indiana

No relevant local rule. According to the clerk, the court considered adopting a rule like the District of South Carolina's, proscribing sealed settlement agreements, but decided such a rule was unnecessary, because the district does not have sealed settlement agreements.

Statistics: 4,103 cases in termination cohort; 1 docket sheet is sealed (0.02%)—this case's disposition code suggests no sealed settlement agreement;⁴³ 216 docket sheets (5.3%) have the word "seal" in them; 11 complete docket sheets (0.27%) were reviewed; actual documents were examined for 0 cases; no case appears to have a sealed settlement agreement.

Southern District of Indiana

"No document will be maintained under seal in the absence of an authorizing statute, Court rule, or Court order." S.D. Ind. L.R. 5.3(a).

Statistics: 5,831 cases in termination cohort; 200 docket sheets (3.4%) have the word "seal" in them; 60 complete docket sheets (1.0%) were reviewed; actual documents were examined for 13 cases (0.22%); 9 cases (0.15%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

United States ex rel. Elrefai v. Charter Medical Corp. (IN-S 1:96-cv-01759 filed 12/04/1996).

Qui tam action under the False Claims Act for fraudulent Medicare billing by psychiatric hospitals. The case was dismissed as settled, and the complaint, notice of intervention, stipulation of dismissal, and dismissal were unsealed. A sealed settlement agreement apparently was filed.

43. One judgment on motion before trial.

Appendix C. Case Descriptions

Stanback v. DaimlerChrysler Corp. (IN-S 1:99-cv-00043 filed 01/15/1999).

Civil rights employment action for wrongful termination after the plaintiff complained that he was sexually harassed. A jury awarded the plaintiff \$2.8 million. To prevent an appeal, the plaintiff reached an agreement with the defendant. A sealed settlement agreement was filed with the motion to enforce it.

Indianapolis Motor Speedway Corp. v. Transworld Diversified Services Inc. (IN-S 1:99-cv-01073 filed 07/12/1999).

Contract action involving breach of a sponsorship agreement. A sealed settlement agreement was filed as an attachment to the joint notification of settlement.

Bokelman v. Allied Telecommunications Inc. (IN-S 1:99-cv-01452 filed 09/16/1999).

Contract action for breach of an employment agreement involving failure to pay the plaintiff a sales commission. The defendant filed a sealed settlement agreement. The court dismissed the case and returned the settlement agreement to the defendant.

Cook Vascular Inc. v. Reiser (IN-S 1:99-cv-01598 filed 10/15/1999).

Patent infringement action involving a specialized catheter used to remove problem pacemakers. A sealed settlement agreement was filed pursuant to a protective order. The court retained jurisdiction to enforce the settlement agreement.

Glendale Centre LLC v. Houlihan's Restaurants Inc. (IN-S 1:00-cv-00671 filed 04/21/2000).

Real property action involving breach of a lease agreement. A consent judgment was reached, and a sealed settlement agreement was filed. The order of dismissal discloses that the amount of judgment was \$800,000.

Locke v. Lawrence Township Fire Department (IN-S 1:00-cv-00942 filed 06/07/2000).

Civil rights employment action by a firefighter against her employer for sexual discrimination and retaliation. The plaintiff filed a motion to enforce the settlement agreement. The court sealed the motion because it contained settlement terms.

FFI Corp. v. Powers Fastening Inc. (IN-S 1:00-cv-00968 filed 06/13/2000).

Contract product liability action claiming that the plaintiff installed grain dryers using the defendant's faulty anchoring system, which caused one grain dryer to collapse and required the plaintiff to test all of the anchors it installed. The plaintiff filed a motion to enforce a settlement agreement. Two months after the motion was filed, the court ordered the motion sealed because it contained settlement terms.

Bailey v. United National Bank (IN-S 1:00-cv-01175 filed 07/21/2000).

ERISA action by retired employees for breach of fiduciary and contractual duty in not properly monitoring and protecting assets. At the pretrial conference the record of settlement was sealed. The case was dismissed and referred to the bankruptcy court because the ERISA claims related to matters that were contested in the debtor's bankruptcy case.

Northern District of Iowa

A document may be filed under seal only by court order. N. & S. D. Iowa L.R. 5.1(e). Thirty days after the case is over (sixty days if the United States is a party), the clerk may notify parties that documents will be unsealed unless there is a timely objection. *Id.* (Note that the Northern and Southern Districts of Iowa have the same local rules.)

Statistics: 1,096 cases in termination cohort; 42 docket sheets (3.8%) have the word "seal" in them; 15 complete docket sheets (1.4%) were reviewed; actual documents were examined for 6 cases (0.55%); 6 cases (0.55%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Mineral Area Osteopathic Hospital Inc. v. Keane Inc. (IA-N 1:99-cv-00050 filed 03/31/1999).

Contract action by three hospitals against a provider of health care information software for damages arising from the Y2K bug. The defendant sought a protective order. Papers and proceedings pertaining to the plaintiffs' motion to certify a class were sealed, and the motion was denied. The parties settled (as did three additional hospital plaintiffs in independent actions) at a settlement conference before a magistrate judge. The parties asked the court to approve a confidential settlement agreement, which was filed under seal. One term of the agreement was plaintiffs' not appeal-

ing the denial of class certification. The court approved the settlement agreement.

Javeed v. Covenant Medical Center Inc. (IA-N 6:00-cv-02007 filed 01/13/2000).

Employment sex discrimination action by a surgeon alleging a hostile work environment for women, more favorable treatment of male surgeons, and termination of her employment contract for complaining about the discrimination. The court scheduled a settlement conference before the chief magistrate judge, and nearly two months later the plaintiff filed a sealed motion to enforce a settlement agreement. The defendants filed a sealed opposition. Four months later the case was dismissed as settled.

Weems v. Federated Mutual Insurance Co. (IA-N 6:00-cv-02013 filed 02/08/2000).

Designated a civil rights action, this is really an employment discrimination action by an African-American employee alleging wrongful termination on the basis of race. The complaint included state-law counts for assault and intentional infliction of emotional distress. The defendant filed a counterclaim for \$549.32 in excess salary paid and the return of property belonging to the defendant. In advance of a settlement conference, the defendant filed a "confidential settlement statement" under seal. Subsequently the case was dismissed as settled.

EEOC v. American Home Products Corp. (IA-N 3:00-cv-03079 filed 09/29/2000).

Employment discrimination action on behalf of female employees for a hostile work environment created by a manager. The complaint alleged that the manager was promoted rather than disciplined and that employees who investigated the harassment were fired. A consent decree mandated payment of \$478,500 to employees. The list of employees and their shares was filed under seal.

Liu v. Life Investors Insurance Co. of America (IA-N 1:01-cv-00141 filed 09/28/2001).

Action alleging employment discrimination on the basis of race and national origin in failing to promote the plaintiff. The action was dismissed as settled, and the plaintiff filed a sealed "motion to extend time to finalize settlement" three weeks later. Over a month later the defendant filed a sealed motion to enforce a settlement agreement. An unsealed brief in support of this motion stated

that the agreement had not been executed because (1) the plaintiff sought to amend his agreement not to seek employment with the defendant or related companies with a limitation to companies within the United States, (2) the plaintiff objected to terms concerning his return of the defendant's property and to the defendant's not admitting liability, and (3) the plaintiff's wife had not signed the agreement. Ruling on the motion, the court ordered specific terms and that a signed settlement agreement be filed by a specific date. The agreement was filed under seal.

EEOC v. DeCoster (IA-N 3:02-cv-03077 filed 09/26/2002).

Employment sex discrimination action on behalf of female employees who complained of sexual harassment and assault. The case was terminated by consent decree. The defendant denied the allegations, but agreed to promulgation of an anti-harassment policy, training, recordkeeping, and payment of \$1,525,000 in monetary relief. The list of who received how much was sealed, but each of approximately a dozen individuals received approximately \$125,000.

Southern District of Iowa

A document may be filed under seal only by court order. N. & S. D. Iowa L.R. 5.1(e). Thirty days after the case is over (sixty days if the United States is a party), the clerk may notify parties that documents will be unsealed unless there is a timely objection. *Id.* (Note that the Northern and Southern Districts of Iowa have the same local rules.)

Statistics: 1,976 cases in termination cohort; 69 docket sheets (3.5%) have the word "seal" in them; 9 complete docket sheets (0.46%) were reviewed; actual documents were examined for 0 cases; no case appears to have a sealed settlement agreement.

District of Maine

No relevant local rule.

Statistics: 1,070 cases in termination cohort; 141 docket sheets (13%) have the word "seal" in them; 10 complete docket sheets (0.93%) were reviewed; actual documents were examined for 2 cases (0.19%); 2 cases (0.19%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Strout v. Paisley (ME 1:00-cv-00107 filed 05/24/2000).

Wrongful death and personal injury action against a truck driver and his employer for causing a motor vehicle accident that killed the plaintiff's wife and caused him bodily injury. The plaintiff's motion for approval of the couple's minor son's settlement was sealed. An unsealed order approving the minor's settlement reported that the minor received \$125,341 of the \$450,000 settlement.

Carrier v. JPB Enterprises (ME 2:01-cv-00187 filed 07/20/2001).

ERISA class action against plaintiffs' former employer for failure to provide advance notice of mass layoffs, failure to pay severance and vacation pay, and failure to contribute to a 401(k) plan. The parties filed a sealed joint motion to approve the settlement. An unsealed order approving the settlement reported that the class representatives each received a total of \$10,000. The order approving the plaintiffs' motion for attorney fees reported that the attorneys were awarded \$150,000.

District of Maryland⁴⁴

"Any motion seeking the sealing of pleadings, motions, exhibits or other papers to be filed in the Court record shall include (a) proposed reasons supported by specific factual representations to justify the sealing and (b) an explanation why alternatives to sealing would not provide sufficient protection. The Court will not rule upon the motion until at least 14 days after it is entered on the public docket to permit the filing of objections by interested parties." D. Md. L.R. 105.11. At the end of the case, sealed documents are returned to the parties or destroyed. *Id.* R. 113.2.

Statistics: 7,851 cases in termination cohort; 8 docket sheets are sealed (0.10%)—the disposition codes for 6 of these cases suggest no sealed settlement agreements⁴⁵ and the disposition codes for 2 of these cases suggest sealed settlement agreements;⁴⁶ 232 unsealed docket sheets (3.0%) have the word "seal" in them; 20 complete docket sheets (0.25%) were reviewed; actual documents

44. This district is included in the study because of its good-cause rule.

45. Two judgments on motions before trial, 3 "other" dismissals, 1 "other" judgment.

46. Two cases settled.

were examined for 15 cases (0.19%); 15 cases (0.19%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Grandison v. Lanham (MD 1:94-cv-00204 filed 01/27/1994).

Prisoner civil rights action by a Muslim prisoner who alleged he was prevented from practicing his religion while incarcerated. The parties settled. A tape recording of the settlement conference was sealed.

United States ex rel. Ackley v. International Business Machines Corp. (MD 8:97-cv-03189 filed 09/18/1997).

Qui tam case filed under the False Claims Act for fraudulent billing by a computer company working on NASA's space shuttle project. A sealed settlement agreement was filed.

Quillen v. CSX Transportation Inc. (MD 8:97-cv-03219 filed 09/22/1997).

Federal employers' liability action by the wife and minor son of an assistant conductor who died when the passenger train he was riding on crashed into a commuter train. A petition for approval of the settlement was sealed. The court denied the request to approve the settlement.

Robinson v. New Line Cinema Corp. (MD 1:97-cv-03859 filed 11/14/1997).

Copyright case claiming that the defendant passed off as its own a screenplay by the plaintiff, which the plaintiff called "Sister Sara" and the defendant called "Set It Off." The court granted the defendant summary judgment, and the plaintiff appealed. The court of appeals reversed. Eleven months after the case was reopened, the plaintiff filed a sealed motion to enforce a settlement agreement. The case was dismissed as settled.

Wilklow v. Johns Hopkins Hospital (MD 1:98-cv-02178 filed 07/08/1998).

Medical malpractice action by the parents of a minor who suffered neurological and permanent physical damage because her hydrocephalus was not treated promptly. A sealed order granted the plaintiffs' motion to approve the settlement.

Sealed Settlement Agreements

Kessler v. American Postal (MD 8:98-cv-03547 filed 10/21/1998).

Statutory action. The docket sheet is sealed. The case was dismissed as settled.

Superior Federal Bank FSB v. Tandem National Mortgage Inc. (MD 1:99-cv-02360 filed 08/04/1999).

Contract case involving breach of a purchase agreement. Settlement documents were filed under seal. The defendants' second application to approve the settlement agreement included a copy of the settlement agreement that did not mention the amount being paid. A default judgment was ordered against one of the defendants for \$71,041.

Teague v. O&K Escalators Inc. (MD 8:00-cv-00292 filed 01/31/2000).

Personal injury action by the estate of a man who was killed when an escalator he was installing in the Washington Metro system collapsed. The plaintiff alleged that the fastener system was defective. There were counterclaims, cross-claims, and third-party claims among Metro, the contractor, the escalator manufacturer, and parts manufacturers. A sealed settlement agreement was filed.

Harmon v. Tyson Foods Inc. (MD 1:00-cv-01997 filed 06/29/2000).

Class action under the Fair Labor Standards Act by chicken catchers for failure to pay overtime wages. A joint memorandum for approval of the settlement agreement was sealed and approved by the court.

Charles River Associates v. Hale Trans Inc. (MD 1:00-cv-02760 filed 09/14/2000).

Contract case involving failure to pay for services rendered to assist the defendant in an antitrust lawsuit. The defendant filed a third-party complaint for legal malpractice against its former attorneys. After a settlement conference the court dismissed the case. The plaintiff filed a motion to revoke the dismissal and reopen the case, because the primary defendant did not pay the settlement. This motion included a letter from the magistrate judge that revealed the settlement amount of \$162,000. The third-party defendant filed a sealed settlement agreement as an exhibit to a motion to enforce it.

Clean Harbors Environmental Services Inc. v. Isom (MD 1:01-cv-00657 filed 03/05/2001).

Contract case involving breach of a confidentiality and noncompetition agreement. A sealed consent order was filed.

Robinson v. Allen Family Foods Inc. (MD 1:01-cv-00838 filed 03/20/2001).

Class action under the Fair Labor Standards Act by chicken catchers for failure to pay overtime wages. A sealed settlement agreement was filed.

Warehouse Employees Local Union Number 730 v. Great Atlantic & Pacific Tea Co. (MD 1:01-cv-01528 filed 05/25/2001).

Case filed under the Labor and Management Relations Act involving dismissal of a union worker in violation of a collective bargaining agreement. A sealed settlement agreement was filed.

Chamberlain v. Fairbanks Capital Corp. (MD 8:01-cv-01779 filed 06/19/2001).

Statutory action involving violation of the Fair Debt Collection Act in connection with the plaintiffs' home mortgage. A sealed settlement agreement was filed.

United States v. Frederick Memorial (MD 1:01-cv-02923 filed 10/02/2001).

Statutory action. The docket sheet is sealed. The case was dismissed as settled.

Eastern District of Michigan

Sealed settlement agreements should be unsealed two years after the date of sealing, absent an order to the contrary. E.D. Mich. L.R. 5.4. Court staff members say that the rule is difficult to implement, because no rule specifies that sealed settlement agreements be designated as anything other than a sealed document, so it is difficult to know what documents are covered by the rule. Sealed *discovery* documents are returned or unsealed sixty days after the case is over. *Id.* R. 5.3(b).

Statistics: 9,561 cases in termination cohort; 351 docket sheets (3.7%) have the word "seal" in them (but 155 of these merely have "seal" in a party name, including 141 cases with Crown Cork and Seal Company as a party); 52 complete docket sheets (0.54%) were reviewed; actual documents were examined for 19 cases (0.20%); 16 cases (0.17%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Herman Miller Inc. v. Palazzetti Imports & Exports Inc. (MI-E 2:96-cv-75833 filed 06/25/1996).

Trademark and trade dress action concerning high-quality reproductions of Eames chairs and ottomans. There was a jury trial, a judgment, an appeal, and a remand. On the eve of the second trial, the case settled pursuant to a sealed settlement agreement “to remain under seal for a period of ten (10) years” (until January 3, 2013).

Smith v. Chrysler Financial Corp. (MI-E 2:97-cv-76338 filed 12/03/1997).

Employment action by a paralegal alleging retaliation against her for complaining of the general counsel’s pursuing a sexual relationship with another paralegal through unwelcome sexual advances. The action was partially dismissed pursuant to a sealed settlement agreement, and an award of attorney fees was to be determined. In addition, the plaintiff was ordered to keep confidential the terms of the defendants’ settlement agreement with the other paralegal in her separate action. Attorney fees of \$184,371.25 and costs of \$13,240.98 were awarded by sealed order, which both the plaintiff and the defendants appealed. The case settled on appeal.

Relume Corp. v. Dialight Corp. (MI-E 2:98-cv-72360 filed 06/09/1998).

Patent infringement case concerning LED displays in traffic signals. The court granted summary judgment to the defendants. Documents filed in the case indicate that the plaintiff tried to negotiate a settlement with the defendants that would relieve it of the preclusive effect of the summary judgment in future actions against other manufacturers of LED traffic signals. Apparently some defendants were amenable to this and some were not. The amenable defendants agreed to a settlement agreement filed under seal. The plaintiff thereafter lost an appeal of the summary judgment. The case was finally dismissed as settled pursuant to an apparently unfiled settlement agreement.

Solomon v. City of Sterling Heights (MI-E 2:98-cv-73900 filed 09/04/1998).

Civil rights case against a newspaper, a city, and its police department for injuries resulting from the police’s use of tear gas, pepper spray, and physical violence to disrupt a picket line. The plaintiff further alleged denial of medical treatment while in confinement and permanent dis-

ability. Judgment on a jury verdict awarded the plaintiff \$500,000 in compensatory damages against all defendants and \$1 million in punitive damages against the newspaper. Litigation over prejudgment interest and attorney fees continued, and a sealed settlement agreement with the city defendants was filed. The newspaper appealed the judgment against it, and the matter is still on appeal.

Pasque v. Frederick (MI-E 2:99-cv-75113 filed 10/20/1999).

Motor vehicle action for wrongful killing of a bicyclist by a truck driver. A sealed document was filed the same day as a “settlement on the record,” and the case was dismissed on an approved settlement the following month. Five days before the settlement on the record, the plaintiff filed a petition to determine settlement specifying a \$2 million settlement.

Wagner v. Ford Motor Co. (MI-E 2:99-cv-75567 filed 11/17/1999).

Employment discrimination case, which was dismissed without prejudice in November. The court retained jurisdiction for two months in the event that the settlement was not consummated. Two months later the court agreed to retain jurisdiction for an additional month. One month later—in early March—the court dismissed the case with prejudice. A sealed document was filed by the judge nearly two months later; this may be a sealed settlement agreement.

Fitch v. Sensormatic Electronics Corp. (MI-E 2:00-cv-71603 filed 04/03/2000).

Complaint under the Fair Labor Standards Act for wrongfully requiring field technicians to deduct one hour from each workday. A stipulated order for dismissal states that the court facilitated a settlement conference, which resulted in a confidential settlement agreement that the court will hold under seal. The docket sheet, however, does not show the filing of such an agreement.

Intra Corp. v. Air Gage Co. (MI-E 5:00-cv-60234 filed 04/19/2000).

Patent case concerning an “apparatus for inspecting an engine valve seat.” The case was dismissed, and the court retained jurisdiction to enforce a sealed settlement agreement.

Parkhill v. Starwood Hotels & Resorts Worldwide Inc. (MI-E 2:00-cv-71877 filed 04/24/2000).

Personal injury action for quadriplegic spinal cord injuries sustained by the plaintiff while swimming in the ocean at the defendant's hotel. The case settled, and approximately three months after the filing of the stipulated order of dismissal—on the statistical date of termination—a sealed document was filed; this may be a settlement agreement.

Hoy v. Pet Greetings (MI-E 2:00-cv-72308 filed 05/19/2000).

Patent case concerning edible pet greeting cards. A sealed document was filed on the day of termination. The unsealed judgment contains several terms of a settlement agreement, but states that some terms are sealed.

Madison/OHI Liquidity Investors LLC v. Omega Healthcare Investors Inc. (MI-E 2:00-cv-72793 filed 06/21/2000).

Contract case for failure to provide a security investment firm with an agreed-upon line of credit. A settlement agreement was reached during a bench trial, and a transcript of the agreement was filed under seal.

Baker v. Bollinger (MI-E 4:00-cv-40239 filed 06/26/2000).

Employment case against the University of Michigan and some of its employees. The case file includes a protective order concerning confidential health information. The court granted the parties' joint motion for a stipulated permanent injunction and sealing of the record.

Smith v. City of Detroit (MI-E 4:00-cv-40273 filed 07/21/2000).

Civil rights action against the city of Detroit for a wrongful killing by a police officer. A sealed document was filed by the judge six days before the case was dismissed as settled. The case was dismissed without prejudice to give plaintiffs sixty days to move to enforce the settlement agreement if it was not consummated.

Allegiance Telecom Inc. v. Hopkins (MI-E 2:01-cv-74310 filed 11/09/2001).

Designated a trademark case, this is an unfair competition case against former employees for siphoning business, with the seventh of eleven claims arising under the Lanham Act. A sealed document was filed nine days before the case was

closed. The stipulated order of dismissal specifies the terms of settlement, but also refers to an "accompanying Confidential Settlement and Mutual General Release Agreement" and represents that an attached exhibit contains true information and is filed under seal.

Saleh v. U.S. Health & Life Insurance Co. (MI-E 2:01-cv-74981 filed 12/21/2001).

Designated an insurance action, the complaint alleges ERISA violations in wrongfully denying an employee's wife \$21,256.80 in health insurance benefits because the employer wrongfully ceased paying the premium. The record of a settlement conference was sealed, the case was referred to mediation, and the case was dismissed as settled.

Moses v. MSP Industries Corp. (MI-E 5:02-cv-60076 filed 04/12/2002).

Action under the Fair Labor Standards Act by a student engineer for failure to pay for overtime work. The case was dismissed pursuant to a sealed settlement agreement.

Western District of Michigan⁴⁷

Documents may be filed under seal only with prior permission from the court, W.D. Mich. L. Civ. R. 10.6(a)-(b), and will be unsealed thirty days after termination of the case, absent an order to the contrary, *id.* R. 10.6(c).

Statistics: 2,775 cases in termination cohort; 2 docket sheets are sealed (0.07%)—the disposition code for 1 of these cases suggests no sealed settlement agreement⁴⁸ and the disposition code for 1 of these cases suggests a sealed settlement agreement;⁴⁹ 181 unsealed docket sheets (6.5%) have the word "seal" in them (but 79 of these include only docket entries made under the identification "seal" because the docket clerk had been accessing sealed documents in other cases, or only notation of whether a sealed mediation award was accepted or rejected); 13 complete docket sheets (0.47%) were reviewed; actual documents were examined for 7 cases (0.25%); 8 cases (0.29%) appear to have sealed settlement agreements.

47. This district was selected for the study as part of a modified random sample, and it has a good-cause rule.

48. One voluntary dismissal.

49. One case settled.

Cases with Sealed Settlement Agreements

Tompkins v. Anderson (MI-W 4:99-cv-00124 filed 09/10/1999).

Fraud action concerning ownership and operation of a radio station. The case settled at a settlement conference, and the proceedings were sealed. Eight months after the case was dismissed, the plaintiffs moved to enforce the confidential settlement agreement. The plaintiffs attached the settlement agreement, which called for twenty-three monthly payments of \$500 from each defendant. The plaintiffs' motion was denied on the ground that the court had not retained jurisdiction to enforce the settlement agreement.

C.S. Engineered Castings Inc. v. deMco Technologies Inc. (MI-W 4:01-cv-00024 filed 02/20/2001).

Negotiable instrument action for nonpayment of loans, with counterclaims for fraud and related injuries. The amount in controversy allegedly was \$75,000 in principal and \$2,445.45 in interest. The case settled. The plaintiff moved to enforce the confidential settlement agreement, claiming \$72,800 still owed. The motion stated that a copy of the confidential agreement would not be attached, but would "be delivered to the court for consideration with this motion." The motion was unopposed and granted. It appears that the court subsequently filed the confidential settlement agreement under seal.

Stryker Corp. v. NeoDyme Technologies Corp. (MI-W 4:01-cv-00031 filed 02/26/2001).

Contract action for failure to pay \$91,500 in invoices for hospital goods and services. The court agreed to file a confidential settlement agreement under seal so that the court could retain jurisdiction to enforce it. The order to seal stated "that within 30 days after termination of the case, the Court will return the Settlement Agreement to either of the attorneys." The motion to seal the settlement agreement was filed two days after the case was dismissed, and the order was granted the following month. The docket sheet shows that the sealed settlement agreement was filed the same day as the order to seal and does not show a return of the sealed document. Less than two months later, the defendant filed a notice for bankruptcy protection.

Fewless v. Board of Education (MI-W 1:01-cv-00271 filed 05/01/2001).

Civil rights action for a warrantless strip search of a disabled 14-year-old student on a false tip from

another student that the boy was concealing contraband drugs in his buttocks. The parties filed a "confidentiality agreement and stipulated protective order" to keep confidential "the name or other personally identifying information about a minor witness or minor party." A magistrate judge presided over a settlement conference, which was sealed "in furtherance of justice and the protection of a minor child." Subsequent to a stipulated dismissal, the plaintiff filed a motion to recover \$53,034.10 in fees and costs. The defendants argued against this figure by noting that the settlement amount was "significantly lower than [the] initial demand" of \$750,000 stated in the plaintiffs' Rule 26(a)(1) disclosures. The court's resolution of this motion was sealed.

Hale-DeLaGarza v. Spartan Travel Inc. (MI-W 1:01-cv-00557 filed 08/28/2001).

Employment action alleging persistent unwanted physical sexual advances. A minute docket entry states that a settlement was placed on the record under seal. A stipulated order dismissing the case gives no additional information.

Mikulak v. ChoiceOne Financial Services Inc. (MI-W 1:01-cv-00721 filed 11/07/2001).

Pro se employment action by an insurance agent who was a recovering alcoholic for wrongful termination and disability discrimination. The court sealed a tape recording of a settlement conference at which the case settled.

Compaq Computer Corp. v. SGII Inc. (MI-W 1:02-cv-00028 filed 01/16/2002).

Trademark action. The docket sheet is sealed. The case was dismissed as settled.

Rapid Design Service Inc. v. Cambridge Integrated Service Group (MI-W 1:02-cv-00179 filed 03/18/2002).

Contract action by a self-insured employer against a company hired by the employer to provide administrative services on insurance claims. An employee was severely burned when mixing explosives in his home, and the defendant authorized an insurance payment of \$236,983.32 to the employee. But the employer's "excess insurance" provider refused to cover the payment because the injury arose from criminal activity, so the employer sued the defendant for wrongful authorization. The case settled pursuant to a confidential settlement agreement, which was inadvertently filed with the court and subsequently sealed.

District of Minnesota

Absent an order to the contrary, sealed documents should be reclaimed by the parties four months after the case is over if there is no appeal and thirty days after the case is over if there is an appeal. D. Minn. L.R. 79.1(d). The court will destroy documents not retrieved within thirty days of notice to retrieve them. *Id.* R. 79.1(e).

Statistics: 4,792 cases in termination cohort; 13 docket sheets are sealed (0.27%)—the disposition codes for 9 of these cases suggest no sealed settlement agreements⁵⁰ and the disposition codes for 4 of these cases suggest sealed settlement agreements;⁵¹ 300 unsealed docket sheets (6.3%) have the word “seal” in them; 31 complete docket sheets (0.65%) were reviewed; actual documents were examined for 27 cases (0.56%); 27 cases (0.56%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Sealed Plaintiff v. Sealed Defendant (MN 0:98-cv-02428 filed 11/10/1998).

Fraud action. The docket sheet is sealed. The case was dismissed as settled.

M.K. v. Pinnacle Programs Inc. (MN 0:98-cv-02440 filed 11/13/1998).

Section 1983 civil rights action by a minor plaintiff against an individual, a corporation, and a county and its board of supervisors. The case was dismissed as settled. The entire case file is sealed.

Sealed Plaintiff v. Sealed Defendant (MN 0:99-cv-00292 filed 02/18/1999).

Fraud action. The docket sheet is sealed. The case was dismissed as settled.

W.E. v. Hennepin County (MN 0:99-cv-00585 filed 04/13/1999).

Section 1983 civil rights action by minor plaintiffs against the Hennepin County Children and Family Services Department and two of its representatives for repeatedly ignoring signs of neglect and both physical and sexual abuse while the children were in their mother’s care. In a sealed

order, the court approved the settlement agreement and dismissed the case.

Stockberger v. Physicians Mutual Insurance Co. (MN 0:99-cv-00805 filed 05/24/1999).

Contract action by a division manager for wrongful termination. The employer filed a counterclaim alleging misappropriation of trade secrets, intentional interference with contractual relations, and unfair competition. The case was settled and dismissed. The settlement transcript was sealed.

Dimensional Arts Inc. v. Holographic Label Converting Inc. (MN 0:99-cv-00958 filed 06/23/1999).

Patent infringement action concerning a holographic product. A sealed settlement agreement was filed. The court enjoined the defendants from infringing on the plaintiff’s patent and using its trade secrets.

Heidi Ott A.G. v. Target Stores Inc. (MN 0:99-cv-01170 filed 07/29/1999).

Trademark action concerning Swiss dolls. The case was dismissed pursuant to a sealed settlement agreement. Two months later the plaintiff filed a motion to enforce the settlement agreement. The court granted the motion and provided the parties with a settlement payment schedule.

Von Ruden v. Arvig Enterprises Inc. (MN 0:99-cv-01260 filed 08/11/1999).

Employment action for wrongful termination just days before the birth of the plaintiff’s second child. The parties entered into a confidential settlement agreement that was sealed by the court.

Schlicht v. Dakota Minnesota & Eastern Railroad Corp. (MN 0:99-cv-02059 filed 12/28/1999).

Wrongful death federal employers’ liability action on behalf of the widow and children of the deceased plaintiff against a city and a railroad corporation. The case was dismissed as settled. The entire case file is sealed.

Keystone Retaining Wall Systems Inc. v. Rockwood Retaining Walls Inc. (MN 0:00-cv-00496 filed 03/03/2000).

Patent infringement action concerning retaining wall blocks. The case was dismissed pursuant to a sealed settlement agreement.

50. One dismissal for want of prosecution; 3 judgments on motions before trial, 1 voluntary dismissal, 3 “other” dismissals, 1 case affirmed by the appeal division.

51. Four cases settled.

Appendix C. Case Descriptions

Binkerd v. Mayo Foundation (MN 0:00-cv-00985 filed 04/17/2000).

Medical malpractice action for the wrongful death of a child. The case settled. All documents relating to the settlement are marked confidential under a protective order and may only be viewed upon written order issued by the court.

Hutchinson v. Nutro Products Inc. (MN 0:00-cv-01929 filed 08/14/2000).

Trademark infringement action concerning pet food. This case and a related case, *Hutchinson v. Petsmart* (MN 0:00-cv-02119 filed 9/13/2000), were settled. The defendants filed a motion to enforce the settlement agreement. The court's order on the defendant's motion is sealed. The case ultimately was dismissed.

Kaufman v. University Travel Services Inc. (MN 0:00-cv-02226 filed 09/29/2000).

Action under the Fair Labor Standards Act for failure to pay an employee overtime wages pursuant to an agreement the defendant entered into with the Department of Labor. The case was dismissed pursuant to a sealed settlement agreement.

Robinson v. Preferred Management Services Inc. (MN 0:00-cv-02419 filed 10/30/2000).

Action under the Fair Housing Act alleging race discrimination and refusal to accommodate the plaintiffs' asthma disability. The court approved and sealed a minor's settlement.

Young v. Conroy (MN 0:01-cv-00354 filed 02/27/2001).

Marine action on behalf of a minor child for injuries from the defendant's motorboat. The parties entered into a confidential settlement agreement, which the court placed under seal.

Jones v. Messerli & Kramer PA (MN 0:01-cv-00748 filed 04/30/2001).

Fraud action under the Fair Debt Collection Act for trying to collect a debt with notice of the plaintiff's Chapter 7 bankruptcy case. The case was dismissed pursuant to a sealed settlement agreement.

Vertical Real Estate Inc. v. AirBand Communications Inc. (MN 0:01-cv-00804 filed 05/09/2001).

Fraud action by a real estate corporation against a seller of broadband wireless communication

services for breach of contract. The plaintiff alleged that the defendant used proprietary information to circumvent the plaintiff and enter into contracts with the plaintiff's subcontractors directly. The case settled, and the court ordered the transcript of the settlement sealed.

Alexander v. Minnesota Viking Food Services LLC (MN 0:01-cv-01514 filed 08/20/2001).

Employment discrimination action by an Egyptian employee against a food service corporation. The case settled, and the court sealed the transcript of the settlement agreement.

Percarina v. Tokai Corp. (MN 0:01-cv-01655 filed 09/07/2001).

Product liability action arising from the negligent manufacture of a butane lighter that was not child-resistant and caused catastrophic burns to two minor children. The defendants filed a counterclaim of contributory negligence and indemnity. The case was dismissed as settled. The court order approving the minors' settlement and distribution of the proceeds was sealed.

Work Connection Inc. v. SAFECO Insurance Cos. (MN 0:01-cv-01670 filed 09/11/2001).

Insurance action alleging failure to return the plaintiff's premium overpayments. The defendants filed a counterclaim alleging that the plaintiff failed to pay for the coverage afforded. The case was dismissed as settled. The confidential transcript of the settlement conference was sealed.

Winmark Corp. v. MNO Inc. (MN 0:01-cv-01805 filed 10/02/2001).

Originally filed as a trademark infringement action, the complaint was amended to allege breach of an anticompetition covenant instead. The case settled, and the court ordered the defendants to keep the terms of the settlement agreement confidential. The transcript of the settlement agreement was sealed. However, a subsequent stipulation order reveals that the defendants agreed to rename three of their stores and, with respect to each store, enter into new franchise agreements with the plaintiffs.

Independent School District No. 112 v. A.S. (MN 0:01-cv-01859 filed 10/10/2001).

Civil rights action against a seven-year-old special education student by a school district appealing the decision by a district hearing officer that the school district needs to provide one-to-one nurs-

ing care pursuant to the Individuals with Disabilities Education Act. The case settled, and the transcript of the settlement conference was sealed.

Universal Hospital Services Inc. v. Hennessy (MN 0:01-cv-02072 filed 11/13/2001).

Breach of contract action by a supplier of moveable medical equipment alleging that its former district manager used confidential trade information to solicit the plaintiff's customers on behalf of a competitor and in violation of a noncompetition agreement. The defendant filed a counterclaim alleging that he signed the agreement after he had already begun employment and received no consideration for signing it. The case settled. The settlement agreement was sealed.

Rowe v. Boys and Girls Club of America (MN 0:01-cv-02269 filed 12/10/2001).

Civil rights action by several parents on behalf of their minor children for race discrimination. The case was dismissed as settled. The court approved and sealed the minors' settlement agreements. The entire case file is under seal.

Sealed Plaintiff v. Sealed Defendant (MN 0:02-cv-00369 filed 02/12/2002).

Fraud action. The docket sheet is sealed. The case was dismissed as settled.

Wright Medical Technology Inc. v. Strand (MN 0:02-cv-01769 filed 07/17/2002).

Breach of contract action by a seller of medical implant devices against a former distributor, alleging violation of the covenants not to compete. The defendant filed a counterclaim alleging that the plaintiff failed to pay a commission for services rendered. The case settled. The settlement agreement was sealed. Some of the settlement terms appear to be detailed in the consent order.

Sealed Plaintiff v. Sealed Defendant (MN 0:02-cv-04270 filed 11/07/2002).

Contract action. The docket sheet is sealed. The case was dismissed as settled.

Northern District of Mississippi⁵²

Court records may be sealed only upon a showing of good cause. N. & S. D. Miss. L.R. 83.6(B). Ab-

sent an order to the contrary, sealed documents are unsealed thirty days after the case is over. *Id.* R. 83.6(D). If a court orders a document sealed beyond that time period, the order "shall set a date for unsealing." *Id.* (Note that the Northern and Southern Districts of Mississippi have the same local rules.)

Statistics: 2,603 cases in termination cohort; 54 docket sheets (2.1%) have the word "seal" in them; 22 complete docket sheets (0.85%) were reviewed; actual documents were examined for 5 cases (0.19%); 5 cases (0.19%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Smith v. Salvation Army (MS-N 1:99-cv-00148 filed 04/03/1999).

Contract action by a bookkeeper for wrongful termination. The case was dismissed as settled, and the parties agreed to keep terms of the settlement confidential. Two months later the plaintiff filed a sealed motion to enforce the settlement agreement. The court denied the motion.

Credit Suisse First Boston Mortgage Capital LLC v. Doris (MS-N 4:99-cv-00283 filed 11/22/1999), consolidated with *Credit Suisse First Boston Mortgage Capital Inc. v. Bayou Caddy's Jubilee Casino* (MS-N 4:99-cv-00284 filed 11/22/1999).

Foreclosure actions concerning preferred ship mortgages pertaining to riverboat gambling. The parties filed a stipulation of dismissal. Over three months later the court granted a joint motion to seal the record.

Banks v. CCA of Tennessee Inc. (MS-N 4:01-cv-00150 filed 06/20/2001); *Hale v. CCA of Tennessee Inc.* (MS-N 2:01-cv-00145 filed 06/21/2001).

Actions under the Fair Labor Standards Act for failure to pay employees overtime for meetings the plaintiffs attended as part of their employment but beyond their scheduled shift. The plaintiffs filed under seal a motion to enforce a settlement agreement. The court ordered the defendants to pay approximately \$2,075,000 to 346 plaintiffs, with notice to a handful of named plaintiffs whose claims were determined not to be valid.

52. This district was selected at random for the study, and it has a good-cause rule.

Southern District of Mississippi⁵³

Court records may be sealed only upon a showing of good cause. N. & S. D. Miss. L.R. 83.6(B). Absent an order to the contrary, sealed documents are unsealed thirty days after the case is over. *Id.* R. 83.6(D). If a court orders a document sealed beyond that time period, the order “shall set a date for unsealing.” *Id.* (Note that the Northern and Southern Districts of Mississippi have the same local rules.)

Statistics: 5,775 cases in termination cohort; 11 docket sheets are sealed (0.19%)—the disposition codes for 9 of these cases suggest no sealed settlement agreements⁵⁴ and the disposition codes for 2 of these cases suggest sealed settlement agreements;⁵⁵ 211 unsealed docket sheets (3.7%) have the word “seal” in them; 38 complete docket sheets (0.66%) were reviewed; actual documents were examined for 18 cases (0.31%); 14 cases (0.24%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Sealed Plaintiff v. Sealed Defendant (MS-S 1:95-cv-00161 filed 03/23/1995).

Statutory action. The docket sheet is sealed. The case was dismissed as settled.

Sistrunk v. Forest Oil Corp. (MS-S 2:97-cv-00070 filed 02/18/1997).

Product liability action by the mother of three minors for a fatal drilling rig accident that resulted in the wrongful death of their father. The court granted one defendant summary judgment. The plaintiffs settled with another defendant for \$49,000. The case against the remaining defendants was then dismissed as settled. The court ordered the transcript of the settlement conference sealed.

Compass Marine v. Lambert Fenchurch (MS-S 1:99-cv-00252 filed 04/05/1999).

Fraud action. The docket sheet is sealed. The case was dismissed as settled.

Donnell v. BellSouth Telecommunications Inc. (MS-S 3:00-cv-00202 filed 03/14/2000).

Employment discrimination action by an African-American technician. The case settled. The defendants filed a motion to enforce the settlement agreement. The plaintiff opposed the motion and moved to seal the settlement agreement that was attached as an exhibit. The court granted the plaintiff’s motion to enforce. The case is on appeal.

Calvert Co. v. Conte Glancz Industries Inc. (MS-S 3:00-cv-00704 filed 09/20/2000).

Breach of contract action by a manufacturer of high voltage electrical bus systems for nonpayment. The case was dismissed pursuant to a sealed settlement agreement.

Boyd v. G & K Services Inc. (MS-S 2:00-cv-00327 filed 12/29/2000).

Employment action by a sales representative for unjust discipline, suspension, and demotion after he reported sexual harassment of himself and others by management. The case settled. The court ordered the transcript of the settlement conference sealed.

Forestry Suppliers Inc. v. General Supply Corp. (MS-S 3:01-cv-00014 filed 01/09/2001).

Copyright infringement action concerning forestry catalogues. The case was dismissed pursuant to a sealed settlement agreement.

Hufstetler v. Hudson Salvage Inc. (MS-S 1:01-cv-00156 filed 04/18/2001).

Action under the Fair Labor Standards Act for failure to pay overtime wages. The case was settled and dismissed. According to the joint stipulation of dismissal, “the settlement agreement contains payment for all claims for back pay, overtime, liquidated damages, attorneys fees, costs, interest, breach of contract damages, and back benefits which have been or could have been raised by plaintiff.” The court later granted the defendant’s oral motion to seal the agreement.

Shepherd v. Corrections Corp. of America (MS-S 5:01-cv-00179 filed 06/07/2001).

Action under the Fair Labor Standards Act for failure to pay employees overtime wages for meetings held outside employees’ scheduled shifts. The case was dismissed as settled. The file

53. This district was selected at random for the study, and it has a good-cause rule.

54. Two judgments on motions before trial, 6 voluntary dismissals, 1 “other” dismissal.

55. Two cases settled.

contains a sealed document that appears to be the settlement agreement.

Pasha Hawaii Transport Lines LLC v. Travelers Casualty and Surety Co. (MS-S 1:01-cv-00279 filed 07/10/2001).

Breach of contract action against a surety company concerning performance and payment in the construction of a car-and-truck carrier vessel. The case settled, and the court sealed the record of the settlement hearing.

Mabry v. Cooper Tire and Rubber Co. (MS-S 3:01-cv-00810 filed 10/18/2001).

Product liability action concerning automobile tires. The case was dismissed as settled. The court sealed all documents related to the settlement agreement on behalf of the minor plaintiff. However, a subsequent court order releasing the minor's claims against Ford Motor Company for the sum of \$5,000 is unsealed.

Huffmaster v. Harlin (MS-S 2:02-cv-00001 filed 01/03/2002).

Section 1983 civil rights action concerning the warrantless illegal search of the plaintiff's bedroom. The plaintiff was jailed and refused bond. The case settled. The defendants subsequently filed a motion to compel settlement and for an award of attorney fees and costs. The court granted the plaintiff's request to seal the defendants' motion, because it contained terms of the confidential settlement agreement. The settlement was renegotiated, and some documents were ordered sealed by the court.

Barlow v. Equifax Information Services Inc. (MS-S 2:02-cv-00088 filed 04/05/2002).

Personal injury action under the Fair Credit Reporting Act for inaccurate information posted to the plaintiff's credit file. The case settled. The transcript of the settlement conference was sealed.

Tillery Dental Clinic PLLC v. BellSouth Credit and Collections Management Inc. (MS-S 2:02-cv-00796 filed 10/01/2002).

Breach of contract action by dental clinics for negligence in managing the plaintiffs' advertising. The defendants filed a counterclaim seeking complete payment for the advertisements. The parties settled, and the court sealed the transcript of the settlement conference.

Eastern District of Missouri⁵⁶

A document may be filed under seal only by court order upon a showing of good cause. E.D. Mo. L.R. 83-13.05(A)(1). Absent an order to the contrary, sealed documents may be unsealed and placed in the public file thirty days after the case is over. *Id.* R. 83-13.05(A)(2).

Statistics: 4,798 cases in termination cohort; 342 docket sheets (7.1%) have the word "seal" in them (but 98 of these merely have the word "seal" in place of docket entry clerk initials); 53 complete docket sheets (1.1%) were reviewed; actual documents were examined for 22 cases (0.46%); 20 cases (0.42%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

McCrary v. Delo (MO-E 4:93-cv-00384 filed 02/12/1993).

Civil rights prisoner petition in which the plaintiff alleged that prison guards permitted a race-based attack on him, nearly resulting in the severing of his ear. The plaintiff further alleged inadequate medical treatment and retaliation for seeking legal redress. After a trial, the jury found in favor of the plaintiff on some claims and in favor of some defendants on others, awarding the plaintiff \$50,000 in compensatory damages and \$80,000 in punitive damages. Other claims previously dismissed on summary judgment were reopened when it was discovered that the defendants withheld court-ordered discovery. The case subsequently was referred to mediation, where it was settled. According to a later-filed unsealed court opinion, the terms of settlement included payment to the plaintiff of \$200,000 and confidentiality.

The plaintiff subsequently filed under seal a "motion for order vacating order re dismissal, vacating trial setting, reopening discovery and assessing sanctions." This motion most likely was filed under seal because it disclosed terms of the confidential settlement agreement. Apparently, after the defense counsel agreed to the settlement, the Missouri Attorney General's Office determined it had to notify victims of the plaintiff's crimes of the settlement, contrary to the settlement agreement, and the plaintiff was concerned that the victims would seek to block payment. The defense counsel was sanctioned, and the case ultimately was dismissed as resolved.

56. This district was selected at random for the study, and it has a good-cause rule.

Appendix C. Case Descriptions

Perez v. Ford Motor Co. (MO-E 4:98-cv-01973 filed 11/25/1998).

Motor vehicle product liability action by a wife and two children for their injuries and for the husband's wrongful death in an automobile accident. The plaintiffs and decedent were passengers in an Aerostar minivan, which was driven by the defendant driver, rented from the defendant rental agency, and manufactured by the defendant auto maker. Apparently, the van hit a patch of ice, rolled down an embankment, and lost its side door, causing the decedent to be thrown from the van and killed when his seatbelt, manufactured by the defendant seatbelt manufacturer, failed. The court approved a settlement with the defendant driver in which the wife received \$51,000 for her injuries, each child received \$2,500 for the child's own injuries and \$7,000 for the wrongful death of the child's father, and the plaintiffs' attorneys received \$30,000.

Over one year later, the court approved a settlement with the defendant seatbelt manufacturer in which each child received \$12,000, the decedent's mother received \$6,000, and the plaintiffs' attorneys received \$20,000. Approximately one year after that, the case against the remaining defendants was dismissed pursuant to a sealed settlement agreement. An unsealed order approving the structure of the minors' settlement discloses that the auto maker agreed to future payments to the children equivalent to approximately \$100,000 total in present value.

Meier v. Ortho-Clinical Diagnostics Inc. (MO-E 4:99-cv-01172 filed 07/22/1999).

Product liability action for a defective blood product. During the plaintiff wife's first pregnancy, she was given RhoGAM to protect subsequent pregnancies from Rh incompatibility. The plaintiffs husband, wife, and baby sued for injuries sustained during delivery following the second pregnancy, allegedly arising from insufficient RhoGAM dosage during the first delivery. (Filed papers suggest the defective dosage subsequently was recalled.) At court-ordered ADR, the case settled. The plaintiffs filed a motion to approve the settlement on behalf of the minor, stating that Rh incompatibility did not appear to result in permanent injury to the minor, and attaching a sealed copy of the confidential settlement agreement. The court approved the settlement and dismissed the case.

Rademeyer v. Farris (MO-E 4:99-cv-01770 filed 11/12/1999).

Personal property fraud action alleging that the defendant wrongfully netted \$602,000 by simultaneously negotiating the sale of a medical technology corporation in which he was 51% owner and the purchase of the remaining 49% for substantially less than the sale price. The district court granted the defendant summary judgment, but the court of appeals reversed. On remand, the case settled and the court accepted a copy of the settlement agreement under seal.

Ray v. de Castro (MO-E 4:00-cv-00118 filed 01/25/2000).

Medical malpractice action by the husband and children of a woman who died from breast cancer for failure to diagnose and treat the cancer early enough to save her. After a settlement hearing before the court, a settlement agreement was approved by sealed court order. Upon satisfaction of judgment, the case was dismissed.

United States ex rel. Padda v. Jefferson Memorial Hospital P.H.O. (MO-E 4:00-cv-00177 filed 02/03/2000).

Qui tam action under the False Claims Act. The docket sheet shows only documents 1, 17, 18, and 19. The last document is a "sealed stipulation for dismissal of case," and all four documents, including the complaint, are sealed.

Black v. AutoZone Inc. (MO-E 4:00-cv-00488 filed 03/23/2000).

Motor vehicle personal injury action against a truck driver and a truck company by parents of a boy killed in a traffic accident with the truck. The court approved a settlement agreement by an order the court ordered sealed for fifteen years.

Cummings v. Mallinckrodt Inc. (MO-E 4:00-cv-00660 filed 04/20/2000).

Designated a civil rights action, this is an employment action for wrongful termination in retaliation for previously pursuing an employment discrimination lawsuit against the defendant that ultimately was settled. The defendant filed a sealed "motion to enforce settlement agreement reached during the Court ordered mediation," and the plaintiff opposed the motion by sealed brief. The case was resolved without a hearing on the motion.

Sealed Settlement Agreements

Orthodontic Centers of Missouri Inc. v. Bhatia (MO-E 4:00-cv-00765 filed 05/09/2000).

Contract action by a provider of business and office management to orthodontic practices against an orthodontist for failure to make monthly payments. The plaintiff filed a motion to enforce a settlement agreement, and a copy of the agreement was filed under seal. The matter ultimately was resolved without a hearing on the motion to enforce.

Berliner v. LoBue Associates (MO-E 4:00-cv-00824 filed 05/17/2000).

Contract action by a departing corporate CEO against the corporation for three years' salary as severance pay. After the court twice denied the defendants' motions for summary judgment, the parties settled and the court sealed the transcript of the settlement hearing. The case was dismissed, and the court retained jurisdiction to enforce the agreement.

Schuppert v. Orthodontic Centers of America (MO-E 4:00-cv-01034 filed 06/23/2000).

Contract action by a dentist against his business and office management provider. The defendants filed a sealed motion to enforce a confidential settlement agreement. Before the motion was heard, the disagreement apparently was resolved and the case dismissed pursuant to a consent judgment disclosing no settlement terms beyond the validity of the contract.

Newman v. Sikeston Department of Public Safety (MO-E 1:00-cv-00074 filed 07/07/2000).

Civil rights action for wrongful death of a fetus and injuries to the mother and her child when the mother and child were arrested after the child accidentally hit a police officer's private car with a tar-paper shingle he was throwing into the air to see fly. The plaintiffs, who are African-American, also alleged race discrimination. The court granted the plaintiffs' motion to approve a \$400,000 settlement agreement calling for payment of \$70,360 to the mother now and \$10,000 per year thereafter, \$25,000 to the child on his eighteenth birthday, and \$173,455 to the plaintiffs' attorneys. Subsequent to the court's granting this motion by "ruled document," the court filed an "order approving settlement" under seal. Two days later a newspaper article reported the city's settlement payment, prompting the defendants to request a gag order on the plaintiffs, which the court denied.

Estate of Dobbins v. City of Pagedale (MO-E 4:00-cv-01104 filed 07/07/2000).

Civil rights action for wrongful killing by a police officer. The case was dismissed pursuant to a confidential settlement agreement, which the court approved by sealed order. Filed correspondence suggests that the decedent's minor son would obtain his interest in the settlement upon reaching the age of eighteen.

McDermott v. 7-Eleven Inc. (MO-E 4:00-cv-01495 filed 09/15/2000).

Designated an employment action, the complaint alleges sexual harassment, including unwanted sexual touching, of a female employee and her minor daughter. The case was consolidated with two other cases for discovery purposes (*McCroy v. 7-Eleven Inc.*, MO-E 4:00-cv-01495, and *Castrogiovanni v. 7-Eleven Inc.*, MO-E 4:00-cv-01974). The case settled, and the plaintiffs filed a sealed motion to approve the minor's settlement, which the court granted. Two months after the case's conclusion, the clerk notified counsel that sealed documents would be unsealed absent an order to the contrary. The court granted the defendant's motion to return the sealed documents to the defendant.

Tipler v. Delta Area Economic Opportunity Corp. (MO-E 1:00-cv-00152 filed 12/13/2000).

Employment action in which thirteen African-American plaintiffs alleged forty-one causes of action pertaining to a racially discriminatory hostile work environment and wrongful termination. After some claims were dismissed on summary judgment, the case went to trial. During a break, the case settled. The settlement agreement was put on the record, settlement proceedings were sealed, and the case was dismissed.

Nottingham v. Women's Health Specialists PC (MO-E 1:01-cv-00005 filed 01/10/2001).

Medical malpractice action for brain injury to a baby resulting from negligent pregnancy care and delivery. The case was dismissed pursuant to a sealed judgment of settlement. An unsealed satisfaction of judgment showed that the plaintiffs received \$100,000 in settlement.

Bowler v. Southwestern Bell Telephone LP (MO-E 4:01-cv-00131 filed 01/26/2001).

Employment action by a plaintiff with psoriasis for wrongful termination and disability discrimination. The case settled at court-ordered ADR, but

two weeks later the plaintiff's counsel requested to withdraw as counsel on the ground that his client dismissed him; the plaintiff apparently developed second thoughts. Approximately one month later the defendant filed a sealed motion to enforce the settlement agreement. Approximately one week later, the plaintiff's attorney filed a sealed motion to enforce the settlement agreement. The plaintiff's attorney's motion to recover his fees from the plaintiff discloses that the case was settled for \$7,500. The attorney recovered from the plaintiff \$5,700 in fees and \$2,210.85 in costs.

Earth City Technologies Inc. v. Dentsply International Inc. (MO-E 4:01-cv-00173 filed 02/02/2001).

Trademark infringement action concerning ultrasonic endodontic tips. The parties filed a partial settlement agreement under seal. The case continues. (It is not clear why the statistical database shows the case to have been terminated in 2001.)

Stelbrink v. Manyx (MO-E 4:01-cv-00411 filed 03/20/2001).

Motor vehicle action in which a fourteen-year-old Illinois resident sued the Missouri-resident driver of the car in which he was a passenger (a woman with the same last name as the plaintiff—possibly the mother or an aunt), a Missouri deputy sheriff, and the sheriff for injuries resulting from the deputy sheriff's car colliding with the car in which the plaintiff rode while the deputy sheriff was ignoring traffic signals in response to an emergency. After hearings to approve settlement with the minor plaintiff were initiated, the complaint was amended to name the second minor passenger of the car as a plaintiff—the defendant driver's daughter, who also was a Missouri resident. The court approved and sealed the settlement agreement.

Brown v. SSI Global Security Agency (MO-E 4:01-cv-00917 filed 06/08/2001).

Employment action by a pro se plaintiff for sexual harassment. The case was dismissed pursuant to a sealed settlement agreement.

Western District of Missouri

No relevant local rule.

Statistics: 4,857 cases in termination cohort; 167 docket sheets (3.4%) have the word "seal" in them; 35 complete docket sheets (0.72%) were reviewed; actual documents were examined for 27

cases (0.56%); 24 cases (0.49%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Jedrzejewski v. Reckitt & Colman Inc. (MO-W 6:97-cv-03637 filed 12/23/1997).

Employment action for wrongful termination of a Polish employee in retaliation for EEO and OSHA complaints. The case settled, and the parties asked the court to retain jurisdiction to enforce the settlement agreement, which the court ordered the parties to file under seal for court review. The court dismissed the action with prejudice, retaining jurisdiction over the settlement.

Clune v. Industrivarden Service AB (MO-W 4:98-cv-00179 filed 02/11/1998).

Product liability action by a woman and her minor children against an elevator manufacturer for the wrongful death of her husband on a construction site when he fell off an elevator platform, allegedly because of an inadequate guardrail. The case was dismissed pursuant to a sealed settlement agreement approved by the court.

Morris v. William Woods University (MO-W 2:99-cv-04062 filed 03/18/1999).

Contract action for wrongful termination of the equestrian division chair in retaliation for her reporting illegal horse trading by the university. The plaintiff's attorney apparently agreed to a settlement, which the plaintiff claimed was beyond the attorney's authority, so the defendant filed a sealed motion to enforce the settlement agreement, and the plaintiff's attorney filed a motion to withdraw. In an unsealed order, the court held that the parties had agreed to a settlement in which the plaintiff would receive \$42,000 and her attorney would receive \$32,851. The court also held that the plaintiff would be liable for the defendants' fees and costs in enforcing the agreement. The defendants sought \$121,170.62, but the court granted the plaintiff's motion to amend the judgment, finding that the plaintiff did not act in bad faith in resisting the settlement agreement.

Moore v. Russell (MO-W 2:99-cv-04082 filed 04/15/1999).

Designated a prison-condition action, this is really a civil rights action by a now-incarcerated woman against a sheriff's department and its officers for coercing her to engage in repeated acts of sexual intercourse in exchange for their unlawfully not serving an arrest warrant on her. According to a

Sealed Settlement Agreements

minute entry, the parties settled, and “proceedings [were] to remain under seal.” That day the court received a check for \$250,000 “to be deposited in court registry for settlement.” A sealed order concerning the settlement was filed the following day, and the case was dismissed.

Thomas v. Kansas City Power and Light Co. (MO-W 4:99-cv-00464 filed 05/11/1999).

Employment action by an African-American employee claiming racial discrimination in compensation, promotion, working conditions, and supervision. The parties filed a joint stipulation of dismissal one week after the defendant filed a sealed motion to enforce settlement.

Zuno-Cajayon v. Ashton Court Partners (MO-W 4:99-cv-00560 filed 06/08/1999).

Employment discrimination and breach of contract action by a Filipino nurse. Apparently several other plaintiffs filed similar lawsuits, which were consolidated for discovery. After mediation, as part of the court’s Early Assessment Program, one defendant moved to enforce an alleged settlement agreement whereby \$40,000 would be paid to twenty-six plaintiffs. The court held that such an agreement had been reached and granted the motion. But the court rescinded its order upon later determination that although there was agreement on the amount of settlement, there was not agreement on which entities not parties to the case would be released from liability. The defendant subsequently renewed its motion to enforce, but while the motion was pending the consolidated cases settled at a settlement conference. The court ordered that the tape recording of the conference and the draft agreement presented as an exhibit to the conference be sealed.

Cowan v. St. Francis Hospital & Health Services (MO-W 5:99-cv-06085 filed 07/16/1999).

Medical malpractice action for the wrongful death of the plaintiffs’ newborn baby as a result of negligent delivery. A settlement was reached and approved by the court at a settlement conference, and two conference exhibits were sealed. The plaintiffs’ recovery is sealed, but the agreement called for their attorneys to receive \$76,587.34 in fees and \$30,407.19 in expenses.

Liberty Mutual Insurance Co. v. Pratt (MO-W 4:99-cv-00811 filed 08/18/1999).

Contract action by a provider of workers’ compensation insurance against a trucking company

for employing more workers than it acknowledged to the insurer. The parties announced a settlement at a telephonic settlement conference, the record of which the court ordered sealed. The case was dismissed by stipulation.

Banks v. Peak (MO-W 6:00-cv-03004 filed 01/06/2000).

Designated an employment discrimination action, the complaint alleges a variety of malicious actions by an employer against a 78-year-old employee. The alleged actions include gluing his toolbox shut, setting his toolbox on fire, and turning a fan on him in winter. The case settled at a settlement conference, the record of which was sealed.

James v. Tri-Lakes Newspapers Inc. (MO-W 6:00-cv-03019 filed 01/20/2000).

Action under the Family Medical Leave Act by a newspaper advertising manager for failure to reinstate her after she took leave for a hysterectomy. The case settled at a settlement conference, the record of which was sealed.

United States ex rel. Ken Babcock Sales Inc. v. Courtney Day Inc. (MO-W 5:00-cv-06018 filed 02/11/2000).

Action under the Miller Act for failure to pay five subcontractors amounts due totaling \$388,648.65 in a federal construction project for the Missouri Air National Guard. The defendants filed a counterclaim alleging that one of the plaintiffs provided defective concrete. Three plaintiffs settled at a settlement conference, the record of which was sealed. The remaining plaintiffs settled at another conference, the proceedings of which also were sealed. The unsealed judgment shows a payment of \$292,131.48 to the plaintiffs.

Dobbs v. Youngelman (MO-W 4:00-cv-00374 filed 04/21/2000).

Medical malpractice action for brain damage resulting from the defendant’s failure to properly diagnose and treat the plaintiff’s intraparenchymal hepatic hemorrhage. The case was dismissed pursuant to a sealed settlement agreement approved by the court.

Brown v. Neosho R-V School District (MO-W 4:00-cv-00457 filed 05/15/2000).

Civil rights action by a schoolteacher against the school district for wrongfully seeking her dismissal and revocation of her teaching license after

Appendix C. Case Descriptions

her estranged husband delivered to the school district nude pictures of her that she had sent by e-mail to private correspondents. The court sealed the record of a settlement conference, although it is not clear whether the case settled then. The following week the parties filed a joint motion under seal, and the court granted the motion by sealed order. A week later the parties filed a joint motion to dismiss the case, which the court granted.

Youngs v. ITT Industries Inc. (MO-W 4:00-cv-00463 filed 05/15/2000).

Product liability action for severe head and body injuries, resulting in permanent disabilities, including brain damage, caused by an explosion of the defendants' air tank when the plaintiff was trying to fill it. The case settled at a settlement conference, and the court sealed the conference transcript. The sealed transcript was forwarded to the county probate court for settlement approval. After the probate court approved the settlement agreement, the district court sealed an "application for approval of settlement involving an incapacitated person" and approved the agreement by sealed order. A subsequently filed unsealed order discloses a settlement amount of \$725,000, including attorney fees of \$363,500 and attorney expenses of \$112,282.13.

Sedalia Lab Inc. v. Novacare Orthotics & Prosthetics East Inc. (MO-W 4:00-cv-00540 filed 06/01/2000).

Contract action concerning a \$7 million business sale. The court sealed a transcript of an "in camera hearing on settlement agreement." An unsealed confession of judgment called for the defendants to pay \$2 million unless the defendants paid \$1.7 million by a certain date. Subsequently the court filed a sealed consent judgment. Other unsealed documents, however, confirm the \$2 million contingent judgment.

Primus Corp. v. Bio-Rad Laboratories Inc. (MO-W 4:00-cv-00634 filed 06/23/2000).

Patent case concerning a diabetes test using high-performance liquid chromatography glycol hemoglobin blood assays. The case was dismissed pursuant to a sealed settlement agreement.

Gillihan v. D & M Masonry Inc. (MO-W 4:00-cv-00698 filed 07/11/2000).

ERISA action by benefits trustees for wrongfully paid benefit claims totaling approximately \$200,000. The court denied the parties' request to seal the entire record, but granted their request to

seal the settlement agreement, pursuant to which the case was dismissed.

7th Street United Super Inc. v. Duffield (MO-W 4:00-cv-01351 filed 08/11/2000).

Multidistrict consolidated contract action by retail grocers against a grocery wholesaler for fraudulent overbilling. One of the consolidated cases, a class action originally filed in the District of Utah, settled for \$16 million. Plaintiffs' attorneys received \$6 million in fees and approximately \$300,000 in expenses, and two lead plaintiffs each received an incentive of \$100,000. The defendant filed a sealed motion to enforce settlement agreements in three cases originally filed in the Western District of Missouri (*Don's United Super Inc. v. Werries*, MO-W 98-06042 filed 03/18/1998; *Coddington Enterprises v. Werries*, MO-W 98-01100 filed 10/19/1998; *J&A Foods Inc. v. Fleming Cos.*, MO-W 00-00285 filed 03/24/2000). The parties resolved the cases before the motion was heard, and it was withdrawn.

McMurry v. American Telephone and Telegraph Co. (MO-W 4:00-cv-01293 filed 12/21/2000).

Employment action by an African-American woman with epilepsy for race and disability discrimination and retaliation. The case settled at a settlement conference, the record of which was sealed.

C.S. v. Heartland Chicken Inc. (MO-W 4:01-cv-00058 filed 01/16/2001).

Designated an employment discrimination action, this is an action for rape of a minor female Pop-eye's employee by a male co-worker. The case was dismissed pursuant to a sealed settlement agreement approved by the court.

Fitzgerald v. New Holland North America Inc. (MO-W 2:01-cv-04032 filed 02/13/2001).

Product liability action for wrongful death when a 1949 tractor manufactured by the defendant rolled over. The parties filed a sealed motion for settlement approval. Unsealed documents show the amount of settlement to be \$160,000; the plaintiffs' attorneys received \$68,293.46 in fees.

Doe v. Otterville R-VI School District (MO-W 2:01-cv-04224 filed 10/30/2001).

Civil rights action for sexual abuse of a disabled 11-year-old boy by a schoolmate and for the defendant school district's failure to accommodate the resulting trauma in the boy's education. The

defendant denied that sexual abuse occurred. The case was dismissed pursuant to a sealed settlement agreement approved by the court.

Wilson v. Goody Products Inc. (MO-W 2:01-cv-06152 filed 12/21/2001).

Product liability action on behalf of a six-year-old girl for blindness to one eye caused by a springy metal headband manufactured by the defendant. The case was dismissed pursuant to a sealed settlement agreement approved by the court.

Kelly v. Ex-L-Tube Inc. (MO-W 4:02-cv-00543 filed 06/06/2002).

Employment disability discrimination action by a shipper whose right arm was amputated at the elbow as a result of an on-the-job injury. The case settled at a settlement conference, the record of which was sealed.

District of New Hampshire

The District of New Hampshire recognizes two levels of sealing. Documents sealed at Level I may be reviewed without court order by any attorney appearing in the action. D.N.H. L.R. 83.11(b)(1). Documents sealed at Level II may be reviewed without court order only by the filer (or the person to whom an order is directed if the sealed document is an order). *Id.* R. 83.11(b)(2). Documents may be sealed only by court order, and motions to seal must explain the basis for sealing and specify which level of sealing is desired. *Id.* R. 83.11(c).

Statistics: 1,157 cases in termination cohort; 2 docket sheets are sealed (0.17%)—both of these cases' disposition codes suggest no sealed settlement agreements;⁵⁷ 82 unsealed docket sheets (7.1%) have the word "seal" in them; 10 complete docket sheets (0.86%) were reviewed; actual documents were examined for 4 cases (0.35%); 4 cases (0.35%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

A.S.I. Worldwide Communications Corp. v. WorldCom Inc. (NH 1:98-cv-00154 filed 03/17/1998).

Contract action between providers of telephone service. The plaintiff filed under seal a motion to enforce a settlement agreement, but before the

case closed, the defendant filed for bankruptcy protection and the action was stayed.

Polyclad Laminates Inc. v. MacDermid Inc. (NH 1:99-cv-00162 filed 04/19/1999).

Patent action alleging that the defendant's product MultiBond, a chemical solution used in the manufacture of printed circuit boards, infringed the plaintiffs' patent. The defendant alleged that its product did not infringe, because it did not use a cationic surfactant, and filed a counterclaim for tortious business interference. The court granted the defendant summary judgment on the patent claim, and the plaintiffs appealed. With the plaintiffs' appeal and the defendant's counterclaim still pending, the parties settled and filed a sealed settlement agreement.

Griffin v. Odyssey House Inc. (NH 1:99-cv-00561 filed 12/03/1999).

Personal injury action against a residential facility for emotionally troubled adolescents for negligently permitting a 15-year-old resident to attempt suicide by hanging herself with her belt, which left her in a persistent vegetative state. The case settled pursuant to a confidential settlement agreement. The settlement agreement was filed under seal and then returned to the parties. The amount of settlement was kept confidential, but unsealed documents disclose that settlement funds were used to satisfy Medicaid liens and establish a special needs irrevocable trust.

Armstrong v. Correctional Medical Services Inc. (NH 1:00-cv-00532 filed 11/14/2000).

Civil rights action for wrongful death resulting from inadequate medical treatment for a head injury inflicted by a correctional officer while the decedent was held at the Hillsborough County House of Corrections under arrest for failure to pay child support. The plaintiff filed a sealed motion to approve a settlement agreement on behalf of the decedent's minor heir. The court approved the agreement, but denied the motion to seal the approval motion, and ordered the confidential agreement returned to the parties.

District of New Mexico

No relevant local rule.

Statistics: 3,084 cases in termination cohort; 3 docket sheets are sealed (0.10%)—the disposition codes for 2 of these cases suggest no sealed set-

57. Two "other" dismissals.

tlement agreements,⁵⁸ and the disposition code for 1 of these cases suggests a sealed settlement agreement;⁵⁹ 86 unsealed docket sheets (2.8%) have the word “seal” in them; 23 complete docket sheets (0.75%) were reviewed; actual documents were examined for 19 cases (0.62%); 19 cases (0.62%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Doss v. Major League Baseball Properties Inc. (NM 1:98-cv-00927 filed 08/03/1998).

Personal property damage action concerning the surreptitious appropriation of a commercial trade name. The case settled, and the stipulated order of dismissal was sealed.

Loeffler v. Transportation Manufacturing Corp. (NM 6:98-cv-01424 filed 11/19/1998).

Product liability action for wrongful death arising from the defective design and manufacture of a safety platform. The case settled. The court appointed a guardian ad litem for the decedent’s minor children. There appears to be a sealed settlement agreement filed with the court.

Trout Trading Management Co. v. Trout (NM 1:99-cv-01330 filed 11/17/1999).

Statutory action by the managers of a mutual fund alleging that a former employee was engaging in an ongoing criminal conspiracy including extortion and threats to publicize false information. The defendants filed a counterclaim alleging breach of an oral partnership agreement. Two of the parties resolved their dispute by way of a confidential settlement agreement. The court entered a stipulated permanent injunction under seal as part of the settlement agreement.

Velasco v. DaimlerChrysler Corp. (NM 1:99-cv-01369 filed 11/23/1999).

Motor vehicle product liability action for the negligent design and manufacture of an automobile, which caused the vehicle to roll over several times on the highway. The plaintiff sustained permanent and disabling spinal cord injuries. The parties settled, agreeing to keep the amount and terms of the settlement confidential. The court sealed documents that disclosed the terms of the settlement agreement. The court retained juris-

diction over the settlement fund. The case was dismissed as settled.

Ramirez v. Isuzu Motors Ltd. (NM 1:00-cv-00331 filed 03/06/2000).

Product liability action for wrongful death in a vehicle rollover accident as a result of the negligent design and manufacture of an SUV. The case settled. The court approved the settlement on behalf of the surviving minor and placed the agreement under seal.

Dillon v. Jackson (NM 6:00-cv-00751 filed 05/24/2000).

Civil rights action by a female prisoner for rape and assault by six corrections officers. The case settled. The plaintiff filed a motion for a court order approving the settlement, appointing a guardian ad litem, and sealing court records of the settlement proceedings. The defendants opposed the motion. The transcript of the proceeding was sealed.

John v. United States (NM 1:00-cv-00850 filed 06/13/2000).

Medical malpractice action for a baby’s brain injury resulting from lack of oxygen during delivery. The case was consolidated with *John v. United States* (NM 1:01-cv-00285 filed 03/13/2001). A guardian ad litem was appointed for the child. The case was dismissed as settled. The court order approving the minor’s settlement agreement was sealed.

Hymes-Odorizzi v. Royal Maccabees Mutual Life Insurance Co. (NM 1:00-cv-00940 filed 06/29/2000).

Insurance action for recovery of benefits under a disability insurance policy. The defendants filed a counterclaim alleging that the plaintiff was not disabled while her policy was in force. The case was dismissed pursuant to a sealed settlement agreement.

Wallace v. Greer Enterprises Inc. (NM 1:00-cv-00952 filed 07/03/2000).

Stockholders’ suit against a property management corporation for corporate oppression of minority shareholders. The case settled, and the tape-recorded settlement agreement, transcribed by the clerk, was sealed. A subsequent dispute arose with respect to the nondisclosure provision of the confidential settlement agreement. Each of the parties, pursuant to court order, submitted alter-

58. Two “other” dismissals.

59. One case settled.

Sealed Settlement Agreements

native language under seal, and the court issued a confidentiality order. The court subsequently granted the parties' requests to remove the tape-recorded settlement agreement from the court's file and docket. The case ultimately was dismissed as settled.

Unzueta v. Pope (NM 6:00-cv-01015 filed 07/13/2000).

Motor vehicle action for serious bodily injuries. A guardian ad litem was appointed to represent the minor plaintiff. The case settled. The transcript of the evidentiary hearing on settlement was sealed.

Whitley v. New Mexico Department of Human Services (NM 2:00-cv-01101 filed 07/28/2000).

Section 1983 civil rights action by a guardian ad litem on behalf of a child alleging rape by another minor while they both were under the care and supervision of New Mexico's Children, Youth, and Families Department. The case was dismissed as settled, and the transcript of the proceedings was sealed.

Espinosa v. Flores (NM 1:00-cv-01641 filed 11/20/2000).

Section 1983 civil rights action on behalf of a minor against her elementary school teacher, alleging sexual harassment and sexually offensive touching. A guardian ad litem was appointed. The case settled. The proceedings approving the minor's settlement agreement were sealed.

United States v. New Mexico Department of Public Safety (NM 1:00-cv-01656 filed 11/22/2000).

Employment action alleging sexual harassment of a public safety employee. The parties entered into a written confidential settlement agreement. The employee filed a sealed motion to enforce the settlement agreement. The dispute alleged in the motion was resolved, and the motion was withdrawn.

Thrasher v. Albuquerque Public School Board (NM 1:01-cv-00113 filed 01/30/2001).

Employment action alleging discrimination based on race and sex, which resulted in harassment and a demotion. The case was dismissed pursuant to a sealed settlement agreement.

Miller v. Napoli (NM 1:01-cv-00145 filed 02/05/2001).

Personal injury action against a law firm, alleging breach of fiduciary duty and negligent representation in a class action suit. The law firm filed a third-party complaint against the plaintiff's brother, an attorney who advised her during the class action suit. The case settled. The court sealed the plaintiff's motion to enforce the settlement agreement.

Maguire v. Albuquerque Public School District (NM 1:02-cv-00325 filed 03/22/2002).

Personal injury action concerning the battery of a minor student with attention deficit disorder by another student, resulting in physical disfigurement. The case settled. The clerk's minutes regarding the approval of the settlement were sealed.

L.W. v. Gallup McKinley County School Board (NM 1:02-cv-00485 filed 04/29/2002).

Section 1983 civil rights action alleging the sexual abuse of a minor student by a school counselor. The case settled. A guardian ad litem was appointed for the minor. The transcript of the proceedings approving the settlement was sealed.

J.A.D. v. City of Albuquerque (NM 1:02-cv-00664 filed 06/07/2002).

Section 1983 civil rights action concerning the sexual molestation of a minor by a school bus driver. The case settled. A guardian ad litem was appointed for approval of the settlement. The clerk's minutes regarding the approval hearing were sealed.

Arviso v. Mission Manor Health (NM 6:02-cv-01072 filed 08/27/2002).

Statutory action. The docket sheet is sealed. The case was dismissed as settled.

Eastern District of New York

To clear out its vault, the district court ordered that sealed documents be archived at the records center and disposed of after twenty years there. E.D.N.Y. Admin. Order 2001-02 (Feb. 21, 2001).

Statistics: 16,001 cases in termination cohort; 495 docket sheets (3.1%) have the word "seal" in them; 88 complete docket sheets (0.55%) were reviewed; actual documents were examined for 59 cases (0.37%); 53 cases (0.33%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Aetna Casualty and Surety Co. v. Berson (NY-E 1:95-cv-01712 filed 05/01/1995).

RICO action by four insurance companies against public adjusters, company adjusters, salvors, brokers, accountants, appraisers, attorneys, contractors, investigators, and insureds. The plaintiffs alleged that the defendants inflated insurance losses. Over 100 people were criminally charged in this fraudulent scheme, and most have pled guilty. Separate settlement agreements were reached with each defendant, who then was dismissed. One settlement agreement was filed under seal at the court's request. The case was closed when one of the plaintiffs informed the court that it did not intend to pursue the case any further.

Rodolico v. Unisys Corp. (NY-E 9:95-cv-03653 filed 09/06/1995).

Employment discrimination class action on behalf of all engineers over age 40 employed by the defendant and selected for layoff effective November 23, 1993. The plaintiffs alleged that the defendant's policies and practices in the layoff discriminated against its older employees by disproportionately selecting them for discharge and by using evaluation practices which disfavored older workers. The court permitted the case to proceed as a class action for the purpose of determining liability only. The case settled during mediation. The settlement agreement was approved on the record and placed in the court vault under seal. The court dismissed the complaint with prejudice.

Coltec Industries Inc. v. Yarom (NY-E 9:96-cv-02962 filed 06/13/1996).

Copyright infringement action alleging copying of technical drawings to obtain approval from the Federal Aviation Administration to manufacture and distribute replacement parts for a fuel control system designed and manufactured by the plaintiff. Prior to the commencement of a jury trial, the case settled and the settlement agreement was sealed. The case was administratively closed until five months later, when the court received the parties' stipulation of dismissal, which was sealed and placed in the vault.

United States Small Business Administration v. Yang (NY-E 1:97-cv-01185 filed 03/11/1997).

Statutory action to liquidate assets to satisfy a judgment for violations of the Small Business Investment Act. This action was brought when the Small Business Administration, acting as receiver,

discovered fraud. The case settled, and the settlement terms were placed under seal. A sealed document was placed in the vault. The court ordered the action discontinued, and the case was closed.

Chadeayne v. Don Thuber Enterprises Inc. (NY-E 9:97-cv-06043 filed 10/20/1997).

Airplane action for severe and permanent injuries sustained when the charter aircraft the plaintiff was taking to return from the defendant's gambling establishment in New Jersey crashed into the Atlantic Ocean six miles from Kennedy Airport. The plaintiff settled with all defendants, including the owner, operator, and manufacturer of the aircraft as well as providers of the air charter service. The parties stipulated to a dismissal with prejudice, and the court placed a sealed document in the vault.

Williams v. Brookwood Childcare Services (NY-E 1:98-cv-00230 filed 01/13/1998).

Civil rights action by a minor's guardian against the city of New York and various departments concerning child welfare. The court approved a settlement at an infant compromise hearing. The tape and transcript of the hearing were ordered sealed. The parties were asked to submit orders reflecting hearing rulings. A sealed document was placed in the vault a week later. Another sealed document was placed in the vault one day before the court filed the parties' stipulation and order of dismissal with prejudice.

Wang v. Liang (NY-E 1:98-cv-02786 filed 04/13/1998).

Action under the Fair Labor Standards Act by seven garment workers for failure to pay minimum and overtime wages. The parties agreed to settle in principle for \$285,000. During a telephone settlement conference, two outstanding settlement issues were resolved, and a confidential stipulation was placed on the record. The transcript of this stipulation was sealed. All claims against all but three defendants were dismissed with prejudice. A default judgment was entered against the remaining defendants, and the plaintiffs were awarded \$101,360.82 in compensatory and liquidated damages.

Jackson v. J.C. Penney Co. (NY-E 0:98-cv-02956 filed 04/17/1998).

Personal injury case for serious and permanent injuries from a slip and fall, which occurred while

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the plaintiff was on the defendant's premises. A jury trial commenced, but the parties settled after the plaintiff presented her case. A sealed settlement agreement was placed on the record, and the case was dismissed with prejudice. The docket sheet indicates that a sealed document was placed in the vault shortly thereafter.

United States Fidelity and Guaranty Co. v. Abcon Associates (NY-E 0:98-cv-03826 filed 05/28/1998).

Designated a contract product liability action, this is a contract action by the plaintiff surety company against indemnitors for breach of an indemnity agreement under which the plaintiff issued performance and payment bonds guaranteeing payment to subcontractors and performance of construction work. The parties settled, and the settlement stipulation was placed on the record and accepted by the court. On the same day, the court dismissed the case without prejudice to renew should settlement not be consummated and placed a sealed document in the vault. The case was closed the next day.

Nu-Chem Laboratories Inc. v. Mastrococco (NY-E 9:98-cv-03867 filed 05/29/1998).

Statutory action alleging RICO violations, including mail and wire fraud, trade libel, business disparagement, and defamation. The parties settled, and the court approved their stipulation of settlement and gave the parties permission to file it with the court. A sealed document was placed in the vault, and the case was closed.

Reid v. City of New York (NY-E 1:98-cv-05929 filed 09/23/1998).

Civil rights action against the city of New York, the city's administration for children's services, and two private foster care agencies by a mother on behalf of her deceased daughter and her two sons. The plaintiff alleged that the defendants placed the children in foster care with adults who had a prior record of child abuse and neglect and who physically and psychologically abused the children, culminating in the torture and murder of her daughter in the presence of her sons. During a settlement conference, the parties agreed to settle the case in principle and submit infant compromise orders for court approval. The court approved the settlement agreement and the plaintiff's proposed allocation and ordered the parties to immediately execute the settlement agreement, which was filed under seal with the court. The

parties agreed to dismiss the action with prejudice.

Goldsmith v. J.C. Penney Co. (NY-E 9:99-cv-00068 filed 01/05/1999).

Personal injury action for serious permanent injuries resulting from an escalator's sudden stopping. After the plaintiff was sworn in at the jury trial, the case settled on the record, and the record was ordered sealed. The case closed with prejudice. One month later the defendant submitted the settlement agreement and release, after which the parties promised to file a stipulation of dismissal. The defendants agreed to pay the plaintiff \$4,000. The court approved the settlement agreement and release.

Doolittle v. Board of Fire Commissioners (NY-E 0:99-cv-00495 filed 01/26/1999).

Employment discrimination suit by a hearing-impaired volunteer firefighter for violation of the Americans with Disabilities Act in excluding him from the fire department. The parties settled, and a tentative settlement was placed on the record. The court ordered the case discontinued without prejudice. The case was closed, and a little over a week later a sealed document was placed in the vault. Five months later the parties filed a stipulation of settlement outlining the terms of the settlement and agreeing to discontinue the case with prejudice.

Piscitelli v. RJM Contracting Inc. (NY-E 9:99-cv-01318 filed 03/09/1999).

ERISA action by the fiduciary of seven employee benefit plans to enforce the defendants' obligations to make contributions to the plans. In addition, as the chief executive officer of a labor organization, the plaintiff alleged that the defendants breached their collective bargaining agreement with the labor organization. The defendants informed the court that the parties had settled. The court ordered the case closed, and a sealed document was placed in the vault the same day. Several months later the parties filed a stipulation of discontinuance with prejudice stating that full settlement had been achieved.

Hutzler v. General Motors Corp. (NY-E 9:99-cv-01780 filed 03/26/1999).

Motor vehicle product liability action against the manufacturer of a vehicle and the manufacturer of its seatbelt restraint system for severe and permanent injuries sustained by a passenger in a colli-

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sion. A jury was impaneled, but the case against the seatbelt manufacturer settled. The trial of the case against the vehicle manufacturer ended in a mistrial. The second jury trial commenced, and the parties settled. The settlement agreement was put on the record. The court ordered the record sealed, and the transcript was placed in the vault. The court ordered the parties to file the settlement agreement under seal within thirty days. The action was dismissed with prejudice.

Gorman v. Polar Electro Inc. (NY-E 9:99-cv-02575 filed 05/05/1999).

Patent infringement action concerning inventions for monitoring biomedical response. During a settlement conference, the case settled and the stipulation of settlement was entered on the record. Portions of the settlement were placed under seal. The case was dismissed with prejudice and ordered closed.

Siebert v. Iowa Precision Industries Inc. (NY-E 1:99-cv-03159 filed 06/04/1999).

Product liability action alleging that faulty installation of the shear and uncoiler devices at the plaintiff's work site caused a metal sheet to fall on the plaintiff, which resulted in a herniated disk, back pain, double vision, and sexual dysfunction. The parties settled on the record during a settlement conference, and the tape was sealed. The transcript of the settlement conference was filed, disclosing that the defendant agreed to pay \$6,000. The court accepted the parties' stipulation of dismissal with prejudice.

Olivieri v. Del-Con Tile Inc. (NY-E 9:99-cv-03622 filed 06/25/1999).

ERISA action by trustees and fiduciaries of several employee labor-management trust funds alleging that the defendant failed to comply with its statutory and contractual obligations to the trust funds arising under the defendant's collective bargaining agreement with non-party unions. The parties agreed to settle the case, but the court rescheduled a pretrial conference after the parties failed to file a fully executed stipulation of discontinuance. Several days after the defendant informed the court of its willingness to discuss settlement terms with the plaintiffs, a sealed document was placed in the vault. After almost one year in which no activity occurred, a pretrial conference was scheduled, but the case was closed after the parties finally filed a stipulation of dismissal.

Lulo v. K-Mart Corp. (NY-E 9:99-cv-04227 filed 07/27/1999).

Personal injury action for injuries from a fall caused by the collapse of a chair in a department store's customer service area. The docket sheet shows that shortly after a settlement conference was held, a sealed document was placed in the vault. Two months later the defendants informed the court that the case had settled and submitted a stipulation discontinuing the case with prejudice.

Fasten v. Kubista (NY-E 1:99-cv-04596 filed 08/06/1999).

Action under the Fair Debt Collection Act alleging that a letter falsely represented that an attorney was participating in the collection of the plaintiff's alleged debt. During a status conference, the parties settled and entered the terms of settlement on the record and discontinued the action. The court ordered the transcript of the proceedings sealed. The action was discontinued with prejudice with leave to reopen it to enforce the settlement terms.

Manenti v. Stratem Facilities Management Inc. (NY-E 9:99-cv-05625 filed 09/14/1999).

Designated a civil rights action, this is an employment sex discrimination action alleging that the plaintiff was terminated after a maternity leave under the pretext of downsizing, despite the defendants' hiring a replacement for the plaintiff. The parties settled and submitted the original settlement agreement to the court with their stipulation of discontinuance. The court dismissed the case with prejudice and placed a sealed document in the vault.

Murphy v. Caracciolo (NY-E 9:99-cv-06797 filed 10/21/1999).

Civil rights action by a Catholic priest alleging wrongful criminal prosecution in retaliation for his lawful exercise of First Amendment rights by praying near the defendant's abortion clinic. The complaint alleges that the plaintiff was exonerated in two prosecutions. During jury selection, the plaintiff informed the court that the case had settled. A stipulation of settlement was entered on the record, and the court ordered the transcript and the two court exhibits on the record sealed. The court ordered the case dismissed with prejudice and placed a sealed document in the vault.

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Automotive Management Group v. Coach Sales of Neoplan Inc. (NY-E 9:99-cv-06837 filed 10/22/1999).

Contract action concerning bus leases. The parties settled and informed the court that the stipulation of settlement resolved all matters, and the case was closed. Shortly thereafter, the court placed two sealed documents in the vault.

Abramson v. Middle Country Central School District (NY-E 9:99-cv-07150 filed 11/03/1999).

Civil rights action by twenty-six current and retired teachers concerning transfer credits for prior years of service outside the district. Prior to commencement of a jury trial, the courtroom was sealed, and the parties reached a confidential agreement with all except six plaintiffs not present in the courtroom. The stipulation of settlement was filed by the court along with the affidavit of one of the plaintiffs, who was unable to be in the courtroom to enter a settlement on the record. The school district agreed to pay each plaintiff \$3,000. The case was closed upon receiving the parties' stipulation of discontinuance with prejudice.

Waskiewicz v. American Ref-Fuel Co. (NY-E 9:00-cv-00831 filed 02/09/2000).

Personal injury action against three corporate owners and operators of a garbage-burning facility at which a plaintiff suffered serious injuries from a fall while making a delivery. The injured plaintiff and his wife discontinued the action against two defendants. A jury trial was held, but before the jury returned its verdict, the plaintiffs settled with the remaining defendant. A sealed document was placed in the vault the same day, and the case was closed.

Kim v. United States Postal Service (NY-E 1:00-cv-01282 filed 03/03/2000).

Motor vehicle action for severe internal and external injuries (some alleged to be permanent) resulting from a vehicle collision. One of the driver defendants was a postal worker. The plaintiff informed the court that the case had settled. It appears that the defendants made payment according to the terms of the settlement, but the plaintiff was awaiting signed stipulations of settlement and discontinuance prior to disbursement of the funds. Two weeks after the plaintiff asked the court to issue a date by which the defendants must sign the stipulations of settlement and discontinuance, the court filed a document under

seal. Two weeks later, the parties submitted a stipulation dismissing the case with prejudice.

Papaieck v. Aeroflex Inc. (NY-E 0:00-cv-01472 filed 03/15/2000).

Designated a contract action, this is an ERISA case against a former employer for misrepresenting that its retirement plan did not exist and refusing to allow the plaintiff to participate in the plan. The parties settled, and the terms of settlement were placed on the record. The docket sheet indicates that a sealed document was placed in the vault one day following settlement. This document is likely to be what the parties referred to as the consulting agreement, an essential component of the settlement, which the plaintiff needed to sign before the parties would file a stipulation of dismissal. Several months later the parties filed their stipulation to dismiss the case with prejudice, and the case was closed.

Stitt v. Nassau County Correctional Center (NY-E 0:00-cv-01544 filed 03/17/2000).

Prisoner civil rights case for failure to mail time-sensitive legal documents. Almost one year after the case was filed, the court granted the parties' request that their stipulation of discontinuance and settlement be filed under seal. The case was closed.

Carrillo v. Delgado Travel (NY-E 1:00-cv-01843 filed 03/29/2000).

Employment discrimination action by a female travel agency employee alleging sex discrimination following disclosure of her pregnancy status and retaliatory discharge after she filed charges with the New York City Human Rights Division. Following a settlement conference, the parties reported that the case had settled, and the court discontinued the case without prejudice. The parties resolved a dispute over the terms of the settlement agreement and met in court to execute a revised settlement agreement. The court ordered the minutes of the two settlement conferences placed under seal. The parties agreed to dismiss the case with prejudice.

Seide v. Seaman Furniture Co. (NY-E 9:00-cv-01934 filed 04/03/2000).

Action under the Fair Labor Standards Act for failure to pay overtime wages. The parties settled and agreed to a consent judgment in favor of the plaintiff. The case was dismissed with prejudice,

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and the settlement agreement was filed under seal.

Sadd v. Brookhaven Memorial Hospital Medical Center (NY-E 9:00-cv-02548 filed 05/04/2000).

Employment discrimination action by a nurse, alleging her employer violated the Americans with Disabilities Act by terminating her because of her breast cancer and an assumption that she would miss a great deal of work because of treatment. The parties settled, and a stipulation of settlement was entered on the record. The settlement was subject to a confidentiality agreement. The transcript of the proceeding was ordered sealed, and the case was dismissed with prejudice.

Lanfranchi v. Freight Brokers International Inc. (NY-E 1:00-cv-03027 filed 05/26/2000).

Contract action alleging that a freight brokerage owed the plaintiff unpaid incentive compensation according to the terms of two sales and agency consultation agreements. Following a full-day settlement conference, the parties settled and placed the settlement terms on the record, which was sealed. The parties agreed to dismiss the case with prejudice.

Ryder v. East Meadow Union Free School District (NY-E 9:00-cv-03209 filed 06/05/2000).

Employment discrimination action by a female elementary school teacher against the school district and principal, alleging sex discrimination, including sexual harassment and retaliatory demotion. The parties settled, and the stipulation of settlement was entered on the record. The settlement was subject to a confidentiality agreement. The court sealed the transcript, and the case was dismissed with prejudice. Five months later the parties filed a stipulation and order of settlement and discontinuance.

Barrau v. Vital Care Infusion (NY-E 9:00-cv-03364 filed 06/09/2000).

Employment discrimination action by a black female plaintiff alleging disparate treatment based on race and retaliatory discharge for filing a charge with the EEOC. The parties settled and were ordered to submit to the court an executed stipulation of settlement and dismissal. A sealed document was placed in the vault, and the case was closed.

Koujan v. EgyptAir Inc. (NY-E 1:00-cv-03661 filed 06/20/2000); *Smith v. EgyptAir* (NY-E 1:01-cv-00180 filed 01/11/2001).

Airplane actions transferred from the Southern District of New York for consolidation into multidistrict litigation concerning the October 31, 1999, crash of EgyptAir Flight 990 into the sea off the coast of Nantucket Island (MDL 1344). In *Koujan*, the parties settled, and because the decedent was survived by three children under age 18, the allocation of the settlement funds with respect to the children required a court-ordered infant compromise order. The court approved an amended infant compromise order submitted by the plaintiff, and it was filed under seal. In *Smith*, the parties settled with respect to the deaths of the plaintiff's parents and submitted the confidential settlement to the court for approval. The court filed the proposed order of final settlement and distribution under seal. The case was dismissed with prejudice.

Demarco v. Jo Mi Equities Corp. (NY-E 0:00-cv-04065 filed 07/13/2000).

Employment discrimination suit by a former waitress, alleging sex discrimination, a hostile work environment as a result of sexual harassment, and retaliatory discharge. The plaintiff informed the court that the parties settled, and a stipulation of settlement was signed by the plaintiff, awaiting the defendant's signature. The court ordered the case closed, and two weeks later a sealed document was placed in the vault.

Globecomm Systems Inc. v. Gilat Satellite Networks Ltd. (NY-E 9:00-cv-04350 filed 07/26/2000).

Patent infringement action alleging that the defendants were using or selling satellite data networks embodying the plaintiff's patented invention. The parties agreed on a confidential settlement and agreed to dismiss the case with prejudice. A sealed document was placed in the vault four days later, and the case was closed.

Sealed Plaintiff v. Sealed Defendant (NY-E 9:00-cv-04693 filed 08/11/2000).

RICO case. All documents in the case are sealed. It involves one unnamed plaintiff and three unnamed defendants. On August 8, 2002, the date of termination, a sealed document "containing settlement and general release agreement" was placed in the vault. According to the docket sheet, this document was signed by the judge on November 2, 2000. On the same day another sealed

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document “containing stipulation of dismissal with prejudice dated June 7, 2001” was placed in the vault. All docket entries before a May 28, 2002, reassignment of the case to another judge state only “sealed document placed in vault,” but a docket entry for June 26, 2002, states that a sealed document placed in the vault contains briefs on a motion to preclude or compel, a motion for contempt and sanctions, and a motion for summary judgment, among others. It is not clear, therefore, whether the sealed settlement agreement applied to only a subset of the defendants or the settlement agreement was scuttled in some way.

Wilkinson v. Audiovox Communication Corp. (NY-E 9:00-cv-04749 filed 08/14/2000).

Designated a civil rights action, this is an employment discrimination case alleging age discrimination in an unexplained and sudden termination. The parties settled, and the settlement terms were placed on the record under seal. A sealed document was placed in the vault. The parties agreed to dismiss the case with prejudice.

Role v. Eureka Lodge No. 434 (NY-E 0:00-cv-04781 filed 08/15/2000).

Contract action alleging that an employer conspired with a union to permit the plaintiff’s wrongful discharge in breach of a collective bargaining agreement. It appears that during a scheduled settlement conference, the parties reached a settlement agreement in open court. The court placed a sealed document in the vault the next day. The case was discontinued without prejudice. The plaintiff subsequently moved to vacate the settlement and reinstate the case, and to recuse the assigned judge with sanctions. The court denied the motion, and the plaintiff sought a writ of mandamus from the court of appeals. The appellate court denied the writ. The case was remanded to the district court in January 2004.

McDow-Drain v. County of Nassau (NY-E 2:00-cv-05339 filed 09/06/2000).

Employment discrimination action by a female African-American employee against the county, the county medical center, and three supervisors employed by the medical center for race discrimination and retaliation. The parties settled, and the plaintiff signed the settlement agreement and submitted it to the court. The defendants requested that references to the settlement payment be detached and kept under seal. The court agreed and filed the agreement under seal and

omitted any reference to the settlement payment on the docket sheet. The court dismissed the case without prejudice in case the settlement agreement was not consummated.

Chilelli v. Schultz Metal Service Inc. (NY-E 2:00-cv-05893 filed 10/02/2000).

Motor vehicle action against the owner and the operator of a motor vehicle that collided with the plaintiff’s vehicle, causing severe and permanent injuries. The parties settled on the record, the court ordered the case closed, and a sealed document was placed in the vault the next day. One day later the parties agreed to discontinue the case without prejudice.

Santangelo v. First Fortis Life Insurance Co. (NY-E 1:00-cv-06090 filed 10/11/2000).

ERISA action alleging that the defendant wrongfully terminated the plaintiff’s long-term disability benefits under her employer-sponsored policy issued by the defendant. The parties settled. The defendant moved to enforce the release and settlement agreement and enjoin the plaintiff from violating a confidentiality clause contained in the agreement. At a show-cause hearing, the plaintiff agreed to the settlement and signed the settlement agreement and stipulation of discontinuance with prejudice. The court sealed the tape of the hearing and closed the case.

Kwasnik v. Kingsbrook Jewish Medical Center (NY-E 1:00-cv-06686 filed 11/08/2000).

Designated a civil rights action, this is a case for age discrimination in employment by a 63-year-old physiatrist, alleging that the defendant hospital interfered with his participation in the rotating patient assignment system. The parties settled, and the settlement was placed on the record. The court ordered the transcript sealed, pursuant to the nondisclosure order in the settlement. The parties agreed to dismiss the case with prejudice.

Golden v. Swift-Eckrich Inc. (NY-E 2:00-cv-06777 filed 11/13/2000).

Contract action alleging breach of an agreement to establish a “Frank-in-a-Blanket” operation. The parties settled, and a sealed document was placed in the vault the same day. The parties agreed to dismiss the case with prejudice.

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Stermer v. Board of Fire Commissioners (NY-E 2:00-cv-07677 filed 12/29/2000).

Employment discrimination action by a female volunteer firefighter, alleging that she suffered repeated sexual harassment by members of the fire department and retaliation for her complaints. The parties settled, and the settlement was placed on the record under seal. The court indicated that the settlement was subject to approval by the Board of Fire Commissioners. Following the board's approval, the parties agreed to dismiss the case with prejudice.

Neillands v. Global Computer Co. (NY-E 2:01-cv-01312 filed 03/05/2001).

Employment discrimination suit by a female employee, alleging sexual harassment and retaliatory termination. The parties settled, and a sealed document was placed in the vault the next day. The parties filed a stipulation withdrawing the complaint with prejudice.

Fenelon v. Murachonian Export Co. (NY-E 2:01-cv-06288 filed 09/13/2001).

Employment discrimination suit by a female employee, alleging sex discrimination by her employer in refusing to rehire her after she was laid off. The parties settled and agreed to discontinue the action. A week after the court closed the case, a sealed document referred to as the confidentiality agreement was placed in the vault.

Bibbs v. Department of Housing and Urban Development (NY-E 2:01-cv-06778 filed 10/12/2001).

Statutory action for breach of contract against the Department of Housing and Urban Development and a local housing authority concerning a 1970 housing program lease. Before a jury trial began, the parties settled and the stipulation of settlement was placed on the record. The transcript was sealed as to the settlement terms. The case was dismissed with prejudice.

Blume v. Target Stores Inc. (NY-E 2:01-cv-07749 filed 11/20/2001).

Labor litigation alleging violation of the Family Medical Leave Act by terminating the plaintiff for job abandonment when she took leave to care for her son after he was in a serious car accident. The case settled, and the stipulation of settlement and confidentiality agreement were entered on the record. The transcript was sealed. The parties

agreed to dismiss the case with prejudice, and the case was closed.

Nikon Inc. v. Mizco International Inc. (NY-E 2:01-cv-08559 filed 12/27/2001).

Trademark infringement action concerning photographic accessory products. The parties settled and agreed to dismiss the action with prejudice. The settlement agreement was filed under seal.

Ranpak Corp. v. Saluppo (NY-E 1:02-cv-01889 filed 03/26/2002).

Contract action against a former sales representative and his current employer for solicitation of customers and dissemination of trade secrets. The parties settled during a settlement conference. A sealed document containing a stipulation and order was filed. The court entered a default judgment against the individual defendant and permanently enjoined the defendant from disclosing the plaintiff's trade secrets for two years. The case was closed pursuant to the sealed document and injunction order.

Northern District of New York

Court documents are sealed upon motion, which itself is filed under seal. N.D.N.Y. L.R. 83.13. Sealed documents remain sealed until ordered unsealed. *Id.*

Statistics: 3,928 cases in termination cohort; 192 docket sheets (4.9%) have the word "seal" in them; 27 complete docket sheets (0.69%) were reviewed; actual documents were examined for 22 cases (0.56%); 21 cases (0.53%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Van Limburg Stirum v. Whalen (NY-N 5:90-cv-01279 filed 11/27/1990).

Securities action by individuals and limited partnerships, alleging that the defendants sold nearly worthless limited partnership units by means of misrepresentations and omissions. A confidential settlement agreement was reached between the defendants and the partnership plaintiffs. The settlement agreement, the release, the notice of proposed settlement, and all documents filed with the court concerning the settlement were sealed. The court issued a final judgment approving the settlement and requested that the plaintiffs file discontinuance papers dismissing all pending causes of action. The case was closed.

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ITT Commercial Finance Corp. v. Harsco Corp. (NY-N 5:91-cv-00793 filed 07/12/1991).

Environmental action under CERCLA to recover the costs incurred in cleaning up property contaminated by the previous owners' use of the property for die cast manufacturing. Two defendants settled with the plaintiff. The court approved their settlements and granted their requests to file the agreements under seal and dismiss the contribution cross-claims. The non-settling defendants were ordered to maintain the terms of the agreements in confidence and could only refer to them in the context of the pending motions to approve the settlement. The plaintiff reached settlements with the remaining defendants on all outstanding claims and issues. Judgment was entered in favor of the plaintiff, and the case was closed.

Saratoga Harness Racing Inc. v. Veneglia (NY-N 1:94-cv-01400 filed 10/28/1994).

Antitrust action by the owner of Saratoga Raceway against several horseman's associations and their officers, alleging boycotts. The plaintiff agreed to dismiss one of the defendants. The plaintiff and two of the remaining defendants reached a settlement agreement and order, which were filed with the court and contained settlement terms. Less than two months later, the plaintiff settled with the remaining defendants and agreed to dismiss the action with prejudice. Subsequently, the court ordered the settlement agreement, stipulation, and order to be sealed. Activity continued in the case over the plaintiff's counsel's claim for attorney fees, which eventually was settled, and the case was closed.

Soriano v. New York (NY-N 1:98-cv-00076 filed 01/14/1998).

Civil rights action by a husband and wife, who were formerly employed as corrections officers, against the state of New York, the New York Department of Correctional Services, and individual corrections officers with supervisory authority over the plaintiffs, alleging that they were subjected to various forms of race-based and sexual discrimination and harassment. A jury trial commenced, but the parties reached a settlement in chambers, and the agreement was placed on the record. The dollar amount was to remain confidential. The transcript as to the settlement terms was sealed and placed in the court vault. The individual defendants were dismissed, and judgment was entered for the plaintiffs against the remaining defendants. The parties agreed to dis-

continue the action with prejudice as to these defendants.

Galusha v. New York State Department of Environmental Conservation (NY-N 1:98-cv-01117 filed 07/13/1998).

Civil rights claim against the state of New York, the New York State Department of Environmental Conservation, and the Adirondack Park Agency, among others, for allegedly violating the Americans with Disabilities Act by denying the plaintiffs and other qualified disabled citizens access to New York parks in general and the Adirondack Park in particular, including areas to which access previously had been available through the aid of a motorized vehicle. A settlement was reached by all parties and was placed under seal along with a proposed consent decree. In addition, the court ordered all past and ongoing settlement negotiations to remain under seal until the parties reached agreement on the terms of the proposed consent decree. After the parties resolved all outstanding issues, the consent decree and judgment was submitted to the court. The case was closed.

Granger v. Pierce (NY-N 9:98-cv-01495 filed 09/22/1998).

Civil rights action by six pretrial and post-trial detainees against a county jail for housing in the general population an inmate known to be infected with HIV. Two years after one plaintiff withdrew from the case, the remaining parties settled and submitted their settlement agreement and general release to the court for approval and sealing. The settlement agreement and general release was placed under seal, and the case was discontinued with prejudice.

Perruccio v. Wilder (NY-N 9:98-cv-01524 filed 09/24/1998).

Prisoner civil rights action by a former inmate against the county jail and two jail officers, alleging civil rights violations, including ignoring the plaintiff's medical needs, improperly disciplining the plaintiff, and denying the plaintiff access to religious services, bible study, and the law library. The parties settled and submitted to the court the settlement agreement and general release as well as a stipulation asking the court to seal it. The court agreed. The parties agreed to discontinue the case with prejudice.

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Forден v. Bristol Myers Squibb (NY-N 1:99-cv-00907 filed 06/10/1999).

Employment discrimination action by a female former employee alleging sex discrimination and disparate treatment, including retaliatory conduct following her resignation because of a sexually hostile work environment. The parties agreed to settle the case, the settlement terms were placed on the record, and the transcript was filed under seal. The parties apparently could not reach a final agreement, and several letters were submitted to the court under seal. The judge denied the plaintiff's oral application to enforce the settlement reached on the record. A jury trial was held, and the jury rendered a verdict for the defendant.

Brown v. County of Oneida (NY-N 5:99-cv-01064 filed 07/08/1999).

Employment discrimination action by an African-American employee of the sheriff's department, alleging race discrimination, including the filing of false criminal charges, aggravated disciplinary action, and disparate denial of promotional opportunities. The parties settled prior to a jury verdict. The settlement terms were placed on the record during a settlement conference in chambers, and the court ordered the settlement terms to be sealed. The court dismissed the case.

Cipolla v. County of Rensselaer (NY-N 1:99-cv-01813 filed 10/27/1999).

Civil rights action by two former county employees after a jury acquitted them of official misconduct charges. The plaintiffs alleged witness tampering, making false statements to law enforcement officials, public defamation, and presentation of knowingly perjured testimony to the grand jury and at trial. Four months after the court granted the defendants' motion for summary judgment, the court vacated the judgment and reopened the case. The case settled, and the court ordered sealed the partial stipulation discontinuing the action between the plaintiffs and the individual defendants, the settlement agreement and release, and the stipulation discontinuing the action. Three months later the court unsealed these documents, noting that there was no reason to keep them sealed because the parallel criminal proceedings in state court were completed. The court closed the case in light of the stipulations of discontinuance signed by all parties.

LaGrange v. Ryan (NY-N 1:99-cv-02133 filed 12/09/1999).

Civil rights action against police officers and a city, alleging deprivation of personal property, use of unreasonable force upon arrest, violations of due process during detention in the city jail, including denial of medication and medical care, and denial of communication with the plaintiff's family and attorney. The plaintiff accepted the defendants' offer of judgment, which was made on the record, and the transcript was sealed. The defendants moved to vacate the judgment on grounds that the plaintiff violated an implied essential condition. The court stated, "It must be noted that the condition may violate or restrict the public's right to important information." The judgment was vacated. Prior to trial, the plaintiff rejected the defendants' settlement offer made without any express or implied conditions. Because of the plaintiff's age, the fair amount of the original judgment, and the plaintiff's risk of losing at trial, and because the condition asserted by the defendants in the initial offer of judgment was not essential to the defendants and the plaintiff's violation of the condition did not cause any harm to the defendants, the court reinstated the original judgment disclosing the settlement terms and closed the case.

Gajjar v. Union College (NY-N 1:00-cv-00718 filed 05/08/2000).

Employment discrimination action by an engineering professor who is a native of India against a college and former dean of engineering, alleging race and national origin discrimination and retaliation, including denial of merit raises and promotional appointments, ridicule and humiliation at faculty meetings, and false accusations of abusing the machine shop. The court dismissed all claims against the dean. The remaining parties reached a confidential settlement agreement during a settlement conference, and the terms were placed on the record. The record was sealed. The parties agreed to discontinue the case according to terms set forth in the stipulation and order of discontinuance.

White v. Clear Channel Communication Inc. (NY-N 1:00-cv-00750 filed 05/16/2000).

Employment discrimination action by a female freelance reporter, alleging sex discrimination in failing to hire her as a full-time reporter. The case settled during a settlement conference, and the court ordered the parties to redraft the settlement agreement and forward it to the court. The case

Sealed Settlement Agreements

was voluntarily dismissed with prejudice according to the terms of an executed voluntary dismissal, which was filed under seal by the court.

Maines Paper & Food Service Inc. v. McGuire (NY-N 3:00-cv-00870 filed 06/05/2000).

Contract action alleging that a former employee solicited the plaintiff's customers for a new employer. The case settled during a settlement conference, and the court granted the parties' motion to seal the transcript. The court dismissed the case as settled and sealed the order.

Kremer v. Gero Vita Laboratories (NY-N 1:00-cv-01329 filed 08/30/2000).

Trademark infringement action by a doctor specializing in rheumatoid arthritis, alleging that the defendants published an advertisement for a dietary supplement that made false representations of the plaintiff's endorsement of the supplement as a treatment for rheumatoid arthritis and related symptoms. The case settled during a settlement conference, and the terms of settlement were sealed. The court dismissed the action as settled.

Yezzo v. Hartford Life Insurance Co. (NY-N 1:00-cv-01649 filed 10/27/2000).

ERISA action against an employer and its insurance company or wrongful denial of long-term disability benefits on the grounds that the plaintiff's stroke was a preexisting condition. The plaintiff dismissed his claim against the employer and settled with the insurance company. The insurance company moved to seal the stipulation of settlement, and the court agreed.

Nationwide Mutual Insurance Co. v. DePaulo (NY-N 1:01-cv-00042 filed 01/08/2001).

Contract action alleging that the defendant agent procured the cancellation and replacement of the plaintiff's insurance policies. The parties agreed to a confidential settlement that was to be submitted to the court. The case was dismissed with prejudice. A sealed document was filed a week later.

Baker v. Maura (NY-N 1:01-cv-00525 filed 04/11/2001).

Motor vehicle action alleging that a child was seriously injured crossing a highway when she was struck by an automobile driven by the defendant driver, who was driving the wrong way in order to go around a garbage disposal truck operated by the defendant town. The case settled, and the court granted the parties' sealed motion for set-

tlement. The parties agreed to dismiss the case with prejudice.

Palmateer v. Golub Corp. (NY-N 1:01-cv-01210 filed 07/30/2001).

Employment discrimination action against the plaintiff's employer and supervisors, alleging sexual harassment, age discrimination, and perpetuation of a hostile work environment. The parties settled and agreed to dismiss the case with prejudice thirty-one days later unless the settlement was not consummated. Two weeks later a document was filed under seal. There was no further activity in the case.

Matias v. Nevele Grande LLC (NY-N 1:01-cv-01247 filed 08/06/2001).

Pro se employment discrimination action alleging discrimination and termination on the basis of the plaintiff's Brazilian national origin. The parties apparently settled, because the docket sheet shows that pursuant to a sealed document the court ordered the confidential settlement agreement filed under seal. The confidential settlement agreement was filed under seal, and the case was closed the same day.

U.S. Foodservice Inc. v. Zehner (NY-N 3:02-cv-00821 filed 06/21/2002).

Contract action alleging that the plaintiff's former sales representatives violated their contractual nonsolicitation and confidentiality obligations after they voluntarily resigned to go to work for a direct competitor of the plaintiff. The parties settled, and the settlement was placed on the record. The court granted the parties' request to seal the transcript. The court ordered the parties to work out settlement agreements and file a stipulation of discontinuance. The court entered judgment dismissing the action by reason of settlement.

Southern District of New York

No relevant local rule.

Statistics: 20,976 cases in termination cohort; 948 docket sheets (4.5%) have the word "seal" in them; 130 complete docket sheets (0.62%) were reviewed; actual documents were examined for 95 cases (0.45%); 89 cases (0.42%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Maryland Casualty Co. v. W.R. Grace & Co. (NY-S 1:88-cv-04337 filed 06/21/1988).

Insurance case concerning insurance liability for environmental cleanup costs. The plaintiff and the defendant agreed to dismiss the action between themselves with prejudice. The case continued as to claims between the defendant and its insurers. The defendant agreed to dismiss with prejudice all but one insurer through confidential settlement agreements and releases that allowed the court to retain jurisdiction to enforce all terms and provisions of the settlement agreements. Several docket entries indicate that a sealed document was placed in the court vault. The defendant and the remaining insurer agreed to dismiss all remaining claims with prejudice, and the defendant forever waived coverage for these claims. The case was closed.

Knisley v. Kidder Peabody & Co. (NY-S 1:94-cv-03954 filed 05/26/1994).

Consolidated securities class action alleging fraudulent public filings. The class was certified. A proposed stipulation of settlement was submitted to the court along with a supplemental agreement, to be filed under seal, setting forth conditions under which the defendant could withdraw or terminate the settlement. A sealed document was placed in the vault the next day. The court issued a final judgment approving the settlement and plan of distribution. The case was dismissed with prejudice and closed.

Schonfeld v. Hilliard (NY-S 1:95-cv-03052 filed 04/28/1995).

Designated a contract action, this is a derivative suit for failure to fund a supply agreement between the defendant and the BBC after having induced the plaintiff and the BBC to enter into the interim agreement to bring the BBC to the United States as a twenty-four-hour international news and information network. The court granted the defendant summary judgment and dismissed all of the plaintiff's claims except a fraud claim. The court of appeals affirmed in part and reversed in part. Several months later the parties signed, and the court approved, a settlement agreement. A sealed document had been placed in the vault five days earlier. The parties agreed to dismiss all claims with prejudice, and the case was closed.

In re Air Crash TWA (lead case filed 10/24/1996).⁶⁰

Consolidated airplane actions for wrongful death (with one case designated an airplane product liability action) arising from the July 17, 1996, crash of TWA flight 800 from Kennedy Airport to Paris, France, which was allegedly caused by a fuel cell explosion. In each of these cases, the plaintiffs settled with the defendants and dismissed their actions with prejudice. The docket

60. This consolidation includes thirty-three cases in our termination cohort: *Dadi v. Trans World Airlines Inc.* (NY-S 1:96-cv-07986 filed 10/24/1996) (lead case), consolidated with *Delange v. Trans World Airlines Inc.* (NY-S 1:96-cv-08701 filed 11/19/1996), *Rio v. Trans World Airlines Inc.* (NY-S 1:96-cv-08850 filed 11/21/1996), *Ostachiewicz v. Trans World Airlines Inc.* (NY-S 1:96-cv-09489 filed 12/17/1996), *Rades v. Trans World Airlines Inc.* (NY-S 1:97-cv-03652 filed 05/20/1997), *Brown v. Trans World Airlines Inc.* (NY-S 1:97-cv-03654 filed 05/20/1997), *Rencus v. Trans World Airlines Inc.* (NY-S 1:97-cv-04627 filed 06/23/1997), *Ingenhuett-Quinn v. Trans World Airlines Inc.* (NY-S 1:97-cv-05195 filed 07/16/1997), *Steward v. Trans World Airlines Inc.* (NY-S 1:97-cv-06271 filed 08/22/1997), *Johns v. Trans World Airlines Inc.* (NY-S 1:97-cv-06813 filed 09/15/1997), *Schmitz v. Trans World Airlines Inc.* (NY-S 1:97-cv-06814 filed 09/15/1997), *Story v. Trans World Airlines Inc.* (NY-S 1:97-cv-07120 filed 09/24/1997), *Pares v. Trans World Airlines Inc.* (NY-S 1:97-cv-08048 filed 10/30/1997), *Furlano v. Trans World Airlines Inc.* (NY-S 1:97-cv-08049 filed 10/30/1997), *Puhlmann v. Trans World Airlines Inc.* (NY-S 1:97-cv-08732 filed 11/24/1997), *Taylor v. Trans World Airlines Inc.* (NY-S 1:98-cv-00239 filed 01/14/1998), *Chanson v. Trans World Airlines Inc.* (NY-S 1:98-cv-01668 filed 03/06/1998), *Feeney v. Trans World Airlines Inc.* (NY-S 1:98-cv-01670 filed 03/06/1998), *Richter v. Trans World Airlines Inc.* (NY-S 1:98-cv-01671 filed 03/06/1998), *Alex v. Trans World Airlines Inc.* (NY-S 1:98-cv-02986 filed 04/28/1998), *Straus v. Trans World Airlines Inc.* (NY-S 1:98-cv-02988 filed 04/28/1998), *Windmiller v. Trans World Airlines Inc.* (NY-S 1:98-cv-03604 filed 05/20/1998), *Lacaille d'Esse v. Trans World Airlines Inc.* (NY-S 1:98-cv-04304 filed 06/18/1998), *Von Hedrich v. Trans World Airlines Inc.* (NY-S 1:98-cv-04863 filed 07/09/1998), *Licari v. Trans World Airlines Inc.* (NY-S 1:98-cv-04877 filed 07/10/1998), *Beaumont v. Trans World Airlines Inc.* (NY-S 1:98-cv-04950 filed 07/13/1998), *Ferrat v. Trans World Airlines Inc.* (NY-S 1:98-cv-04995 filed 07/14/1998), *Cayrol v. Trans World Airlines Inc.* (NY-S 1:98-cv-04997 filed 07/14/1998), *Roger v. Trans World Airlines Inc.* (NY-S 1:98-cv-05103 filed 07/17/1998), *Karschner v. Trans World Airlines Inc.* (NY-S 1:98-cv-05427 filed 07/30/1998), *Baszczewski v. Trans World Airlines Inc.* (NY-S 1:98-cv-06335 filed 09/09/1998), *Bohlin v. Boeing Co.* (NY-S 1:98-cv-06336 filed 09/09/1998), and *Loudenslager v. Trans World Airlines Inc.* (NY-S 1:98-cv-06341 filed 09/09/1998).

Sealed Settlement Agreements

sheet for each of these cases indicates “sealed document placed in vault” either the same day as settlement or several days before or after settlement.

Holtz v. Rockefeller & Co. (NY-S 1:96-cv-09484 filed 12/17/1996).

Employment discrimination action by a female employee alleging age and sex discrimination, including retaliatory discharge. The district court granted the defendants’ motion for summary judgment, and the court of appeals affirmed in part and vacated in part. A little over a year later, the parties settled and agreed to dismiss the case with prejudice. The docket sheet indicates a sealed document was placed in the vault a month later.

Martinez-Torres v. Trustees of Columbia University (NY-S 1:97-cv-00503 filed 01/23/1997).

Employment discrimination action by a former assistant professor of Spanish national origin alleging that the university discriminated against him based upon his sex, national origin, race, ethnicity, and ancestry by denying him a promotion to the position of associate professor and not renewing his appointment. The parties settled, and the court ordered sealed the confidential settlement agreement and all documents filed in connection with the plaintiff’s application for attorney fees. The fee application was resolved, and the court ordered the case closed.

Powell v. Consolidated Edison Co. of New York (NY-S 1:97-cv-02439 filed 04/04/1997).

Employment discrimination action by a black man with AIDS against his employer, two supervisors, and two co-workers, alleging race and disability discrimination, including denial of promotions, creating a hostile and oppressive work environment, and threatening termination or demotion in retaliation for objecting to the defendant’s racist policies and practices. The court granted the defendants summary judgment on some of the plaintiff’s claims. The case was dismissed with prejudice pursuant to a sealed stipulation of settlement.

Casper v. Lew Lieberbaum & Co. (NY-S 1:97-cv-03016 filed 04/28/1997).

Employment discrimination action by three female former employees, alleging sexual harassment, including demands for sexual favors. The parties agreed to dismiss the action against one

defendant—the employer’s chief executive officer. The remaining parties agreed to settle their claims and discontinue the case with prejudice. The court dismissed the action with prejudice pursuant to a sealed settlement agreement.

A.I.A. Holding SA v. Lehman Brothers Inc. (NY-S 1:97-cv-04978 filed 07/08/1997).

Fraud action by 276 plaintiffs against an investment adviser. Twenty-two plaintiffs agreed to dismiss their claims with prejudice. Five years after the original complaint was filed and various motions were ruled upon by the court, the remaining parties settled and agreed to dismiss the case with prejudice. A sealed document was placed in the vault five days prior to the order dismissing and closing the case.

Shepherd v. Pentagon Federal Credit Union (NY-S 1:97-cv-07464 filed 10/08/1997).

Action pursuant to the federal Fair Credit Reporting Act and the Fair Debt Collection Practices Act for wrongfully designating several of the plaintiff’s loan accounts as delinquent. The parties settled, and the terms of the settlement agreement were placed on the record. The transcript was sealed, and the action was dismissed with prejudice. The case was closed.

Orce v. Wackenhut Corp. (NY-S 7:97-cv-09246 filed 12/16/1997).

Action under the Fair Labor Standards Act by thirty-nine nuclear power plant security officers for unpaid overtime compensation. A confidential settlement agreement was reached and placed under seal. The court entered judgment dismissing each action with prejudice.

Sonex International Corp. v. Tactica International Inc. (NY-S 1:98-cv-02931 filed 04/24/1998).

Patent infringement action concerning an automatic flosser and plaque remover. The parties settled, and the court ordered the settlement agreement filed under seal. The action was dismissed with prejudice.

Koh v. Premier Equity Funds Inc. (NY-S 1:98-cv-04318 filed 06/19/1998).

Securities class action alleging that class members suffered millions of dollars in damages by purchasing overpriced shares. The court certified the class. A settlement was reached. The settlement agreement included a supplemental stipulation defining the circumstances under which the de-

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defendants could withdraw from the settlement agreement. One version of this supplemental stipulation was publicly available. A second version defining with greater specificity the circumstances under which the defendants could withdraw from the settlement agreement was filed under seal.

Fanelli v. Town of Harrison (NY-S 7:98-cv-07683 filed 10/28/1998).

Civil rights action alleging false arrest for First Amendment activities. The parties agreed to a confidential settlement on the record, and the court ordered the transcript of the settlement proceeding sealed. The parties agreed to discontinue the action.

Joel A. v. Giuliani (NY-S 1:99-cv-00326 filed 01/15/1999).

Civil rights class action by young people in the defendants' custody and care who identify themselves as lesbian, gay, bisexual, or transgendered or are experiencing feelings or confusion about their sexual orientation or gender. The defendants operate the New York City child welfare and foster care system. The plaintiffs alleged discrimination based on actual or perceived sexual orientation and gender atypicality; failure to protect the class from bias-related violence, harassment, and abuse; and failure to provide the class members with supportive environments in which they can safely disclose and express feelings of same-sex attraction, discuss issues relating to sexual identity, and develop healthy sexual identities. The action was not certified as a class action. The defendants agreed to pay \$15,000 in full satisfaction of all claims of one of the six named plaintiffs. The remaining five named plaintiffs settled with the city defendants, and the court ordered the settlement agreement to be filed under seal "solely in order to protect the confidentiality of the identity of settling plaintiffs." The case was closed.

Jacob v. Porcari (NY-S 7:99-cv-01216 filed 02/18/1999).

Contract action alleging legal malpractice in failing to advise the plaintiff of statutes of limitation on his civil rights claims of false arrest, malicious prosecution, and use of excessive force against the police department. The parties settled on the record, and the court ordered the proceedings sealed. The parties agreed to dismiss the case with prejudice.

Jack Schwartz Shoes Inc. v. Buffalino USA Inc. (NY-S 7:00-cv-01007 filed 02/10/2000).

Trademark infringement action with patent claims, alleging that the defendant represented its footwear as looking "just like" the plaintiff's shoes. The parties settled, and the settlement agreement was sealed and placed in the vault. The case was closed the same day.

Cassina SPA v. Strada Design Associates Inc. (NY-S 1:00-cv-02852 filed 04/13/2000).

Contract action for refusal to pay for furniture and installation services. A bench trial was held, and the case settled. The parties entered on the record a stipulation placing their confidential settlement agreement under seal. The court ordered the transcript sealed, and the docket sheet indicates that two sealed documents were placed in the vault.

Watcher Technologies LLC v. Tradescape.com Inc. (NY-S 1:00-cv-03050 filed 04/20/2000).

Copyright action against day-trading firms for offering customers access to the plaintiff's software. The parties settled, and the court dismissed the case without prejudice to restore it if settlement was not effectuated within thirty days. The case was closed. A month later a sealed document was placed in the vault. A month after that another sealed document was placed in the vault.

Franco v. Saks & Co. (NY-S 1:00-cv-05522 filed 07/26/2000).

Labor litigation under the Family Medical Leave Act for wrongful replacement after the plaintiff returned from an approved unpaid FMLA leave to care for his dying father. The parties settled, and the court dismissed the case without prejudice to restore it if settlement was not effectuated within sixty days. A little over a year and a half later, a sealed document was placed in the vault.

Millinnium LP v. Captiva Software Corp. (NY-S 1:00-cv-05908 filed 08/09/2000).

Patent infringement action concerning computer software technology used for scanning hard-copy documents. The parties settled and agreed to a consent decree that incorporated a confidential settlement and license agreement, which was filed under seal. The action was dismissed with prejudice.

Sealed Settlement Agreements

United States v. American Cyanamid Co. (NY-S 1:00-cv-06015 filed 08/14/2000).

Environmental action by the EPA under CERCLA against the owner and operator of a landfill where hazardous substances had been dumped and against the substance owners. The EPA settled its claims with the owners of the hazardous substances, and the court entered a consent decree. The owners brought cross-claims against one another for contribution. The EPA settled with the owner of the landfill, and the terms of the settlement were embodied in a separate consent decree. Two years later the owners settled their cross-claims and agreed to dismiss them with prejudice. The court retained jurisdiction to decide whether to enter a contribution bar order and to resolve any disputes in connection with the settlement agreement. A motion for entry of a contribution bar was brought, attaching the settlement agreement as an exhibit. A sealed document was placed in the vault a few days later. The motion for a contribution bar was denied, and no further activity occurred in the case.

Isler v. Mount Vernon Hospital (NY-S 7:00-cv-06048 filed 08/15/2000).

Medical malpractice and wrongful death action. The defendant hospital brought a third-party complaint against the plaintiff's two private physicians and the medical group sponsoring an HIV/AIDS clinical trial in which the plaintiff participated. The case settled. The order settling the case with two of the plaintiff's treating physicians was filed under seal and placed in the vault. The parties agreed to discontinue the case against all defendants with prejudice.

Uptown Nails LLC v. Lemax World Inc. (NY-S 1:00-cv-06195 filed 08/18/2000).

Trademark infringement action concerning artificial nails and related products. The parties settled, and the court dismissed the case with prejudice. The court informed the parties that if they wished the court to retain jurisdiction to enforce the settlement agreement, they must submit it to the court. A month later, in an attempt to settle unresolved issues in court-ordered mediation, the plaintiff asked the court to file under seal the confidential settlement agreement. The court sealed a copy of the settlement agreement and exhibits. The parties settled their issues through mediation.

Jeremy M. v. Giuliani (NY-S 1:00-cv-06498 filed 08/30/2000).

Civil rights action by a minor and his mother for retaining the child in foster care without a legal basis. The parties settled, and the court issued an infant compromise order approving the settlement. A sealed document was placed in the vault. Two months later the parties agreed to discontinue the action with prejudice, stating that the parties settled pursuant to a separate settlement agreement.

Messina v. Local 1199 SEIU (NY-S 1:00-cv-07375 filed 09/28/2000).

Case under the Labor-Management Reporting and Disclosure Act alleging that the plaintiff was removed as an elected delegate in reprisal for her zealous representation of union membership, assertion of free speech rights, and bringing of charges against an elected vice-president. The court granted in part the defendants' motion to dismiss and motion for summary judgment. The parties settled, and the court dismissed the case without prejudice to restore it if requested within forty-five days. A sealed document was placed in the vault a month later.

Jack Schwartz Shoes Inc. v. Skechers USA Inc. (NY-S 1:00-cv-07721 filed 10/12/2000).

Trademark infringement action with patent claims concerning footwear that embodied the design claimed in the plaintiff's patent. The court granted the plaintiff partial summary judgment as to infringement, awarded the plaintiff damages, and issued an injunction against the defendant. The defendant's motion for summary judgment was denied as to patent infringement and granted as to trade dress infringement. Several weeks later the parties settled all remaining claims, and the court discontinued the action. Although the defendant requested that the court file under seal a stipulation and order of dismissal with prejudice, the court refused to take further action, stating that the parties' agreement of settlement need not be filed. Despite this statement, one week later a sealed document was placed in the vault.

Murphy v. Transitional Services Inc. (NY-S 1:00-cv-08169 filed 10/25/2000).

Employment discrimination action by a male counselor alleging that he was terminated for not having sex with his female director. The parties settled, and the confidential settlement agreement

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was sealed and placed in the vault. The case was dismissed with prejudice.

Crooks v. Metro-North Railroad Co. (NY-S 1:00-cv-08420 filed 11/03/2000).

Federal employers' liability action by a signalman for on-the-job injuries. The parties settled, and a sealed document was placed in the vault three days later. The case was dismissed with prejudice.

McEachin v. Kerik (NY-S 7:00-cv-08998 filed 11/27/2000).

Prison condition action for multiple physical injuries resulting from an assault by prison staff and retaliatory segregation. The parties settled during a settlement conference, and the court sealed the tape of the conference and placed it in the court vault. The parties agreed to dismiss the action with prejudice according to the terms of the stipulation and order of settlement and discontinuance.

Reese v. Consolidated Edison Co. (NY-S 1:00-cv-09390 filed 12/11/2000).

Employment discrimination action by a black man for race discrimination, including denials of promotion. The parties settled, and the settlement conference transcript of the parties' agreement was sealed. The action was dismissed with prejudice.

Gold v. Unumprovident Corp. (NY-S 7:00-cv-09854 filed 12/29/2000).

Insurance action for refusal to pay the plaintiff disability benefits. The parties settled, and the terms of settlement were placed on the record. Because the settlement agreement ultimately signed by the parties contained a confidentiality provision, the parties asked the court to seal the tape and transcript of the settlement conference. The court agreed to seal the tape. The case was discontinued with prejudice and with leave to reopen it solely for the purpose of enforcing the settlement.

Weisman v. Doremus Advertising Inc. (NY-S 1:01-cv-00080 filed 01/04/2001).

ERISA action alleging failure to provide the plaintiff with the same benefits offered to other employees. A settlement agreement was reached on the record, and the case was dismissed with prejudice. A sealed document was placed in the vault a little over a month after the case closed.

Archer v. City of New York (NY-S 1:01-cv-00402 filed 01/18/2001).

Designated a civil rights action, this is an employment discrimination action by a female employee against the sheriff's office for sexual harassment and retaliation. The parties settled during a settlement conference, and the settlement terms were placed on the record. One month later a sealed document was placed in the vault the same day as the parties filed their stipulation and order of discontinuance dismissing the action with prejudice.

SBAM Inc. v. U.S. Roads Inc. (NY-S 1:01-cv-01848 filed 03/02/2001).

Negotiable instrument action. The parties settled and discontinued the action. A sealed document was placed in the vault three days later. A little over two months later, judgment was entered against the defendant subject to the terms of the stipulation of settlement.

Cook v. Stroock & Stroock & Lavan LLP (NY-S 1:01-cv-02065 filed 03/12/2001).

Employment discrimination action by an African-American woman against a law firm and partner for sexual harassment and retaliation. The parties settled on the record during a settlement conference and agreed to dismiss the case with prejudice. A sealed document was placed in the vault six days after the case closed.

ON2 Inc. v. ECOIN Co. (NY-S 1:01-cv-03618 filed 04/30/2001).

Contract action concerning the exclusive right to market the plaintiff's encoding and server technologies to third parties in South Korea. The parties settled on the record during a settlement conference. The court dismissed the case with prejudice and retained jurisdiction over the settlement pursuant to the terms of the settlement agreement. A sealed document was placed in the vault.

Pacific Sunwear of California v. Crest Inc. (NY-S 1:01-cv-04072 filed 05/14/2001).

Trademark infringement action concerning a line of men's, women's, and children's clothing. The parties settled, and their stipulation of dismissal was sealed. A sealed document was placed in the vault, and the court dismissed the case with prejudice.

Sealed Settlement Agreements

Avon Products Inc. v. Kim (NY-S 1:01-cv-04163 filed 05/16/2001).

Trademark infringement action concerning cosmetic products and services similar to those sold by Avon. The parties settled and filed their settlement agreement and order under seal. The case was discontinued with prejudice.

Twentieth Century Fox Film Corp. v. Bermuda Cablevision Ltd. (NY-S 1:01-cv-04748 filed 06/01/2001).

Action under the Communications Act of 1934 by several large motion picture studios and their affiliates, alleging that a cable television provider in Bermuda pirated encrypted satellite signals at an enormous profit. The parties settled and agreed to discontinue the case with prejudice. Five months later the plaintiffs informed the court of their intention to file a motion to enforce the settlement agreement reached with the defendants. Shortly thereafter two sealed documents were placed in the court vault. The parties met and finalized their settlement. They agreed to dismiss the case with prejudice.

CBC Holdings Inc. v. Medina (NY-S 7:01-cv-05168 filed 06/11/2001).

Action alleging violations of the Cable Communications Policy Act of 1984 for use of an unauthorized converter-decoder. The parties settled during a settlement conference, and the court sealed the tape of the conference. The parties agreed to the issuance of a consent injunction against the defendant and to discontinue the case with prejudice according to the terms of the stipulation of discontinuance.

Freeman v. City of New York (NY-S 1:01-cv-05360 filed 06/14/2001).

Civil rights action by an incarcerated prisoner against the city of New York and several correctional officers for verbal abuse, physical attack, and failure to provide medical attention. The case settled on the record during a settlement conference. The court ordered the tape of the conference sealed, and the tape was placed in the vault. The parties dismissed the action with prejudice.

Shieldkret v. Park Place Entertainment Corp. (NY-S 1:01-cv-05471 filed 06/18/2001).

Action under the Fair Labor Standards Act by a female marketing employee of a gaming industry company, alleging violations of the Equal Pay Act for deliberately paying her substantially less than

male employees. A jury trial was held, but the parties settled before the jury returned a verdict. The court ordered the order of discontinuance, a letter from the plaintiff, and an additional order to be filed under seal. Two sealed documents were placed in the vault, and the case was closed.

Kattini v. Republic of South Africa (NY-S 1:01-cv-05648 filed 06/21/2001).

Employment age discrimination action by a 64-year-old employee of the South African consulate in New York, alleging an attempt to force the plaintiff into involuntary retirement, demotion of the plaintiff from a permanent position to a temporary one, and termination. The parties settled and agreed to discontinue the action with prejudice. The court placed a sealed document in the vault the same day. The parties were given 120 days to restore the action if settlement was not effected. Five months later another sealed document was placed in the vault. No further activity occurred in the case.

Roach v. Young's Equipment (NY-S 7:01-cv-05979 filed 07/02/2001).

Product liability action for a hand injury caused by a frame machine. The case settled, and the court ordered the tape of the settlement conference to be sealed. The case was discontinued with prejudice.

Menaker v. Westchester Jewish Community Services Inc. (NY-S 7:01-cv-06127 filed 07/06/2001).

Employment discrimination case for sex and age discrimination and harassment. The parties settled, and a stipulation of settlement was placed on the record. The transcript was sealed, and the case was discontinued with prejudice with leave to reopen it solely for the purpose of enforcing the settlement.

Caesar v. Sugarhill Music Publishing Inc. (NY-S 1:01-cv-06180 filed 07/09/2001).

Copyright infringement action concerning songs. Settlement was reached between the plaintiffs and one defendant. Court-ordered mediation produced a stipulation settling all issues in the case. A sealed document was placed in the vault the same day the court ordered the case to be discontinued without prejudice.

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Toumarkine v. Hollywood Media Corp. (NY-S 1:01-cv-06623 filed 07/20/2001).

Employment discrimination action alleging pretextual termination to conceal illegal age discrimination. The case settled on the record in open court and was discontinued with prejudice. The court retained jurisdiction to enforce the settlement terms. A sealed document was placed in the vault two weeks later.

Charley v. Andin International (NY-S 1:01-cv-08302 filed 09/05/2001).

Employment discrimination action by a black male employee with kidney and skin cancer, alleging discrimination based on race, color, and disability, including wrongful termination and failure to accommodate disabilities. The parties reached a settlement agreement on the record, and a sealed document was placed in the vault two days later. The parties agreed to dismiss the case with prejudice.

Top Rank Inc. v. Kelepeses (NY-S 1:01-cv-08382 filed 09/07/2001).

Action for violation of the Cable Communications Act and for copyright infringement in transmitting without authorization the plaintiff's pay-per-view programs, including boxing matches. The parties entered into an executed stipulation of settlement, which was filed by the court under seal. The court placed the sealed document in the vault and ordered the case dismissed with prejudice the same day.

Albany International Corp. v. J.M. Voith Fabrics Inc. (NY-S 1:01-cv-09455 filed 10/26/2001).

Patent infringement action concerning fabrics and methods for making such fabrics. The parties reached a settlement and agreed to dismiss the case with prejudice, but only as to the allegations of infringement concerning fabrics sold by the defendants prior to the effective date of the settlement agreement. The stipulated order of dismissal indicated that the settlement agreement was filed along with the stipulation. Several days later a sealed document was placed in the vault.

Gund Inc. v. Ganz Inc. (NY-S 1:02-cv-00801 filed 02/01/2002).

Copyright infringement suit alleging that the defendants' toy animals were substantially similar to the plaintiff's plush toys. The parties settled, and the court granted their request to file their consent judgment under seal because unrestricted access

to the consent judgment would result in inappropriate disclosure of trade secrets and other proprietary information. The case was dismissed without prejudice to reopen it within thirty days if the settlement was not consummated.

Centre Group Holdings Ltd. v. American International Group Inc. (NY-S 1:02-cv-01955 filed 03/08/2002).

Trademark infringement action concerning financial and insurance services. The parties settled and agreed to dismiss the case with prejudice. The stipulation of dismissal states that the terms of the settlement agreement are attached and the court retains jurisdiction to enforce it. The agreement was not attached to the stipulation of dismissal, so it was probably the document the docket sheet indicated was filed under seal three days previously.

McVicker v. Pactiv Corp. (NY-S 7:02-cv-02548 filed 04/03/2002).

Patent infringement case concerning garbage bags. The parties agreed to settle all claims and dismiss the action with prejudice. The court ordered the taped settlement agreement sealed and placed in the vault.

Mannain v. J-Len Inc. (NY-S 7:02-cv-02919 filed 04/16/2002).

Employment discrimination action by four female employees for sex discrimination, including sexual harassment, a hostile work environment, and retaliation. The parties settled and submitted their confidential settlement agreement and release to the court under seal. The case was dismissed with prejudice.

Clyde Otis Music Group v. MTV Networks Enterprises Inc. (NY-S 1:02-cv-05326 filed 07/11/2002).

Copyright infringement action for unlawful airing of a musical composition. The parties reached a settlement agreement and agreed to dismiss the case with prejudice. A sealed document was placed in the vault a little over a month later.

CDC IXIS Capital Markets North America Inc. v. Parker (NY-S 1:02-cv-06436 filed 08/13/2002).

Personal property fraud action for theft of trade secrets. The parties settled and submitted to the court a settlement agreement set forth in a consent order. The court granted the parties' request to file an attachment to the consent order under seal in order to protect the plaintiff's highly sensitive

confidential and proprietary information. The case was dismissed with prejudice.

Western District of New York

The Western District of New York has a new local rule requiring a “substantial showing” to seal a document, W.D.N.Y. L.R. 5.4(a), but this rule is newer than the cases in this study. “Unless an order of the court otherwise directs, all sealed documents will remain sealed after final disposition of the case.” *Id.* R. 5.4(f).

Statistics: 3,000 cases in termination cohort; 12 docket sheets are sealed (0.40%)—the disposition codes for 10 of these cases suggest no sealed settlement agreements,⁶¹ and the disposition codes for 2 of these cases suggest sealed settlement agreements;⁶² 106 unsealed docket sheets (3.5%) have the word “seal” in them; 20 complete docket sheets (0.67%) were reviewed; actual documents were examined for 12 cases (0.40%); 11 cases (0.37%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Burns v. Imagine Films Entertainment Inc. (NY-W 1:92-cv-00243 filed 04/08/1992).

Copyright case alleging use of the plaintiffs’ copyrighted screenplays in the motion picture *Backdraft*. As a discovery sanction, the court ordered the defendants’ answers stricken and entered a default judgment against the defendants; trial was set on the question of damages. The parties settled all claims. The plaintiffs moved to enforce the confidential settlement agreement. The court ordered the parties to resolve outstanding issues. One week later the parties filed a stipulation and order of dismissal with prejudice, requesting that the court vacate its prior judgment of liability in favor of the plaintiffs, which was based on the striking of the defendants’ answers. On the day the case was closed, a document was filed under seal. The court agreed to vacate its prior judgment of liability.

Tops Markets Inc. v. Quality Markets Inc. (NY-W 1:93-cv-00302 filed 04/02/1993).

Antitrust action by a large supermarket chain against other supermarkets and a commercial developer, who filed a counterclaim. The district

61. Two judgments on motions before trial, 1 voluntary dismissal, 6 “other” dismissals, 1 “other” judgment.

62. One consent judgment, 1 case settled.

court bifurcated the case, and the jury returned a liability verdict against the plaintiff on all counts and in favor of the commercial developer on his counterclaim. The plaintiff settled the counterclaim with the developer. The plaintiff’s original attorney was discharged, and he filed to have a lien placed on the case until he was paid for his services. The district court denied the attorney’s motion for fees and a lien, and the attorney appealed. The plaintiff moved to enter the settlement agreement with the developer into the record. The plaintiff sought to do this under seal to preserve a nondisclosure agreement. The court agreed to seal the settlement agreement. The court of appeals affirmed the district court’s denial of the attorney’s lien.

United States v. Genesee Valley Card (NY-W 6:97-cv-06502 filed 11/12/1997).

Statutory action. The docket sheet is sealed. The case was dismissed as settled.

Airse Corp. v. ICAR SPA (NY-W 1:00-cv-00089 filed 01/26/2000).

Contract action alleging that defects in capacitors manufactured and distributed by the defendants caused oxygen concentrators manufactured and sold by the plaintiff to catch fire. The parties settled, and the court dismissed the case without prejudice, with leave to reopen it within sixty days if settlement was not consummated. Two months later a document was filed under seal, and a final settlement conference was held to discuss the status of settlement. No further activity occurred in the case.

Weidner v. Town of Eden (NY-W 1:00-cv-00162 filed 02/16/2000).

Civil rights action concerning the plaintiffs’ real property. The case settled, the settlement terms were put on the record, and the court recording was sealed. The parties agreed to dismiss the action with prejudice, and the case was closed upon court approval of the dismissal.

Nevarez v. Pittsford Central School District (NY-W 6:00-cv-06096 filed 03/06/2000).

Civil rights action under the Americans with Disabilities Act against a school district, its board of education, and a principal for discrimination against the plaintiffs and their disabled daughter. The parties settled, and the court placed the settlement terms on the record. The parties executed the stipulation and order to dismiss in open court,

and the court sealed the stipulation. The case was closed.

Jeswald v. Frontier Central School District (NY-W 1:00-cv-00824 filed 09/22/2000).

Employment discrimination action by an obese Native-American woman, alleging wrongful termination on the basis of her race and disability by a school district. The defendant informed the court that the parties had settled. Five months later a document was filed under seal, and the case was closed the same day.

Harms v. Dow Chemical Co. (NY-W 1:00-cv-01040 filed 12/19/2000).

Product liability action alleging that the decedent's workplace exposure to the defendants' vinyl chloride caused him to develop several illnesses, including liver cancer, which resulted in his death. The defendants brought a third-party complaint against the decedent's employer for contribution. The case settled, and the court sealed an order of settlement. All parties agreed to dismiss all claims with prejudice, and the court dismissed the case.

United States v. 2986 Tallman Road (NY-W 6:01-cv-06155 filed 03/23/2001).

Case involving the drug-related seizure of property. The docket sheet is sealed. The case was resolved by consent judgment.

Buchalski v. Dow Chemical Co. (NY-W 1:01-cv-00309 filed 04/27/2001).

Product liability action by a surviving wife alleging that the decedent's workplace exposure to the defendants' vinyl chloride caused him to develop several illnesses, including angiosarcoma of the liver, which resulted in his death. The defendants brought a third-party complaint against the decedent's employer for contribution. The case settled, and the court sealed tapes of a teleconference held three days later. About a week later the court issued a sealed order of settlement. All parties agreed to dismiss all claims with prejudice, and the court dismissed the case.

Roberts v. County of Erie (NY-W 1:01-cv-00565 filed 08/09/2001).

Employment action for sexual discrimination against the Erie County Sheriff's Department by a former nurse employee, alleging repeated instances of sexual harassment, discrimination, and retaliation. During a settlement hearing, the par-

ties settled, and the court ordered the proceedings sealed. The parties were ordered to exchange a written settlement agreement and sign a general release. The court dismissed the case, and the parties stipulated to dismiss all claims with prejudice.

Eastern District of North Carolina

The court amended its local rule on sealed documents effective January 1, 2003. Absent statutory authority, court filings may be sealed only on court order obtained by motion. E.D.N.C. L. Civ. R. 79.2(a). Sealed documents must be delivered to the court in red envelopes with three lines of specified text designating the date of filing and that the document is to be filed under seal. *Id.* R. 79.2(e). The docket designates "generically the type of document filed under seal, but it will not contain a description that would disclose its identity." *Id.* R. 79.2(c). "After the action concludes and all appeals have been completed, counsel is charged with the responsibility of retrieving and maintaining all sealed documents. Upon 10 days notice by mail to counsel for all parties, and within thirty days after final disposition, the court may order the documents to be unsealed and they will thereafter be available for public inspection." *Id.* R. 79.2(d).

Statistics: 2,808 cases in termination cohort; 143 docket sheets (5.1%) have the word "seal" in them (but 57 of these merely have Crown Cork and Seal Company as a party); 12 complete docket sheets (0.43%) were reviewed; actual documents were examined for 4 cases (0.14%); 3 cases (0.11%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Lloyd v. Newton (NC-E 7:00-cv-00034 filed 02/22/2000).

Housing and accommodations action under the Americans with Disabilities Act and state law for failure to rent a hotel room to a disabled person who had a service dog but who was not blind. The parties filed a consent protective order, and the transcript of the settlement conference was sealed. The case ended in a stipulation of dismissal. Because the complaint included a claim for negligent supervision, settlement discussions may have included trade secrets on employee training.

Ramirez v. Beaulieu (NC-E 5:00-cv-00536 filed 07/25/2000).

Action under the Fair Labor Standards Act and state law by carpenters for unpaid wages. The

parties reached a confidential settlement agreement and filed a joint stipulation of dismissal. The stipulation specified that if the plaintiff notified the court within ninety days that the defendants had breached the agreement, then an attached sealed consent order would become effective. The ninety days elapsed without such notice, and the case was closed.

Watson v. Life Insurance Co. of North America (NC-E 5:01-cv-00870 filed 11/07/2001).

ERISA action for wrongfully denying disability benefits to a processing clerk. The disabled beneficiary was represented by her mother, who had power of attorney. The case settled, and the court approved the settlement. A sealed settlement agreement was filed.

Middle District of North Carolina

Sealed documents are sent to the records center in Atlanta along with the rest of the case file, where “[t]he confidentiality of sealed documents cannot be assured.” M.D.N.C. L.R. 83.5(c). At the end of the case, after the opportunity for appeal is exhausted, the clerk sends the parties a notice that they may retrieve sealed documents.

Statistics: 2,284 cases in termination cohort; 63 docket sheets (2.8%) have the word “seal” in them; 10 complete docket sheets (0.44%) were reviewed; actual documents were examined for 7 cases (0.31%); 6 cases (0.26%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Queen v. rha Health Services Inc. (NC-M 1:00-cv-00101 filed 02/01/2000).

Class action under the federal Fair Labor Standards Act and state law by employees of a residential facility for developmentally disabled adults, alleging that the employees working a night shift were required to remain on the premises without compensation for eight hours of their eighteen-hour shifts. The court dismissed the state law claims as preempted by the federal claim. The case settled, and the parties filed a joint motion under seal for an order approving the settlement. Such an order was granted, but the order says nothing about the terms of the settlement.

Saine v. Bristol-Myers Squibb Co. (NC-M 1:00-cv-00271 filed 03/20/2000).

ERISA action by a drug sales employee to challenge denial of short-term disability benefits for migraine headaches. The court granted the defen-

dants summary judgment on the ERISA claim, but denied them summary judgment on a counterclaim for the return of mistakenly issued salary checks. The parties settled the counterclaim before trial, but the plaintiff apparently violated the settlement agreement (before the case was dismissed), so the defendant employer moved for enforcement of the agreement, attaching the agreement as a sealed exhibit. The plaintiff apparently violated the court’s order to enforce the agreement by failing to return money and sales supplies, including a car, a computer, and drugs, so the employer moved for an order of contempt. The court did not rule on this motion, because the parties settled their dispute and filed a stipulated dismissal.

Kurth v. BioSignia Inc. (NC-M 1:00-cv-00534 filed 06/01/2000).

Stockholders’ suit for wrongful cancellation of a stock certificate allegedly worth \$3.3 million. The plaintiff received the certificate in exchange for legal services provided to a CEO of a subsidiary of the defendant. The defendant alleged that the CEO’s interest in the certificate never vested because he was forced to resign, with a suggestion of wrongdoing. The case settled on the eve of trial, and the court sealed the transcript of the settlement conference. The plaintiff thereafter refused to sign the settlement papers because of a term impairing his ability to sell his stock, so the defendant filed a sealed motion to enforce the agreement. The plaintiff’s unsealed response included the agreement as an exhibit. The disagreement was resolved, and a copy of the settlement agreement was attached to an unsealed stipulation of dismissal.

Parks v. Alteon Inc. (NC-M 1:00-cv-00657 filed 07/13/2000).

Product liability case in which the plaintiff sued drug companies, alleging that their experimental diabetes drug caused kidney failure. The parties reached a confidential private settlement agreement, but one defendant apparently was late in making its settlement payment. The settlement agreement was filed under seal as an exhibit to a motion to enforce it. The case was dismissed without action on the motion.

Gaskins v. Carolina Manufacturer’s Service Inc. (NC-M 1:00-cv-01219 filed 12/01/2000).

Employment civil rights action in which black plaintiffs sued their employer for race discrimina-

tion. One plaintiff had second thoughts about the confidential settlement agreement and moved pro se to set it aside. The defendant attached a sealed copy of the settlement agreement to a motion to enforce it. The court ruled against the plaintiff's motion and ordered her to pay a \$3,600 sanction to cover the defendant's attorney fees to enforce the agreement.

Estate of Mayo v. Kindred Nursing Centers East LLC (NC-M 1:02-cv-00260 filed 04/05/2002).

Medical malpractice action against a nursing home for wrongful death resulting from the insertion of a feeding tube into a patient's trachea instead of her esophagus, resulting in her lungs receiving feeding solution. The case was dismissed pursuant to a sealed consent order.

Western District of North Carolina

Local Rule 5.1(D)(4) states: "Unless otherwise ordered by a court, any case file or documents under court seal that have not previously been unsealed by court order shall be unsealed at the time of final disposition of the case." According to the clerk, sealed documents are not sent to the records center. If there were an order to keep a document sealed, the court probably would keep the whole file, because there would be so few.

Statistics: 2,203 cases in termination cohort; 2 docket sheets are sealed (0.09%)—both of these cases' disposition codes suggest no sealed settlement agreements;⁶³ 101 unsealed docket sheets (4.6%) have the word "seal" in them; 27 complete docket sheets (1.2%) were reviewed; actual documents were examined for 14 cases (0.64%); 11 cases (0.50%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Estate of Carr v. Louisiana-Pacific Corp. (NC-W 5:99-cv-00023 filed 02/24/1999), consolidated with *Estate of Carr v. Louisiana-Pacific Corp.* (NC-W 5:99-cv-00024 filed 02/24/1999), *Estate of Carr v. Louisiana-Pacific Corp.* (NC-W 5:99-cv-00025 filed 02/24/1999), *Estate of Phillips v. Louisiana-Pacific Corp.* (NC-W 5:99-cv-00026 filed 02/24/1999), and *Estate of Carr v. Louisiana-Pacific Corp.* (NC-W 5:99-cv-00027 filed 02/24/1999).

Consolidated motor vehicle tort action in which five decedents' estates sued the alleged employers

of a logging truck driver. According to the complaints, the driver became distracted while changing a tape in his cab. He veered into oncoming traffic and ran a church van off the road. He then swerved back into the correct lane, and the truck's logs spilled, crushing the van's five occupants. The district court granted summary judgment to the defendants on the grounds that the driver was not their agent, and the plaintiffs appealed. The case settled on appeal. The court had to approve the settlement agreement, because one of the plaintiffs was a minor representing her father's estate. Terms of the settlement agreement are under seal.

Delaney v. Stephens (NC-W 3:00-cv-00138 filed 03/24/2000).

Medical malpractice action by a three-year-old boy for "cardiac arrest and cephalad hematoma" allegedly resulting from his mother's physician's using a "vacuum assisted delivery device" during delivery. More than two years later the court denied a motion to continue the trial date, and one week in advance of the scheduled trial date, a document was filed under seal. A week later another document was filed under seal, and the case was closed the following day, with the disposition of the case coded as a consent judgment. A sealed settlement agreement apparently was filed.

McKinney v. CVS Pharmacy Inc. (NC-W 1:01-cv-00124 filed 06/08/2001).

Housing and accommodations action for refusal to permit a customer with a service dog to bring her dog into the store. The plaintiff alleged that she brought in the dog while filling a prescription and was rudely shooed away. A district manager allegedly told the plaintiff, "we don't have to let handicapped people in . . . if we don't want to." Subsequently the dog needed a prescription filled, and when the plaintiff visited the store to fill it she was humiliated, injured, and prosecuted for violating the store's no-dog rule. The defendants claimed that the plaintiff was not disabled, the dog was not a service dog, and the dog was not sufficiently well-behaved. The case was dismissed pursuant to a sealed settlement agreement. Nearly two months later another document was filed under seal—apparently a motion by the defendants to enforce the agreement. The plaintiff's counsel notified the court that the plaintiff had not yet signed the agreement or received the settlement check and that the plaintiff was no longer permitted to visit counsel at his office. Thereafter the plaintiff represented herself. Two additional

63. One case transferred to another district, 1 voluntary dismissal.

documents were filed under seal, at least one of which was an order.

McGinnis v. Eli Lilly and Co. (NC-W 5:02-cv-00010 filed 01/22/2002).

Product liability action by a surviving husband and three children claiming that Prozac caused the decedent's suicide. Prior to a mediation conference the parties settled, and four documents were filed under seal.

J.M. Huber Corp. v. Potlatch Corp. (NC-W 3:02-cv-00034 filed 01/25/2002).

Trademark action concerning a plywood substitute called oriented strand board. The case was dismissed in reliance on a settlement agreement, which was sealed and filed as an exhibit to the order dismissing the case. The order included the statement that "[t]he parties . . . consent to the Court retaining jurisdiction of this matter to enforce the terms of a confidential Settlement Agreement"

Estate of Neville v. United States (NC-W 1:02-cv-00029 filed 02/04/2002).

Medical malpractice action alleging wrongful death at a Veterans' Administration hospital following surgery to correct bile peritonitis, which had resulted from an earlier negligent Veterans' Administration hospital surgery. A mediator's report was filed under seal, and the case was dismissed as settled.

Rasavong v. Fortis Benefits Insurance Co. (NC-W 3:02-cv-00132 filed 03/29/2002).

ERISA action challenging the defendant's refusal to pay life insurance benefits on the grounds that the plaintiff was a suspect in her husband's murder. The parties moved for approval of a confidential settlement agreement, which the court ordered filed under seal. The docket sheet, however, does not show such a filing, but the court did approve the agreement. Unsealed documents disclose that the defendant paid the \$370,000 insurance claim in full to the plaintiff and that this was deemed in the best interest of her minor children, who would receive the payment themselves if she were ineligible. It is not clear what term of the settlement agreement remains confidential.

District of North Dakota

Unless the court orders otherwise, sealed documents are returned to the parties filing them when

the case is over. D.N.D. L.R. 5.1(F)(1). If an entire file is permanently sealed, then the court retains custody of it. *Id.* R. 5.1(F)(3).

Statistics: 574 cases in termination cohort; 126 docket sheets (22%) have the word "seal" in them; 8 complete docket sheets (1.4%) were reviewed; actual documents were examined for 6 cases (1.0%); 5 cases (0.87%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Jones-VanTassel v. Richland County (ND 3:99-cv-00060 filed 04/16/1999).

Civil rights employment action by an emergency manager against her former employer for wrongful termination based on sex. The transcript of the settlement conference was sealed. The court retained jurisdiction to enforce the terms of the settlement agreement.

United States v. BM&H Partnership (ND 3:99-cv-00163 filed 11/17/1999).

Action under the Fair Housing Act by husband and wife caretakers of an apartment complex for wrongful termination and eviction. The complaint alleged retaliation for aiding tenants in asserting their right to fair housing. The transcript of the settlement conference was sealed. The court approved the settlement on behalf of the plaintiffs' three minor children.

Steen v. United States (ND 4:00-cv-00040 filed 03/21/2000).

Personal injury action under the Federal Tort Claims Act by an Air Force base maintenance worker who was employed by a civilian contractor, for sexual harassment and assault by a civilian employee who inspects the work of contractors. During the settlement conference the court agreed to keep the settlement amount under seal. About a month after the settlement conference, the government filed a motion to unseal the settlement amount of \$30,000 because confidentiality provisions in settlement agreements are contrary to the policy of the Department of Justice

Johnson v. Pharmacia & Upjohn Co. (ND 1:00-cv-00047 filed 04/10/2000).

Personal injury action by a pharmaceutical sales representative for wrongful termination based on his felony conviction, which had been divulged to the defendant prior to his employment. The parties settled at a pretrial conference. The court or-

dered that transcripts and any settlement documents that contain monetary amounts be sealed.

Binstock v. The Finder (ND 1:00-cv-00087 filed 07/14/2000).

Personal injury action under the Family Medical Leave Act and state law by a woman who was unaware that she was entitled to twelve weeks of maternity leave and returned to work after five weeks so that she would not lose her benefits. The court granted summary judgment on the state law claim of negligence. The transcript of the settlement conference was sealed.

Northern District of Oklahoma⁶⁴

“No pleading, document, or record shall be placed under seal without a prior, specific order of the court finding good cause to do so.” N.D. Okla. L.R. 79.1(D).

Statistics: 1,954 cases in termination cohort; 176 docket sheets (9.0%) have the word “seal” in them; 35 complete docket sheets (1.8%) were reviewed; actual documents were examined for 15 cases (0.77%); 11 cases (0.56%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

First National Bank and Trust Co. of Miami v. Ottawa County Chapter of the American Cancer Society (OK-N 4:99-cv-00691 filed 08/18/1999).

Contract action concerning the identity of the rightful claimants of a \$1.6 million residuary trust fund. The case settled. The clerk’s minutes indicate that the court ordered the settlement agreement and the agreed order for distribution of funds filed under seal. Shortly thereafter, two sealed documents were filed with the court.

Whelan v. Saint John (OK-N 4:00-cv-00109 filed 02/07/2000).

Medical malpractice action against a plastic surgeon, alleging negligence and battery resulting in serious permanent injury. The case was dismissed as settled. The confidentiality order relating to the case dismissal was filed under seal.

Rogers v. Kaplan (OK-N 4:00-cv-00321 filed 04/19/2000).

Medical malpractice action on behalf of an incompetent person, alleging negligence in the administration of epidural anesthesia, which resulted in severe and permanent brain injury. The case was dismissed as settled. The settlement hearing transcript was sealed.

Ramsey v. Brighter Day Inc. (OK-N 4:00-cv-00593 filed 07/18/2000).

Action under the Fair Labor Standards Act for failure to pay habilitation training specialists and supervisors overtime compensation. The case was dismissed as settled, and the confidential settlement agreement was filed under seal.

Doe v. City of Tulsa (OK-N 4:00-cv-00896 filed 10/18/2000).

Civil rights action alleging failure to take adequate precautions to avoid public disclosure of the plaintiff’s medical condition. The case was dismissed as settled. The court ordered all matters related to the case sealed except for the agreed judgment, which discloses the amount of settlement to be \$9,000. The sealed documents include the complaint, settlement conference report, and administrative closing order.

Raimond v. Toys “R” Us—Delaware Inc. (OK-N 4:00-cv-01090 filed 12/29/2000).

Product liability action on behalf of a minor who was severely injured by a dangerously designed and manufactured water toy sold by the defendant. The case was dismissed as settled. Documents related to the joint settlement report hearing, including the court’s order dismissing the case, were sealed.

Momper v. Hartford Life Insurance Co. (OK-N 4:01-cv-00597 filed 08/10/2001).

Insurance action on behalf of a minor to recover benefits for injuries incurred during a soccer match. The case settled. The court approved the settlement and ordered the transcript of the settlement proceedings sealed.

Sandoval v. Travelers Property Casualty (OK-N 4:01-cv-00847 filed 11/15/2001).

Insurance action by a surviving spouse alleging failure to pay benefits for the decedent’s lethal injuries sustained in an automobile accident that was caused by an uninsured motorist’s negli-

64. This district is included in the study because of its good-cause rule.

gence. The case settled. The court appointed a guardian ad litem for the decedent's minor child and approved the settlement. The court order was filed under seal.

Ainsworth v. Bailey Inc. (OK-N 4:02-cv-00191 filed 03/08/2002).

Civil rights action on behalf of children, alleging race discrimination by the defendant's hotel. The case settled, and the court order approving the settlement was sealed.

Impressions on Hold International Inc. v. AMFYOYO LLC (OK-N 4:02-cv-00216 filed 03/21/2002).

Trademark infringement action alleging the attempted conversion of an on-hold message company and the wrongful use of the company's name. The defendants filed a counterclaim alleging breach of contract. The case settled, and the court ordered the transcript of the settlement proceedings sealed.

United States ex. rel Seneca-Cayuga Tribe of Oklahoma v. Humble Riggs & Associates LLC (OK-N 4:02-cv-00239 filed 04/01/2002).

Statutory action concerning the management of a tobacco enterprise on United States property entrusted to an Indian tribe. The case settled. The court granted the plaintiff's motion to seal certain filed documents, including the settlement agreement.

Eastern District of Pennsylvania

No relevant local rule.

Statistics: 19,520 cases in termination cohort; 655 docket sheets (3.4%) have the word "seal" in them; 208 complete docket sheets (1.1%) were reviewed; actual documents were examined for 192 cases (0.98%); 183 cases (0.94%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Tara M. v. City of Philadelphia (PA-E 2:97-cv-01041 filed 02/11/1997).

Civil rights case involving a foster child who was sexually abused and seriously burned by her foster parents. The plaintiff alleged that the foster parents were not properly screened. After the child was injured, the defendant failed to properly treat the child's physical and mental injuries. A third-party complaint was filed by the Department of Human Services against the attorney who was appointed counsel for the child. Another

third-party complaint was filed against the insurer of the company with which the defendant contracted to provide foster care services. A petition for leave to compromise the minor's claims and the defendant's response were sealed. The order of dismissal reported that the settlement amount was \$4,310,000.

Lord v. Living Bridges (PA-E 2:97-cv-06355 filed 10/14/1997).

Personal injury case against an adoption agency that falsely represented the background and health status of three Mexican minors adopted by the plaintiffs. A sealed settlement agreement was filed.

Graco Children's Products Inc. v. Regaldo International LLC (PA-E 2:97-cv-06885 filed 11/10/1997).

Patent case involving a "foldable play yard." The defendant filed a sealed motion to enforce the settlement agreement. Three months after the motion was filed, the court denied it as moot, because the parties had filed a consent judgment and voluntary permanent injunction. The consent judgment noted that the defendant would pay the plaintiff a set amount, but the amount was not revealed.

Keyes v. Deere & Co. (PA-E 2:98-cv-00602 filed 02/06/1998).

Product liability case involving a minor. Early in the case the mother was removed as plaintiff and a guardian ad litem was appointed. The entire case file is sealed. A settlement agreement is among the sealed documents. The final entry on the docket sheet reports that the minor received \$21,024.

Slater v. Liberty Mutual Insurance Co. (PA-E 2:98-cv-01711 filed 03/31/1998).

Insurance case involving a workers' compensation claim. The entire case was sealed. The plaintiff filed a motion to enforce the settlement agreement. After a four-day jury trial, the case was settled.

E.B. v. Easton Area School District (PA-E 2:99-cv-00256 filed 01/19/1999).

Civil rights case involving a 13-year-old boy who was assaulted by a teacher. The signed release and order permitting compromise of the minor's claims were sealed.

Appendix C. Case Descriptions

Official Committee of Unsecured Creditors v. Shapiro (PA-E 2:99-cv-00526 filed 02/01/1999).

Securities fraud case involving a scheme to register, offer, and sell securities. A sealed settlement agreement was filed.

Ruiz v. Metrobank of Philadelphia NA (PA-E 2:99-cv-00655 filed 02/08/1999).

Contract action by a woman and her minor child involving default on a promissory note. The petition to settle the minor's claims was sealed. A motion for sanctions included an exhibit revealing that the minor received \$224,455.

Miller v. Hygrade Food Products Corp. (PA-E 2:99-cv-01087 filed 03/01/1999).

Employment class action by African-American plaintiffs against their employer for race discrimination. The transcript of a settlement hearing was sealed.

In re Air Crash Disaster Near Peggy's Cove, Nova Scotia on September 2, 1998 (MDL 1269 transferred 04/07/1999).⁶⁵

Airline cases claiming that an aircraft crashed because of a malfunction in the in-flight entertainment center, killing 229 passengers and crew members. A stipulation and order was filed under seal in each member case on the same day that the case was closed.

65. This multidistrict litigation includes 144 Pennsylvania Eastern member cases in our termination cohort: Tschudin v. McDonnell Douglas Corp. (PA-E 2:99-cv-02291 filed 05/04/1999); Dwek v. McDonnell Douglas Corp. (PA-E 2:99-cv-02293 filed 05/04/1999); Kalogridakis v. Swissair (PA-E 2:99-cv-02523 filed 05/17/1999); Arnaldi v. Sair Group (PA-E 2:99-cv-02524 filed 05/17/1999); Junod v. Swissair (PA-E 2:99-cv-02528 filed 05/17/1999); Economopoulos v. Swissair (PA-E 2:99-cv-02554 filed 05/18/1999); Kief v. Swissair (PA-E 2:99-cv-02534 filed 05/19/1999); Kessler v. Swissair Transport Co. (PA-E 2:99-cv-02586 filed 05/19/1999); Librett v. Swissair Transport Co. (PA-E 2:99-cv-03146 filed 06/21/1999); Neuweiler v. Swissair Transport Co. (PA-E 2:99-cv-03147 filed 06/21/1999); Lee v. Sair Group (PA-E 2:99-cv-03148 filed 06/21/1999); Harrity v. Swissair Transport Co. (PA-E 2:99-cv-03245 filed 06/25/1999); Scott v. Swissair Transport Co. (PA-E 2:99-cv-03753 filed 07/23/1999); Rizza v. Swissair Transport Co. (PA-E 2:99-cv-03948 filed 08/04/1999); Wilson v. Swissair Transport Co. (PA-E 2:99-cv-04058 filed 08/11/1999); Rogers v. Swissair Transport Co. (PA-E 2:99-cv-04193 filed 08/19/1999); Rogers v. Swissair Transport Co. (PA-E 2:99-cv-04194 filed 08/19/1999); Myers v. Swissair

Transport Co. (PA-E 2:99-cv-04195 filed 08/19/1999); Shuster v. Swissair Transport Co. (PA-E 2:99-cv-04235 filed 08/20/1999); Caripides v. Swissair Transport Co. (PA-E 2:99-cv-04236 filed 08/20/1999); Watson v. Delta Airlines Inc. (PA-E 2:99-cv-04869 filed 09/30/1999); Estate of Tahmoush v. Swissair Transport Co. (PA-E 2:99-cv-04971 filed 10/07/1999); Diba v. Swissair Transport Co. (PA-E 2:99-cv-04972 filed 10/07/1999); Troyon v. Swissair Transport Co. (PA-E 2:99-cv-05236 filed 10/22/1999); Estate of Colmery v. Swissair Group (PA-E 2:99-cv-05269 filed 10/25/1999); Estate of Kleinman v. Delta Airlines Inc. (PA-E 2:99-cv-05316 filed 10/27/1999); Nelson v. Sair Group (PA-E 2:99-cv-05372 filed 10/29/1999); Lamotta v. Interactive Flight Technologies Inc. (PA-E 2:99-cv-05526 filed 11/08/1999); Estate of Hopcraft v. Swissair Transport Co. (PA-E 2:99-cv-05584 filed 11/09/1999); Arnaldi v. Sair Group (PA-E 2:99-cv-05623 filed 11/12/1999); Diasparra v. Swissair Group (PA-E 2:99-cv-05624 filed 11/12/1999); Thompson v. Swissair Transport Co. (PA-E 2:99-cv-05773 filed 11/19/1999); Estate of Kief v. Swissair (PA-E 2:99-cv-05775 filed 11/19/1999); Smith v. Swissair Transport Co. (PA-E 2:99-cv-05776 filed 11/19/1999); Conley v. Swissair Transport Co. (PA-E 2:99-cv-05778 filed 11/19/1999); Mann v. Swissair Transport Co. (PA-E 2:99-cv-05779 filed 11/19/1999); Estate of Gerety v. Swissair Transport Co. (PA-E 2:99-cv-05780 filed 11/19/1999); McGinnis v. Interactive Flight Technologies Inc. (PA-E 2:99-cv-05809 filed 11/22/1999); Diasparra v. E.I. Dupont de Nemours and Co. (PA-E 2:99-cv-05812 filed 11/22/1999); Alleaume v. Swissair Transport Co. (PA-E 2:99-cv-05854 filed 11/23/1999); Monay v. Swissair (PA-E 2:99-cv-05855 filed 11/23/1999); Dwek v. Swissair (PA-E 2:99-cv-05857 filed 11/23/1999); Faherty v. Swissair Transport Co. (PA-E 2:99-cv-05858 filed 11/23/1999); Wight v. Swissair Transport Co. (PA-E 2:99-cv-05860 filed 11/23/1999); Fetherolf v. Swissair Transport Co. (PA-E 2:99-cv-05861 filed 11/23/1999); Abady v. Swissair Transport Co. (PA-E 2:99-cv-05997 filed 12/01/1999); Estate of Smith v. Swissair (PA-E 2:99-cv-06002 filed 12/01/1999); McGinnis v. Swissair Transport Co. (PA-E 2:99-cv-06003 filed 12/01/1999); Hawkins v. Swissair Transport Co. (PA-E 2:99-cv-06004 filed 12/01/1999); Amposta v. Swissair Transport Co. (PA-E 2:99-cv-06010 filed 12/01/1999); Dalmais-Kitzinger v. Swissair Transport Co. (PA-E 2:99-cv-06013 filed 12/01/1999); Brown v. Swissair Transport Co. (PA-E 2:99-cv-06014 filed 12/01/1999); De Roussan v. Swissair Transport Co. (PA-E 2:99-cv-06019 filed 12/01/1999); Albertsen v. Swissair Transport Co. (PA-E 2:99-cv-06024 filed 12/01/1999); Rizza v. Swissair Transport Co. (PA-E 2:99-cv-06026 filed 12/01/1999); Levina v. Swissair Transport Co. (PA-E 2:99-cv-06027 filed 12/01/1999); St. George-Kreis v. Swissair Transport Co. (PA-E 2:99-cv-06030 filed 12/01/1999); De Graef v. Swissair Transport Co. (PA-E 2:99-cv-06031 filed 12/01/1999); Estate of Ezell v. Swissair Transport Co. (PA-E 2:99-cv-06032 filed 12/01/1999); Smith v. E.I. Dupont de Nemours

and Co. (PA-E 2:99-cv-06033 filed 12/01/1999); Kassel v. E.I. Dupont de Nemours and Co. (PA-E 2:99-cv-06035 filed 12/01/1999); Boure v. Sair Group (PA-E 2:99-cv-06040 filed 12/01/1999); Valade v. Sair Group (PA-E 2:99-cv-06043 filed 12/01/1999); Richard v. Sair Group (PA-E 2:99-cv-06044 filed 12/01/1999); Rossi v. Sair Group (PA-E 2:99-cv-06046 filed 12/01/1999); Burckhardt v. Sair Group (PA-E 2:99-cv-06049 filed 12/01/1999); Babolat v. Sair Group (PA-E 2:99-cv-06050 filed 12/01/1999); Pavrette v. Sair Group (PA-E 2:99-cv-06052 filed 12/01/1999); Baconnier v. Sair Group (PA-E 2:99-cv-06053 filed 12/01/1999); Foxford v. Sair Group (PA-E 2:99-cv-06055 filed 12/01/1999); Gabourdes v. Sair Group (PA-E 2:99-cv-06056 filed 12/01/1999); Gardner v. Sair Group (PA-E 2:99-cv-06058 filed 12/01/1999); Salakhoutdinov v. Sair Group (PA-E 2:99-cv-06059 filed 12/01/1999); Kenneth v. Sair Group (PA-E 2:99-cv-06060 filed 12/01/1999); Levina v. Swissair Transport Co. (PA-E 2:99-cv-06061 filed 12/01/1999); Bell v. Swissair (PA-E 2:99-cv-06075 filed 12/01/1999); Burrus v. Swissair (PA-E 2:99-cv-06084 filed 12/02/1999); Mendo Martínez v. E.I. Dupont de Nemours and Co. (PA-E 2:99-cv-06086 filed 12/02/1999); Burrus v. E.I. Dupont de Nemours and Co. (PA-E 2:99-cv-06087 filed 12/02/1999); Kief v. E.I. Dupont de Nemours and Co. (PA-E 2:99-cv-06088 filed 12/02/1999); Dwek v. E.I. Dupont de Nemours and Co. (PA-E 2:99-cv-06093 filed 12/02/1999); Monay v. E.I. Dupont de Nemours and Co. (PA-E 2:99-cv-06094 filed 12/02/1999); Hastie v. Sair Group (PA-E 2:99-cv-06100 filed 12/02/1999); Dwek v. McDonnell Douglas Corp. (PA-E 2:99-cv-06102 filed 12/02/1999); Baconnier v. Sair Group (PA-E 2:99-cv-06110 filed 12/02/1999); Mendo Martínez v. Swissair (PA-E 2:99-cv-06113 filed 12/02/1999); Mendo Martínez v. McDonnell Douglas Corp. (PA-E 2:99-cv-06119 filed 12/02/1999); Alleaume v. McDonnell Douglas Corp. (PA-E 2:99-cv-06150 filed 12/03/1999); Thompson v. Swissair Transport Co. (PA-E 2:99-cv-06169 filed 12/06/1999); de la Soudiere-Gerety v. Interactive Flight Technologies Inc. (PA-E 2:99-cv-06170 filed 12/06/1999); Scarboro v. McDonnell Douglas Corp. (PA-E 2:99-cv-06172 filed 12/06/1999); Estate of Mir-Alai v. McDonnell Douglas Corp. (PA-E 2:99-cv-06173 filed 12/06/1999); Estate of Benjamin v. McDonnell Douglas Corp. (PA-E 2:99-cv-06174 filed 12/06/1999); Estate of Makarevitch v. McDonnell Douglas Corp. (PA-E 2:99-cv-06176 filed 12/06/1999); Smith v. Interactive Flight Technologies Inc. (PA-E 2:99-cv-06178 filed 12/06/1999); Jhurani v. Sair Group (PA-E 2:99-cv-06180 filed 12/06/1999); Schachter v. Sair Group (PA-E 2:99-cv-06181 filed 12/06/1999); Wilkins v. Sair Group (PA-E 2:99-cv-06182 filed 12/06/1999); Estate of Mozes v. E.I. Dupont de Nemours and Co. (PA-E 2:99-cv-06242 filed 12/08/1999); Kokoruda v. Swissair Transport Co. (PA-E 2:99-cv-06267 filed 12/09/1999); Sheer v. Swissair Transport Co. (PA-E 2:99-cv-06268 filed 12/09/1999); Houtait v. Swissair Transport Co. (PA-E 2:99-cv-06269 filed 12/09/1999); Karamanoukian v. Swissair Transport Co. (PA-E 2:99-

cv-06270 filed 12/09/1999); Smith v. Swissair (PA-E 2:99-cv-06418 filed 12/15/1999); Leite de Roussan v. McDonnell Douglas Corp. (PA-E 2:99-cv-06438 filed 12/17/1999); Rizza v. McDonnell Douglas Corp. (PA-E 2:99-cv-06443 filed 12/17/1999); Levina v. McDonnell Douglas Corp. (PA-E 2:99-cv-06444 filed 12/17/1999); Levina v. McDonnell Douglas Corp. (PA-E 2:99-cv-06446 filed 12/17/1999); St. George-Kreis v. McDonnell Douglas Corp. (PA-E 2:99-cv-06448 filed 12/17/1999); Sutton v. E.I. Dupont de Nemours and Co. (PA-E 2:99-cv-06450 filed 12/17/1999); Ezell Brown v. Interactive Flight Technologies Inc. (PA-E 2:99-cv-06497 filed 12/21/1999); Burghardt v. Swissair Transport Co. (PA-E 2:99-cv-06537 filed 12/23/1999); Estate of Hoche v. Swissair Transport Co. (PA-E 2:00-cv-00011 filed 01/03/2000); Beckett v. Sair Group (PA-E 2:00-cv-00130 filed 01/10/2000); Estate of Springer v. Sair Group (PA-E 2:00-cv-00155 filed 01/11/2000); Mallin v. Sair Group (PA-E 2:00-cv-00330 filed 01/18/2000); Viollet v. McDonnell Douglas Corp. (PA-E 2:00-cv-00418 filed 01/24/2000); Viollet v. McDonnell Douglas Corp. (PA-E 2:00-cv-00419 filed 01/24/2000); Noceto v. McDonnell Douglas Corp. (PA-E 2:00-cv-00420 filed 01/24/2000); Viollet v. McDonnell Douglas Corp. (PA-E 2:00-cv-00421 filed 01/24/2000); Kennett v. Interactive Flight Technologies Inc. (PA-E 2:00-cv-00422 filed 01/24/2000); Diasparra v. Interactive Flight Technologies Inc. (PA-E 2:00-cv-00694 filed 02/08/2000); Sutton v. Interactive Flight Technologies Inc. (PA-E 2:00-cv-00695 filed 02/08/2000); O'Gara v. Sair Group (PA-E 2:00-cv-00912 filed 02/18/2000); Rizza v. Interactive Flight Technologies Inc. (PA-E 2:00-cv-01417 filed 03/20/2000); Estate of Milne v. Swissair (PA-E 2:00-cv-02258 filed 05/01/2000); Estate of Ezell v. E.I. Dupont de Nemours and Co. (PA-E 2:00-cv-02259 filed 05/01/2000); Estate of Hoche v. Swissair Transport Co. (PA-E 2:00-cv-02623 filed 05/23/2000); Estate of Ikonopoulou v. Interactive Flight Technologies Inc. (PA-E 2:00-cv-02676 filed 05/25/2000); Rizza v. Santa Barbara Aerospace Inc. (PA-E 2:00-cv-03558 filed 07/13/2000); Estate of Coppola v. Swissair Transport Co. (PA-E 2:00-cv-04105 filed 08/14/2000); Kennett v. Santa Barbara Aerospace Inc. (PA-E 2:00-cv-05281 filed 10/16/2000); Estate of Donaldson v. Swissair Transport Co. (PA-E 2:00-cv-05495 filed 10/30/2000); Froghi v. Swissair Transport Co. (PA-E 2:00-cv-05497 filed 10/30/2000); Gabourdes v. Sair Group (PA-E 2:00-cv-05499 filed 10/30/2000); Scarboro v. Swissair (PA-E 2:00-cv-05526 filed 10/31/2000); Makarevitch v. Swissair (PA-E 2:00-cv-05527 filed 10/31/2000); Guely v. Swissair (PA-E 2:00-cv-05528 filed 10/31/2000); Rizza v. E.I. Dupont de Nemours and Co. (PA-E 2:00-cv-05557 filed 11/01/2000); Estate of Gerety v. Santa Barbara Aerospace Inc. (PA-E 2:00-cv-05857 filed 11/16/2000); Coop Generale d'Assurances SA v. Swissair (PA-E 2:00-cv-06392 filed 12/18/2000); Lamotta v. Santa Barbara Aerospace Inc. (PA-E 2:01-cv-00092 filed 01/08/2001); Coop Generale d'Assurances SA v. McDonnell Douglas Corp. (PA-E 2:01-cv-00200 filed 01/16/2001); Hoche v.

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Monument Builders of Pennsylvania Inc. v. Catholic Cemeteries Association (PA-E 2:99-cv-02030 filed 04/22/1999).

Antitrust case involving restraint of trade and conspiracy to fix prices for monuments and markers. A settlement agreement was filed, but the amount of the settlement was sealed. The plaintiff filed a motion to enforce the settlement agreement.

HomeNexus Inc. v. DirectWeb Inc. (PA-E 2:99-cv-02316 filed 05/05/1999).

Trademark case involving theft and execution of the plaintiff's business plan for a computer and Internet service. The plaintiff's motion to dismiss the case with prejudice pursuant to a settlement agreement was sealed.

Valitek Inc. v. Hewlett-Packard Co. (PA-E 2:99-cv-03024 filed 06/15/1999).

Copyright case in which the entire record was sealed. The court granted a joint motion to seal the record of the negotiated settlement.

Talus v. D&L Co. (PA-E 2:99-cv-03386 filed 07/02/1999).

Product liability action by the parents of an eight-year-old boy who suffered an eye injury while playing with a "Stomp Rocket" toy. A sealed settlement agreement was filed. An order approving the petition to compromise the minor's action reveals a settlement amount of \$400,000.

Spaziani v. Chester County Hospital (PA-E 2:99-cv-04172 filed 08/18/1999).

Medical malpractice case involving the premature birth of the plaintiffs' child, which resulted from a misdiagnosis of an infection. The plaintiffs' son was born with cerebral palsy. The plaintiffs' motion to approve the settlement was sealed.

Mahoney v. Daisy Manufacturing Co. (PA-E 2:99-cv-04286 filed 08/25/1999).

Product liability action by the parents of a 16-year-old boy who suffered a severe brain injury when he was shot in the head with an air gun by a friend. The plaintiffs alleged that the air gun was defective because a BB became lodged in the internal parts of the gun and allowed numerous

rounds of air to be fired, which caused the user to erroneously believe the gun was empty. A third-party complaint was filed by the manufacturer and distributor against the person who fired the air gun. The petition to seal court documents related to the settlement was granted.

Dunkin' Donuts Inc. v. Shree Dev Donut LLC (PA-E 2:99-cv-06655 filed 12/30/1999).

Trademark case involving continued use of the "Dunkin' Donuts" mark after termination of a franchise agreement. The consent judgment was sealed.

Holdsworth v. Allegheny University Medical Practices at Hahnemann Hospital (PA-E 2:00-cv-02443 filed 05/11/2000).

ERISA and wrongful death action involving delay and denial of benefits to provide the plaintiff's decedent minor daughter with health care services to treat her cancer. The court order approving the settlement was filed under seal.

Villanova University v. Villanova Alumni Education Foundation Inc. (PA-E 2:00-cv-03007 filed 06/13/2000).

Trademark case concerning an affiliation agreement. The tape of the settlement conference and the order dismissing the case were sealed.

Travelers Casualty & Surety Co. v. Church of the Lord Jesus Christ of the Apostolic Faith (PA-E 2:00-cv-03320 filed 06/29/2000).

Insurance case against a church, its officers, and other individuals. The entire case file is sealed. The last document filed was a stipulation of dismissal.

Shumake v. Toyota Motor Sales USA Inc. (PA-E 2:00-cv-03427 filed 07/06/2000).

Motor vehicle product liability action by the parents of a man who died in a car crash when the restraint system failed in a 1994 Toyota Tercel in which he was a passenger. A sealed settlement agreement was filed.

InterDigital Communications Corp. v. Lomp (PA-E 2:00-cv-04579 filed 09/11/2000).

Labor litigation case involving breach of an employment contract. The plaintiff filed documents under seal three weeks before the case was dismissed as settled. A sealed settlement agreement apparently was filed.

Santa Barbara Aerospace Inc. (PA-E 2:01-cv-01722 filed 04/09/2001).

Sealed Settlement Agreements

Dusewicz v. National Casualty Co. (PA-E 2:00-cv-04625 filed 09/12/2000).

Insurance action by a mother and father and their four minor children against their health insurance company for denying coverage of the minors' Lyme disease. The plaintiffs' petition to settle or compromise a minor's action was sealed.

Ford Motor Co. v. Cattco Marketing (PA-E 2:00-cv-04672 filed 09/14/2000).

Trademark case involving infringement of the "MOTORCRAFT" mark in the defendant's Web site domain name. A sealed settlement agreement was filed.

Windowwizards Inc. v. Window Wholesalers Inc. (PA-E 2:00-cv-04679 filed 09/14/2000).

Trademark case alleging unfair competition in making disparaging remarks about the plaintiff's window product to potential customers. Three months after the case was dismissed, a sealed consent order was filed.

Coles v. University of Pennsylvania Health System (PA-E 2:00-cv-05178 filed 10/12/2000).

Employment action by an African-American female dietetic assistant based on sex, race, and age discrimination. One day before the case was dismissed, the record of a status conference was sealed.

Pilotti v. Bell (PA-E 2:00-cv-05695 filed 11/08/2000).

Employment action by a sales assistant against her former employer for sexual harassment. The plaintiff filed a sealed motion to enforce the settlement agreement. Three days later the plaintiff withdrew the motion.

Estate of Bailey v. NBC News Productions Inc. (PA-E 2:00-cv-05717 filed 11/09/2000).

Product liability action by the estate of a man who died when he fell 100 feet while installing a cable on a television tower. A third-party complaint was brought against the manufacturer of the clip used by the decedent to attach his harness to the hoisting line. The petition for approval of settlement and the order approving settlement were sealed.

Booth v. Grand Pacific Finance Corp. (PA-E 2:00-cv-06034 filed 11/28/2000).

Contract case involving breach of a graphic design and printing services contract. The plaintiff filed a sealed motion to enforce the settlement agreement. The court denied the motion as moot, but the order contained settlement terms that were crossed out.

Susavage v. Bucks County Schools Intermediate Unit No. 22 (PA-E 2:00-cv-06217 filed 12/08/2000).

Civil rights action by the parents of a handicapped child who died from injuries sustained when she was strangled by an ill-fitting safety harness while being transported to school. The tape of the settlement conference was sealed.

McCullins v. Woods Services Inc. (PA-E 2:01-cv-00110 filed 01/08/2001).

Personal injury action by a woman and her 12-year-old son, who was sexually abused by a 15-year-old student at a private residential school for the mentally retarded. The plaintiffs' petition to approve the settlement and the order approving settlement were sealed.

Travelers Indemnity Co. v. Schmalz (PA-E 2:01-cv-00361 filed 01/24/2001).

Contract action involving breach of an employment agreement and misappropriation of trade secrets. A sealed settlement agreement was filed.

Millard v. Nasoya Foods Inc. (PA-E 2:01-cv-01313 filed 03/20/2001).

Motor vehicle personal injury action by the estate of a man who was burned to death when the defendants' tractor-trailer crashed into his car. A sealed settlement agreement was filed.

Slaymaker v. Rival Co. (PA-E 2:01-cv-03912 filed 08/02/2001).

Product liability action by the father of an 11-month-old boy who sustained serious burns as a result of coming in contact with hot oil spilled from the defendant's multi-cooker. The plaintiff alleged that the cooker had a design defect that allowed it to slide off of surfaces. A sealed settlement agreement was filed.

Eisen v. Temple University (PA-E 2:01-cv-04165 filed 08/15/2001).

Employment action by a tenured mathematics professor against his former employers, who fired

Appendix C. Case Descriptions

him when he refused to pass all students in a remedial math class. The same day that the case was closed, a court order, presumably containing terms of the settlement, was sealed. The defendant filed a settlement statement the same day, stating that the plaintiff did not have evidence to support grade inflation.

Harris v. Rohm & Haas Co. (PA-E 2:01-cv-05184 filed 10/12/2001).

Employment action by an African-American woman alleging race discrimination with respect to promotion and compensation. The defendant filed a sealed motion to enforce the settlement agreement. The plaintiff's response to the motion also was sealed. The court granted the defendant's motion to enforce.

Burgee v. Vision Quest Ltd. (PA-E 2:01-cv-05948 filed 11/28/2001).

Civil rights action by an African-American treatment family advocate, who suffered from post-traumatic stress disorder, against his former employer for discrimination based on age and disability. A sealed settlement agreement was filed.

Ely v. Doylestown Lumber and Millwork Inc. (PA-E 2:02-cv-00423 filed 01/25/2002).

Employment action by a delivery driver against his former employer for age discrimination. A sealed settlement agreement was filed.

Medina v. Rose Art Industries Inc. (PA-E 2:02-cv-01864 filed 04/05/2002).

Product liability action by the parents of a minor child who suffered burns while playing with a "Creative Case Soap Making" art project. The plaintiffs' motion to settle and compromise the minor's action was sealed.

Dougherty v. Dougherty (PA-E 2:02-cv-06683 filed 08/09/2002).

Civil rights action by the mother of a 13-year-old boy who was grabbed by a police officer while walking home, verbally assaulted, beaten, and arrested for disorderly conduct and resisting arrest. The petition to settle or compromise the minor's claims was sealed.

Middle District of Pennsylvania

Court documents are unsealed two years after the case is over, unless good cause is shown. M.D. Penn. L.R. 79.5.

Statistics: 4,678 cases in termination cohort; 520 docket sheets (11%) have the word "seal" in them; 25 complete docket sheets (0.53%) were reviewed; actual documents were examined for 12 cases (0.26%); 10 cases (0.21%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Gould Inc. v. A & M Battery & Tire Service (PA-M 3:91-cv-01714 filed 12/23/1991).

Environmental action seeking declaratory judgment under CERCLA for causing pollution on the plaintiff's property. After a bench trial the court ordered that the defendants were responsible for 25% of the cleanup costs. The plaintiff filed two motions to enforce two settlement agreements with three of the defendants. The two settlement agreements were filed as sealed attachments to the motion. One motion was withdrawn, and the court ordered that the second settlement agreement could not be enforced because the attorney did not have the authority to settle. The plaintiff was awarded approximately \$10 million by the remaining forty-two defendants. The plaintiff filed three sealed motions to enforce the settlement agreement against three of the remaining defendants.

Havenstrite v. Toyota Motor Sales USA Inc. (PA-M 3:93-cv-00120 filed 01/26/1993).

Personal injury action that was consolidated with two other cases. The lead case involved an employee of a battery-crushing and lead-processing facility who suffered health problems when exposed to excessive quantities of lead. After the cases were consolidated all filings occurred in the lead case. The two companion cases involved families with residences near the processing facility. After an eight-day bench trial, the court awarded \$130,000 to four children who suffered from learning disabilities as a result of lead exposure. The plaintiffs' claims of diminution of property value and loss of use and enjoyment were dismissed. Two other plaintiffs were awarded \$145,000 for injuries caused by lead exposure. The approval of a partial distribution of funds was sealed.

Doe v. Chamberlin (PA-M 3:97-cv-01765 filed 11/18/1997).

Personal injury action by the parents of minors ages 15 and 16 who were photographed by the defendants in sexually suggestive positions. The plaintiffs filed a sealed motion to enforce the set-

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tlement agreement. The court granted the motion to enforce a settlement amount of \$350,000. The transcript of the hearing to enforce was sealed.

Van Arsdale v. Toyota Motor Sales USA Inc. (PA-M 1:99-cv-02206 filed 12/22/1999).

Product liability action involving the death of a man who suffered head injuries while operating a Toyota fork-lift. A sealed settlement agreement was filed.

First Union National Bank v. Solfanelli (PA-M 3:00-cv-00732 filed 04/21/2000).

Statutory action involving an appeal of a bankruptcy judgment. The defendant had defaulted on a stipulation and security agreement with the plaintiff that was initiated during the defendant's bankruptcy. The plaintiff decided to liquidate stock collateral that the defendant had pledged, but the defendant still owed \$1,191,496. The defendant filed an adversary proceeding against the plaintiff, alleging that it violated the agreement, and the court ruled in favor of the defendant and deemed the entire debt satisfied. The same day that the case settled, two sealed documents were filed.

Fessler v. Losch Plumbing & Heating Inc. (PA-M 3:00-cv-01456 filed 08/14/2000).

Statutory action under the Family and Medical Leave Act by a husband and wife who were wrongfully terminated after they took time off after the birth of their child. The tape of a settlement conference was sealed.

Sampson v. Wayne Memorial Hospital (PA-M 3:00-cv-01581 filed 09/06/2000).

Medical malpractice action by the parents of a minor who was misdiagnosed by the defendants and subsequently lost his right testicle. The plaintiffs' petition to approve distribution of funds was sealed.

Graham Packaging Co. v. Mooney (PA-M 1:00-cv-02027 filed 11/20/2000).

Patent case involving "blown-finish hot fill containers." The last entry on the docket sheet notes that all documents in the case were sealed. A joint sealed settlement agreement was filed.

Bosserman v. Lloyd-Silber Orthopedics Inc. (PA-M 1:01-cv-02288 filed 12/03/2001).

ERISA action by a woman against her former employer for withholding \$18,771 in principal from her employee stock ownership trust account. A sealed settlement agreement was filed.

Mizerak v. Webster Trucking Corp. (PA-M 3:02-cv-00277 filed 02/20/2002).

Motor vehicle case in which one defendant's car struck the plaintiffs' van from behind while it was stopped in traffic and then forced it into another lane of a highway, where it was hit by another defendant's tractor-trailer. This accident resulted in the death of the plaintiffs' youngest child, injury to two other minor children, and a traumatic injury that has left the father in a vegetative state. The court granted the plaintiffs' sealed petition to approve the settlement. The order noted that the allocation of \$120,000 was to be used for the benefit of the father's medical care.

Western District of Pennsylvania

No relevant local rule.

Statistics: 6,218 cases in termination cohort; 306 docket sheets (4.9%) have the word "seal" in them; 44 complete docket sheets (0.71%) were reviewed; actual documents were examined for 20 cases (0.32%); 16 cases (0.26%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Koppers Co. v. Aetna Casualty and Surety Co. (PA-W 2:85-cv-02136 filed 09/16/1985).

Insurance case involving a manufacturing company's coverage for chemical-waste liability. Shortly before trial, the plaintiff settled with most of the insurance companies. At least some of these settlement agreements were confidential and filed under seal. A jury awarded the plaintiff \$70,072,341. The court reduced the verdict against the remaining defendants to account for the limits of the insurance policies and the amounts of settlement.

Keystone Powdered Metal Co. v. Borg-Warner Automotive Morse TEC Corp. (PA-W 1:98-cv-00106 filed 03/24/1998).

Contract case involving breach of a confidentiality agreement and a supply agreement. A sealed motion and six sealed documents were filed two days before the case was closed.

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SGL Carbon Corp. v. Dupenn Inc. (PA-W 1:98-cv-00231 filed 08/12/1998).

Personal property damage case involving misappropriation of trade secrets, breach of an employment contract, and breach of fiduciary duties. A sealed settlement agreement was filed as an attachment to the stipulation of dismissal. The court retained jurisdiction to enforce the settlement agreement until the conclusion of the terms of the agreement.

CCL Container (Hermitage) Inc. v. Exal Corp. (PA-W 2:98-cv-01786 filed 10/28/1998).

Patent case involving infringement of a "method of forming a metal container having an elongated neck." A joint sealed settlement agreement was filed.

Joseph v. Sears Roebuck & Co. (PA-W 1:99-cv-00013 filed 01/20/1999).

Personal injury action by the parents of a minor who injured her face in the defendant's store when she fell into glass shelving. The plaintiffs' motion for settlement was filed under seal.

T.M. v. Perry (PA-W 2:99-cv-00831 filed 05/27/1999).

Personal injury case involving the sexual abuse of the plaintiffs' 11-year-old granddaughter by her minor cousin while visiting her aunt and uncle over the summer. The plaintiffs' motion for settlement of the minor's claims was filed under seal.

United States ex rel. Diehl v. Three Rivers Family Hospice Inc. (PA-W 2:00-cv-00077 filed 01/12/2000).

Qui tam action under the False Claims Act for fraudulent Medicare billing against providers of rehabilitative medical services. The plaintiff filed a settlement agreement as an attachment to a motion to enforce. Two weeks later the court sealed the motion and the settlement agreement.

Etzal v. General McLane School District (PA-W 1:00-cv-00032 filed 01/28/2000).

Civil rights case involving a middle school student who was suspended from school without a hearing for using the word "kill" in a talent show video. The parties filed a sealed motion for approval of settlement. One month after the case was dismissed, the court granted a newspaper's request to unseal the motion. The motion included a letter to the student's parents stating that

the school district was "satisfied that violent action was not intended" by the plaintiff. The motion for approval did not disclose any other terms of settlement.

Southwest Recreational Industries Inc. v. Turf USA Installations Inc. (PA-W 2:00-cv-00342 filed 02/23/2000).

Designated a slander case, this case is really an unfair competition case that includes causes of action for commercial disparagement and defamation and involves a synthetic sports surface product. A sealed settlement agreement was filed.

Angelo v. General Motors Corp. (PA-W 2:00-cv-00871 filed 05/04/2000).

Product liability case. The court granted a joint motion to approve the minor's settlement and seal the record. All documents were sealed.

Benson v. First Energy Nuclear Operating Co. (PA-W 2:00-cv-01101 filed 06/05/2000).

Designated an employment discrimination case, this is really a class action under the Fair Labor Standards Act by power plant employees for failure to pay overtime wages. A sealed settlement agreement was filed.

Aguirre v. Alamo Rent-A-Car Inc. (PA-W 2:00-cv-01374 filed 07/14/2000).

Motor vehicle action by a woman injured in an accident. The transcripts from two settlement conferences were sealed. The case was dismissed as settled twelve days after the second sealed settlement conference.

Performance Health Inc. v. Kustomer Kinetics Inc. (PA-W 2:00-cv-02323 filed 11/22/2000).

Trademark infringement case involving "analgesic balm" products. The defendant's motion to enforce the settlement agreement was sealed.

Estate of Grannis v. City of New Castle (PA-W 2:01-cv-00033 filed 01/04/2001).

Civil rights action by the estate of a man who committed suicide while being held for public drunkenness and disorderly conduct at the defendant's jail. In the order closing the case, the court noted that the case was settled and ordered the parties to file a motion to approve settlement. Ten days later the plaintiff filed a sealed motion.

Smith v. City of Monessen (PA-W 2:01-cv-00744 filed 04/26/2001).

Civil rights case in which the police removed an 11-year-old from the custody of her mother and did not allow her mother to accompany her daughter to the hospital. The police released the minor into the custody of a non-family member, who sexually abused her. The court denied the defendant's sealed motion to enforce the settlement agreement. The joint motion for dismissal noted that the minor would receive \$359.71 per month for ten years after she turned 18. The settlement also provided for \$4,000 for future burial of the mother and \$9,200 for attorney fees.

APT Acquisition Corp. v. Southwest Recreational Industries Inc. (PA-W 2:01-cv-01893 filed 10/10/2001).

Designated a patent case, this case is really a trademark infringement case involving a polyurethane product. A sealed consent judgment was filed.

District of Puerto Rico

No relevant local rule.

Statistics: 3,562 cases in termination cohort; 223 docket sheets (6.3%) have the word "seal" in them; 159 complete docket sheets (4.5%) were reviewed; actual documents were examined for 120 cases (3.4%); 117 cases (3.3%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Generadora de Electricidad del Caribe Inc. v. Foster Wheeler Corp. (PR 3:94-cv-01405 filed 03/29/1994).

Designated a personal injury action, this is really a contract action concerning a partnership to construct a \$200 million electric plant in the Dominican Republic. In their third amended complaint, the plaintiffs added a claim for development of stress-related lupus by one of the principals. Several defendants filed counterclaims under seal. The case was dismissed pursuant to a sealed settlement agreement.

Guillemard Noble v. Sánchez Rodríguez (PR 3:94-cv-01961 filed 07/14/1994).

Motor vehicle action for permanent brain injury by a passenger in an automobile crash that killed the driver. The plaintiff alleged that two defendants were racing their cars, and one of them hit a five-foot-tall mound of dirt, constructed by other defendants, causing the car to fly and hit the car in which the plaintiff was riding. The dirt mound

was created in excavation for a warehouse's water pipe, and the plaintiff named as defendants various entities associated with the excavation. The defendants filed cross-claims against each other. The plaintiff settled with all defendants pursuant to sealed settlement agreements, but the court was asked to decide whether the warehouse owners' insurance policy covered the action. The court decided that it did not, and the warehouse owners appealed. The court of appeals affirmed. An unsealed order discloses that the warehouse owners' share of settlement obligations was \$126,500.

Serrano Moran v. Toledo Davila (PR 3:96-cv-01383 filed 03/29/1996).

Civil rights action by the parents of a mentally impaired man who was beaten by the police during an arrest and later died of his injuries. The medical malpractice claims against the hospital were dismissed. A sealed settlement agreement was filed. The court granted a motion for disbursement of funds in the amount of \$40,103 to the plaintiffs.

Landrau Romero v. Banco Popular de Puerto Rico (PR 3:96-cv-01470 filed 04/16/1996).

Employment action for wrongful constructive termination because of race. The case was dismissed pursuant to a sealed settlement agreement approved by the court.

Dominguez Cruz v. Suttle Caribe Inc. (PR 3:96-cv-01611 filed 05/20/1996).

Statutory action for wrongful termination because of age. The court granted summary judgment to the defendant on the federal claims and dismissed the state claims without prejudice, but the court of appeals reversed the summary judgment. The case settled on the eve of trial, but a dispute arose over the terms of settlement, such as confidentiality. An unsealed "motion in further support of motion for entry of judgment" discloses the amount of settlement to be \$250,000. The parties resolved their dispute by sealed stipulation.

Gines Vega v. Crowley American Transport Inc. (PR 3:96-cv-01638 filed 05/24/1996).

Motor vehicle action against the owner of a trailer hauled by a trucker who sped through a red light and collided with a car, killing the car's driver and three passengers and injuring the fourth passenger. The plaintiffs included the injured passenger and many relatives of the deceased and injured, including minors. The trailer's owner

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filed a third-party complaint against the driver, the driver's employer, the truck's owner, the consignee of the cargo, insurance companies, and conjugal partnerships of the individuals. Cross-claims and third-party complaints also were filed. The case was consolidated with three other related actions. A sealed settlement agreement was filed. Unsealed documents indicate that the entire litigation included several half-million-dollar settlements.

Herrera v. Ports Authority of the Commonwealth of Puerto Rico (PR 3:96-cv-01743 filed 06/19/1996).

Employment action by a chief of purchases clerk and her minor children against her former employer for race and political discrimination. A sealed settlement agreement was filed.

Arrivi Cros v. Torres Rivera (PR 3:96-cv-02216 filed 10/07/1996).

Employment action by attorneys against the president of the Industrial Commission of Puerto Rico for wrongful demotion and termination because of political party affiliation. The case was dismissed pursuant to sealed settlement agreements with each plaintiff. The plaintiffs subsequently filed a motion to show cause why settlement payments were not made on time, and just over two weeks later the defendant deposited a check for \$125,000 with the court. The plaintiffs then filed an unsealed motion for disbursement of funds, specifying individual settlements of \$53,000, \$40,000, and \$32,000. The following month the court issued checks for \$53,175.08, \$40,133.39, and \$32,108.40.

Saavedra Rodriguez v. Enron Corp. (PR 3:96-cv-02443 filed 11/22/1996).

Personal injury action consolidated with over 500 other cases and including over 1,500 plaintiffs against a gas company for deaths and injuries resulting from a massive gas explosion. Additional actions were filed in commonwealth court. The litigation is sometimes referred to as the Rio Piedras Explosion Litigation. The 632-page docket sheet catalogs 3,685 documents. Over the course of the litigation, there were numerous settlements, and there appear to be some settlement agreements filed under seal. It appears that settlement amounts sum to several dozen million dollars. Some settlement payments were jeopardized by Enron's bankruptcy.

San Antonio Mendoza v. WMS Industries (PR 3:97-cv-01717 filed 05/07/1997).

Labor litigation by three casino employees against their former employer for age discrimination and failure to pay minimum wage. A sealed settlement agreement was filed. Eleven months later the court granted a disbursement of funds in the amount of \$28,083 to one plaintiff and her minor child.

González Sampayo v. Fuentes Agostini (PR 3:97-cv-01784 filed 05/20/1997).

Civil rights action by two special agents of Puerto Rico's justice department against the department for interfering with their investigation of a senator's drug trafficking and other organized crime involvement. The case was dismissed pursuant to a sealed settlement agreement. An unsealed motion for consignment states that the department of justice paid \$50,000 in settlement. The court subsequently released \$50,193.67.

Rivera Rodríguez v. Frito Lay Snacks Caribbean Inc. (PR 3:97-cv-01825 filed 05/28/1997).

Employment action for wrongful termination of a human resources director. The plaintiff alleged that after the defendant's Puerto Rico operation came under the control of the defendant's Mexican office, he was terminated because he was over 40 (he was 46), he was Puerto Rican, and he had a history of chronic asthma and lymphoma. The case was dismissed pursuant to a sealed settlement agreement.

Caribe Shipping Co. v. Puerto Rico Ports Authority (PR 3:97-cv-01837 filed 05/30/1997).

Bankruptcy withdrawal. A shipping company filed for bankruptcy and sought an injunction against eviction by the port authority. The port authority filed a third-party action against the shipping company's principals for \$1.2 million in back rent, penalties, and interest. The adversary actions were withdrawn to the district court. The case was dismissed pursuant to a sealed settlement agreement.

Howe Investment Ltd. v. Perez & Compania de Puerto Rico Inc. (PR 3:97-cv-01864 filed 06/05/1997).

Contract action for \$1.5 million unpaid in an agreement to buy stevedoring services stock options for \$4,250,000. The case was dismissed pursuant to a sealed settlement agreement.

Sealed Settlement Agreements

Valles Santiago v. General Motors Corp. (PR 3:97-cv-02209 filed 08/12/1997).

Motor vehicle product liability case against the manufacturer and designer of a Chevrolet van. The plaintiffs' van was parked in the emergency lane on a roadway and was struck behind by another car, which caused the fuel tank to explode. Two children died, and three other children and three adults were seriously burned. The plaintiffs alleged a failure to warn and that the van had a faulty fuel system, bumper, and chassis because of manufacturing and design defects. A sealed settlement agreement was filed.

Pandolfi de Rinaldis v. Varela Llavona (PR 3:97-cv-02699 filed 11/18/1997).

Civil rights action by an executive director for wrongful termination after he denounced his co-workers' irregular use of council funds. A sealed settlement agreement was filed. The court granted disbursement of funds in the amount of \$27,586 to the plaintiff.

Mejías Miranda v. BBII Acquisition Corp. (PR 3:98-cv-01107 filed 02/06/1998).

Labor litigation alleging wrongful termination following pregnancy complications. The case was dismissed pursuant to a sealed settlement agreement approved by the court.

Colón v. Hospital Damas Inc. (PR 3:98-cv-01237 filed 03/09/1998).

Medical malpractice action alleging that a patient's treatment for a sore shoulder ultimately resulted in extensive brain surgery for a nonexistent tumor, which rendered the patient permanently comatose. The plaintiffs were the patient's wife, two minor sons, parents, brother, and sister. The sixteen defendants included physicians and corporate medical service providers. Nine defendants settled for \$4,000 each. After additional litigation, the remaining defendants settled for an additional \$2,250,000 total, and a sealed settlement agreement showing how much each defendant contributed was filed.

Batiste Perez v. Cruz (PR 3:98-cv-01267 filed 03/16/1998).

Civil rights action by three municipal officials against the new municipal administration for politically motivated curtailments of responsibility. The case was dismissed pursuant to a sealed settlement agreement.

Portalatin v. Feliciano de Melecio (PR 3:98-cv-01336 filed 04/01/1998).

Employment action for wrongful constructive discharge because of party affiliation. The case was dismissed pursuant to a sealed settlement agreement.

Rosado v. Puerto Rico Pepsi Cola Bottling Co. (PR 3:98-cv-01384 filed 04/09/1998).

Contract action alleging that the defendant employer induced the plaintiff to transfer from the employer's operations in Puerto Rico to operations in Brazil without disclosing that he would lose substantial employment benefits. The case was dismissed pursuant to a sealed settlement agreement.

Ramírez Cancel v. Loomis Fargo and Co. (PR 3:98-cv-01574 filed 05/27/1998).

Civil rights action for the wrongful identification of five adults and one minor as suspects in an armed robbery. The case was dismissed pursuant to a sealed settlement agreement.

FAC Inc. v. Cooperativa de Seguros de Vida (PR 3:98-cv-01592 filed 05/29/1998).

RICO action by a company with the responsibility for filing Medicare claims on behalf of Puerto Rico's health department against a company with the responsibility for reviewing such claims. The plaintiff alleged that the defendant sought illegal kickbacks for approving the claims. The defendants filed a counterclaim, alleging defamation. The case was dismissed as settled, and the plaintiff filed a sealed motion to enforce it. The matter was resolved, and the plaintiff's principals were paid \$1,521,416.58 by docketed check.

Madre v. Ortíz Ramos (PR 3:98-cv-01594 filed 06/01/1998).

Civil rights action by a mother and her two daughters, age four and six, for wrongful removal of the daughters to foster care, where they were sexually abused. All plaintiffs appeared by pseudonyms. The case was dismissed pursuant to a sealed settlement agreement. Docketed attorney fees and expenses were \$106,933.92.

Ramos Christian v. Ochoa Fertilizer Co. (PR 3:98-cv-01987 filed 08/28/1998).

Employment action by an administrative manager for wrongful termination. The plaintiffs included the employee, his wife, and their children. The

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case settled on the morning scheduled for trial, and the court approved a sealed settlement agreement.

Colón Mulero v. Mitsubishi Motors Corp. (PR 3:98-cv-02090 filed 09/29/1998).

Motor vehicle product liability action for injuries suffered when a Mitsubishi Expo's air bags deployed in a low-speed head-on collision. A month-old baby riding in her mother's arms became a quadriplegic. The mother also was injured. A second child and the woman's mother also were in the accident and were plaintiffs in the case. The case was dismissed pursuant to a sealed settlement agreement approved by the court.

Alvarado Rivera v. American Airlines Inc. (PR 3:98-cv-02120; filed 10/06/1998).

Airplane case consisting of twelve cases (three from the Virgin Islands) that were transferred by the MDL Panel to the District of Puerto Rico as MDL 1284. This case became the lead case and was filed against the airline and engine manufacturer of a plane that was forced to make an emergency landing after the engine caught fire. The plaintiffs were injured while exiting the plane using the inflatable ramps. A sealed stipulation was filed to approve the settlement agreements of minor plaintiffs in two member cases.

Vázquez Casas v. Commercial Development Administration (PR 3:98-cv-02198 filed 10/22/1998).

Designated a civil rights prisoner petition, this is really an employment sex discrimination action by the former director of the Commonwealth of Puerto Rico's Commercial Development Administration's Center in Caguas for wrongful termination. The case was dismissed pursuant to a sealed settlement agreement, and the plaintiff was paid \$85,000, according to the docket sheet.

Quinones González v. Loomis Fargo & Co. (PR 3:98-cv-02248 filed 11/04/1998).

Labor-management relations action by an armored truck driver against his union for breach of a collective bargaining agreement by failing to request arbitration or appeal his dismissal. A sealed settlement agreement was filed.

Meléndez Arroyo v. Cutler-Hammer de P.R. Co. (PR 3:98-cv-02395 filed 12/14/1998).

Labor litigation by a 58-year-old accountant against her former employer for age discrimina-

tion. The district court granted the defendant summary judgment, but the court of appeals reversed. The case subsequently was dismissed pursuant to a sealed judgment, which was followed by a sealed motion brought jointly by the parties and a sealed order.

Bernabel Díaz v. Detroit Diesel Allison Division (PR 3:99-cv-01002 filed 01/04/1999).

Product liability action by a Coast Guard engineer who lost a thumb and three fingers from his dominant hand while servicing a ship's diesel engine. The case was dismissed as settled, and settlement terms pertaining to payment to a minor dependent were sealed.

García Medina v. Compagnie Generale des Eaux (PR 3:99-cv-01114 filed 02/02/1999).

Designated a civil rights action, this really is an action by a Puerto Rican woman claiming sex and national origin discrimination in employment. The case was dismissed pursuant to a settlement agreement approved and sealed by the court.

Algarín Rodríguez v. Santiago Rivera (PR 3:99-cv-01178 filed 02/17/1999).

Personal injury action by the wife of a man who was killed when a truck carrying chemicals exploded, blowing the truck's doors into her husband's car. The defendants include the truck driver, the owner of the truck, the company that provided maintenance for the truck, the owner of the chemicals being transported, and the owner of the container in which the chemicals were stored. Both the truck driver and the maintenance company filed cross-claims against all other defendants. A sealed settlement agreement was filed. An informative motion by the owner of the chemicals revealed a payment to the plaintiff of \$65,000.

Cintrón Parrilla v. Eli Lilly Industries Inc. (PR 3:99-cv-01229 filed 03/05/1999).

ERISA action for disability benefits by a chemist who developed carpal tunnel syndrome and thoracic outlet syndrome. The defendants filed a motion to enforce a settlement agreement, specifying the amount of settlement to be \$60,000. The case was dismissed pursuant to a sealed settlement agreement, but the plaintiff filed a letter pro se asking the court's help concerning some settlement terms. The case continues.

Sealed Settlement Agreements

Rios Reyes v. Wackenhut Corrections Corp. (PR 3:99-cv-01306 filed 03/24/1999).

Prisoner civil rights action by an incarcerated former police officer, alleging that the defendants subjected him to disparate and highly restrictive conditions of confinement while in administrative segregation and refused to transfer him to another facility in direct violation of court orders. A sealed settlement agreement was filed. The court granted the motion to disburse \$8,500 in funds to the plaintiff.

Ojeda del Rio v. Pfizer Pharmaceuticals Inc. (PR 3:99-cv-01398 filed 04/13/1999).

Designated a personal injury action, this is an employment discrimination action by a chemical plant worker, alleging failure to accommodate his diabetes, ulcers, and carpal tunnel syndrome. The action was dismissed pursuant to a sealed settlement agreement.

Figueroa Rodríguez v. Volkswagen of America Inc. (PR 3:99-cv-01422 filed 04/16/1999).

Motor vehicle product liability action for complications from a fractured arm, which resulted from a Volkswagen Golf's airbag exploding in a fender-bender. The plaintiffs filed a sealed informative motion on September 18, which the court granted "until October 19." The parties filed a stipulation for dismissal on October 3, and the case was dismissed on October 18. The sealed motion probably contained terms of settlement.

Caraballo Rodríguez v. Clark Equipment Co. (PR 3:99-cv-01446 filed 04/26/1999).

Product liability action by two construction workers against the manufacturer of a crane that dropped a four-ton load on their legs, causing each to lose a leg and suffer permanent disabilities in the remaining leg. The case was dismissed by sealed judgment pursuant to a settlement agreement.

Yannello v. Patriot American Hospitality Inc. (PR 3:99-cv-01597 filed 06/01/1999).

Personal injury action for a fractured ankle suffered by the plaintiff when using a Wave Runner personal water craft at a resort. The plaintiff alleged that the injury resulted from improper training for the plaintiff. The plaintiff also alleged improper medical treatment of the ankle. The action was dismissed pursuant to a sealed settlement agreement. After the case was closed, the plaintiff filed a motion to seize assets of the renter

of the Wave Runner for nonpayment of its \$15,000 (12%) settlement contribution. (This implies that the total amount of settlement was \$125,000.) The defendant paid \$12,500 of the amount owed, and the court subsequently issued a writ of attachment for the remaining amount due.

Santiago Marrero v. Laboy Alvarado (PR 3:99-cv-01601 filed 06/02/1999).

Civil rights action for the group rape of a 17-year-old pretrial detainee who was improperly housed with young adults. The minor appeared in court papers by his initials; his parents appeared by their full names. The case was dismissed pursuant to a sealed settlement agreement.

Muniz Suffront v. Bidot de Jesus (PR 3:99-cv-01616 filed 06/04/1999).

Civil rights prisoner petition for inadequate medical care. After jury selection, the case was dismissed pursuant to a sealed settlement agreement.

Hernández Alfonso v. San Juan Motors Co. (PR 3:99-cv-01620 filed 06/04/1999).

Employment action by a salesman against his former employer for age discrimination. A sealed settlement agreement was filed.

Lorenzo Carrero v. Caribbean Refrescos Inc. (PR 3:99-cv-01708 filed 06/25/1999).

Employment action for wrongful termination and failure to accommodate foot pain arising from psoriasis and psoriatic arthritis. The case was dismissed pursuant to a sealed judgment incorporating terms of settlement.

Microsoft Corp. v. Computer Shack Inc. (PR 3:99-cv-01757 filed 07/06/1999).

Copyright case for unlawful distribution and sale of counterfeit computer programs. The complaint was temporarily sealed. The court awarded the plaintiff a partial judgment of \$9,354. A sealed settlement agreement was filed.

Majewska v. Bared & Sons Inc. (PR 3:99-cv-01770 filed 07/08/1999).

Employment action by a jewelry salesperson for sexual harassment. The case was dismissed pursuant to a sealed settlement agreement approved by the court.

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Cruz Jiménez v. Mueblerías Delgado Inc. (PR 3:99-cv-01792 filed 07/14/1999).

ERISA action for failure to notify the plaintiff of his COBRA rights upon his termination. The case was dismissed pursuant to a sealed settlement agreement.

Carl v. Cohen (PR 3:99-cv-01810 filed 07/19/1999).

Employment action by a naval base elementary school teacher for the school's refusal to administer prescribed injections to alleviate the teacher's periodic severe allergic reactions. The case was dismissed pursuant to a sealed settlement agreement. The Defense Department's unsealed notice of satisfaction of judgment discloses that the plaintiff received \$255,334 and her attorneys received \$124,666.

Rosario Rodríguez v. Trans Union de Puerto Rico Inc. (PR 3:99-cv-01819 filed 07/21/1999).

Designated a personal injury action, this is an action against two credit report services for damages arising from identity theft. Sealed documents were filed after a motion to enforce a settlement agreement and a stipulation for entry of judgment. The case was dismissed pursuant to a private settlement agreement "to remain under seal."

Ferretería Re-Ace Inc. v. Heil Environmental Industries Ltd. (PR 3:99-cv-01820 filed 07/21/1999).

Contract action concerning distribution of refuse-collection products. The case was dismissed pursuant to a sealed settlement agreement.

López Rivera v. Ramos (PR 3:99-cv-01829 filed 07/23/1999).

Personal injury case alleging that the defendant, who was acting as a medical expert in another personal injury case, performed a medical examination on the plaintiffs that included offensive touching of private body parts. The defendant filed a third-party complaint against his medical malpractice insurer. A sealed settlement agreement was filed.

Carmona Ríos v. Aramark Corp. (PR 3:99-cv-01985 filed 09/01/1999).

Labor litigation for wrongful termination of a food services director because of age. The case was dismissed pursuant to a sealed settlement agreement. An unsealed joint information motion of parties' settlement efforts states that the settle-

ment conference judge recommended a settlement amount between \$130,000 and \$140,000.

Fernández Martínez v. Citibank NA (PR 3:99-cv-02009 filed 09/10/1999).

Civil rights action by an account executive and her minor daughter against her former employer for discrimination based on her physical disabilities. A sealed settlement agreement was filed.

Rodríguez v. First Hospital Panamericano Inc. (PR 3:99-cv-02019 filed 09/13/1999).

Employment action under the Americans with Disabilities Act for failure to hire the plaintiff as a nursing director because of her lupus. The case was dismissed pursuant to a sealed settlement agreement.

Mendoza v. Hospital Doctor's Center of Manati (PR 3:99-cv-02027 filed 09/14/1999).

Medical malpractice action by the estate of a woman, including her minor child, who died from complications following an improper intubation during a Caesarian section. The doctor's insurance company filed a third-party complaint seeking reimbursement of any payments made to the plaintiff. A sealed settlement agreement was filed.

Núñez González v. United Parcel Service Inc. (PR 3:99-cv-02060 filed 09/22/1999).

Employment action by a black Dominican UPS driver for race and national origin discrimination. The case was dismissed pursuant to a sealed settlement agreement approved by the court.

Baez v. Puerto Rico Electrical Power Authority (PR 3:99-cv-02139 filed 10/07/1999).

Employment action by an electrician assistant for wrongful failure to promote him to a managerial position because of his political affiliation. The case was dismissed pursuant to a sealed settlement agreement.

Cruz Montes v. Cooperativa de Seguros de Vida (PR 3:99-cv-02158 filed 10/14/1999).

Employment action for sexual harassment. The case was dismissed pursuant to a sealed settlement agreement.

Sealed Settlement Agreements

Rosario Zayas v. Klosterman Baking Co. (PR 3:99-cv-02246 filed 11/10/1999).

Employment action by a maintenance worker for sexual harassment by her supervisor. On the third day of a jury trial, the case was dismissed pursuant to a sealed settlement agreement.

Guerrero Torres v. Clean Harbors Inc. (PR 3:99-cv-02290 filed 11/24/1999).

Designated a civil rights action, this really is an action for employment discrimination on the basis of sex and pregnancy. The case settled just after the jury was impaneled and sworn. After the case was dismissed, the plaintiff filed a sealed motion for execution of settlement. The defendant's unsealed response and the plaintiff's unsealed reply show a dispute over confidentiality of the settlement. The defendant claimed that the plaintiff agreed to confidentiality, and the plaintiff claimed that she did not. The dispute apparently was resolved by the parties.

Ramos Giraldo v. Compresores y Equipos Inc. (PR 3:99-cv-02308 filed 12/02/1999).

Designated a federal employers' liability action, this is an employment action by a billing clerk for wrongful termination because of age. The case was dismissed pursuant to a sealed settlement agreement.

Durieux Rodríguez v. Toledo (PR 3:99-cv-02344 filed 12/10/1999).

Civil rights action against police officers for a group beating. The defendants claimed that the beating was a figment of the plaintiff's imagination, and alleged that his severe facial injuries resulted from a motorcycle accident. The case was dismissed pursuant to a sealed settlement agreement. The docket sheet shows that the plaintiff was paid \$150,300.99 and his attorney was paid \$50,000.

Mario Rivera v. Zory's Hallmark (PR 3:99-cv-02348 filed 12/13/1999).

Copyright case involving the unauthorized reproduction of artwork. A sealed settlement agreement was filed.

Perez Rodríguez v. Irizarry Cancel (PR 3:99-cv-02407 filed 12/27/1999).

Civil rights action against police officers by a father, mother, and 14-year-old son for the warrantless search of their house and seizure of fifteen

firearms and 1,169 munitions. The case was dismissed pursuant to a sealed settlement agreement, but an unsealed motion to issue payment discloses that the amount of settlement was \$55,000; the parents received \$33,916.67, their attorney received \$18,083.33, and the minor received \$3,000.

Roman Castro v. Kelly Services Inc. (PR 3:99-cv-02430 filed 12/30/1999).

Sex discrimination employment action for wrongful termination because of pregnancy. The case was dismissed pursuant to a settlement agreement approved and sealed by the court.

Pramco LLC v. San Juan Bay Marina Inc. (PR 3:00-cv-01008 filed 01/03/2000).

Foreclosure action to recover \$471,733.73 in principal and \$18,043.81 in interest due on a \$500,000 Small Business Administration loan. The parties informed the court of settlement at a pretrial hearing, the tape of which the court ordered sealed. In a motion requesting more time to draw up settlement papers, the defendants stated that they had made one payment of \$200,000 to the plaintiff and the first monthly installment of \$4,500. The settlement agreement was subsequently filed under seal. A dispute over settlement payments arose, and the plaintiff threatened to foreclose on real property security for the loan, but the dispute was resolved and the case dismissed.

Adorno Colón v. Toledo Davila (PR 3:00-cv-01101 filed 01/25/2000).

Civil rights action by a man and his son, who were beaten by the police after the father's car crashed into a police car. A sealed settlement agreement was filed. An informative motion revealed that the plaintiffs received \$125,000.

Sierra Reyes v. San Jorge Children's Hospital (PR 3:00-cv-01246 filed 02/25/2000).

Medical malpractice case involving the death of the plaintiffs' 11-year-old son from complications of improper anesthesia. The hospital filed a third-party complaint against the anesthesiologist. A sealed settlement agreement was filed. The motion requesting disbursement of funds notes that the hospital paid \$400,000 and the doctors paid \$300,000. The decedent's minor brother received \$100,000 of the settlement.

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Avian Technology International Inc. v. Industrias Avícolas de Puerto Rico Inc. (PR 3:00-cv-01346 filed 03/16/2000).

Contract case involving breach of a purchasing agreement. On the second day of a jury trial, the settlement was placed on the record under seal.

J.A. Rafael Doll Inc. v. Lowell Shoe Inc. (PR 3:00-cv-01352 filed 03/17/2000).

Contract case involving breach of an exclusive sales representative agreement. A sealed settlement agreement was filed.

Díaz Colón v. Pepsi Cola of Puerto Rico Bottling Co. (PR 3:00-cv-01424 filed 04/05/2000).

Employment action by a truck driver against his former employer for age discrimination. The court denied the defendant's motion to enforce the settlement agreement, because the defendant never signed it. Seven weeks later a sealed settlement agreement was filed.

Martínez v. Commonwealth of Puerto Rico (PR 3:00-cv-01468 filed 04/13/2000).

Civil rights action by a firefighter for sexual harassment by her supervisor. A sealed settlement agreement was filed. The court granted the disbursement of funds in the amount of \$75,186 to the plaintiff.

Mercado Negrón v. Toledo (PR 3:00-cv-01577 filed 05/09/2000).

Civil rights action by a man for unlawful arrest and conviction for the sale of cocaine against the arresting officers, prosecutor, and a jury member who he claimed knew him. (A key witness later claimed he was coerced.) Claims were dismissed against the prosecutor and juror. A sealed settlement agreement was filed.

Mora Monteserín v. Intel Puerto Rico Ltd. (PR 3:00-cv-01659 filed 05/26/2000).

Employment action by an engineer against his former employer for discrimination based on his age and disability. A sealed settlement agreement was filed.

Rodríguez v. Morales Tefel (PR 3:00-cv-01731 filed 06/09/2000).

Copyright case involving illegal reproduction of the plaintiff's songs. The defendant filed a counterclaim for breach of contract. A sealed settlement agreement was filed.

Martínez Rosado v. Instituto Medico del Norte Inc. (PR 3:00-cv-01748 filed 06/14/2000).

Personal injury and medical malpractice action by the parents of a woman who died of injuries sustained in a car accident after she was transferred from the defendants' hospital to another hospital. A sealed settlement agreement was filed. The court granted a motion for disbursement of funds in the amount of \$100,000 to the plaintiffs.

Nazario Robles v. Raytheon Aerospace (PR 3:00-cv-01844 filed 07/10/2000).

Labor litigation for wrongful termination because of age. The case was dismissed pursuant to a sealed settlement agreement.

Dapena Thompson v. Municipality of San Juan (PR 3:00-cv-01928 filed 07/19/2000).

Employment action for wrongful demotion because of political party affiliation. The case was dismissed pursuant to a sealed settlement agreement, but unsealed documents disclose that the plaintiff received \$150,807.63 and a job reclassification to the highest pay grade of \$4,994.

Correa Cardona v. Municipality of San Juan (PR 3:00-cv-01995 filed 08/07/2000).

Employment action by the director of San Juan's legal aid program, claiming adverse employment actions related to the plaintiff's support of a losing candidate for mayor. The case settled, and the magistrate judge filed a sealed final settlement conference report stating the terms of the agreement. The plaintiff subsequently filed a motion to enforce it. The court responded by dismissing the case pursuant to the sealed agreement. San Juan moved to set aside the judgment on the grounds that settlements by San Juan must be approved by its municipal assembly. The court agreed that legally required approval by the assembly meant that the judgment had to be vacated, but the court sanctioned San Juan \$3,500 and sanctioned its attorneys the same amount for raising the issue so late. The court's order disclosed that the disputed settlement agreement called for a raise in the plaintiff's salary from \$4,738 per month to \$5,488 per month. The case again settled during trial, and a sealed document was filed. An informative motion subsequently disclosed that the assembly approved the settlement at a public hearing.

Sealed Settlement Agreements

Ruiz v. Home Depot (PR 3:00-cv-02082 filed 08/24/2000).

Employment action by a service representative who was terminated by the defendant when she requested an accommodation of fixed hours because of her hepatitis C condition. The court granted the joint stipulation for voluntary dismissal. The plaintiff filed a motion pro se to vacate the judgment on the ground that she revoked the settlement agreement. The defendant filed a sealed settlement agreement along with its opposition to the motion to vacate. The court determined that the settlement agreement was not revoked.

Bender v. Loomis Fargos and Co. of Puerto Rico Inc. (PR 3:00-cv-02150 filed 09/08/2000).

Personal injury action for the wrongful death of the plaintiff's 10-year-old daughter when the defendant's out-of-control armored truck collided with a car in which the girl was a passenger. The case was dismissed pursuant to a sealed settlement agreement.

Cruz Osorio v. Northwest Security Management Inc. (PR 3:00-cv-02223 filed 09/21/2000).

Employment action by a security officer for sexual harassment and wrongful termination because of sex and pregnancy. The case was dismissed pursuant to a sealed settlement agreement.

Santos Marín v. Kiewit Construction Co. (PR 3:00-cv-02470 filed 11/17/2000).

Employment action by a field service engineer for wrongful termination because of Puerto Rican national origin. The case was dismissed pursuant to a sealed settlement agreement.

Rosa Flores v. Kiewit Kenny Zachary (PR 3:00-cv-02471 filed 11/17/2000).

Employment action by a construction worker for wrongful termination and harassment because of Puerto Rican national origin. The action was dismissed pursuant to a sealed settlement agreement.

Banco Bilbao Vizcaya Puerto Rico v. Dellsky Realty Corp. (PR 3:00-cv-02540 filed 12/06/2000).

Contract case in which the plaintiff sought reimbursement of money spent on remodeling the defendant's property. A sealed settlement agreement was filed. One month later the court granted

the motion to disburse funds in the amount of \$403,015 to the plaintiff.

Jorge Rodríguez v. Toledo Davila (PR 3:00-cv-02558 filed 12/11/2000).

Civil rights action by a police officer wrongfully convicted of selling drugs to an undercover officer, who later was found to have participated in other sham prosecutions. The plaintiff served 2.5 years of a 15-year sentence. The case was dismissed pursuant to a sealed settlement agreement approved by the court. An unsealed motion requesting disbursement of funds states that the amount of settlement was \$30,000. The docket sheet shows that the plaintiff received a check for \$30,090.37.

Sánchez v. Pavarini Merit LP (PR 3:01-cv-01107 filed 01/23/2001).

Employment case filed under the Pregnancy Discrimination Act and ERISA by an administrative assistant against her former employer for terminating her while out on maternity leave and failing to comply with notice requirements concerning continuation of medical plan coverage. A sealed settlement agreement was filed.

Perez Corchado v. Puerto Rico Police Department (PR 3:01-cv-01189 filed 02/14/2001).

Designated a civil rights action, this is an employment action by a policewoman for sexual harassment by her supervisor. The case was dismissed pursuant to a sealed settlement agreement approved by the court. Thereafter the court disbursed \$125,188.13.

Estrada Berríos v. Daewoo Motor de Puerto Rico Inc. (PR 3:01-cv-01217 filed 02/21/2001).

Designated a civil rights action, this is an employment action alleging unwanted sexual advances and adverse treatment because of pregnancy. The action was dismissed pursuant to a settlement agreement, which appears to have been filed under seal.

RJO Inc. v. López (PR 3:01-cv-01284 filed 03/09/2001).

Trademark case involving the illegal use of the "Son By Four" mark by a recording company. The defendants filed a counterclaim for breach of contract. A sealed settlement agreement was filed.

Appendix C. Case Descriptions

Matos Morales v. Searle A. Monsanto Co. (PR 3:01-cv-01346 filed 03/26/2001).

Labor action by a woman who had a job offer withdrawn by a defendant when he found out about her disability. A sealed settlement agreement was filed.

Cortes Jiménez v. González Fernández (PR 3:01-cv-01419 filed 04/09/2001).

Medical malpractice action against doctors who misdiagnosed the plaintiff's medical condition and performed an unnecessary open-heart surgery. A sealed settlement agreement was filed. The court granted the motion for the authorization of funds for the plaintiff's minor child in the amount of \$10,000.

Santiago Ramos v. Rodríguez Otero (PR 3:01-cv-01444 filed 04/16/2001).

Employment action by thirty-three employees who did not have their position renewed by the newly elected mayor because of their political affiliations. Two other plaintiffs who retained their position alleged that they were harassed because of their political affiliation. A sealed settlement agreement was filed.

Dupprey Valentín v. K-Mart Corp. (PR 3:01-cv-01540 filed 05/01/2001).

Employment action by a part-time customer service representative against her former employer for terminating her when she revealed she was pregnant. A sealed settlement agreement was filed.

Rivera Requena v. Trailer Bridge Inc. (PR 3:01-cv-01575 filed 05/04/2001).

Employment action by an area manager against his former employer for age discrimination. A sealed settlement agreement was filed.

Quinones v. American Airlines Inc. (PR 3:01-cv-01708 filed 05/30/2001).

Airplane action by a woman who fractured her knee while on the defendant's plane. The settlement conference report was sealed.

Rivera Berríos v. Alvarado (PR 3:01-cv-01763 filed 06/07/2001).

Medical malpractice action for a botched removal of wisdom teeth. The case was dismissed pursuant to a sealed settlement agreement.

Cortés v. First Bank of Puerto Rico Inc. (PR 3:01-cv-01776 filed 06/11/2001).

Employment action for sex and age discrimination. The case was dismissed pursuant to a sealed settlement agreement approved by the court.

Rivera v. Puerto Rico Electrical Power Authority (PR 3:01-cv-01784 filed 06/12/2001).

Personal injury action by the wife of a man who was electrocuted when the pole he was using to pick fruit hit the defendant's power line. The defendant filed a third-party complaint against the owner of the fruit trees that blocked the clear view of the power line. A sealed settlement agreement was filed.

Lebrón Santiago v. Qualex Caribe Corp. (PR 3:01-cv-01802 filed 06/14/2001).

Civil rights action by a chemical driver against his former employer, who terminated him after he returned from a work-related back injury and requested light duty. A sealed settlement agreement was filed.

Ewing v. Rivera (PR 3:01-cv-01866 filed 06/27/2001).

Civil rights action by a man held in jail for twenty-one days for wrongful arrest and prosecution for rape. A sealed settlement agreement was filed. The court granted the motion to consign funds in the amount of \$8,000 to the plaintiff.

Lopez Cuevas v. Acevedo Sevilla (PR 3:01-cv-01871 filed 06/28/2001).

Employment action for wrongful constructive discharge in retaliation for jury service. The court appointed counsel to represent the plaintiff and dismissed the action pursuant to a sealed settlement agreement.

Velez Virola v. Casiano Quiles (PR 3:01-cv-01890 filed 07/03/2001).

Employment action by an administrative official who was reassigned to another position without notice because of his political affiliation. A sealed settlement agreement was filed.

Fuladoza Alequín v. First Federal Finance Corp. (PR 3:01-cv-01891 filed 07/03/2001).

Employment action for wrongful termination because of pregnancy. The case was dismissed pursuant to a sealed settlement agreement.

Sealed Settlement Agreements

Santos Santiago v. Banco Bilbao Vizcaya Argentina (PR 3:01-cv-02030 filed 08/01/2001).

Action under the Fair Labor Standards Act by a bank employee for unpaid overtime compensation. The case was dismissed pursuant to a sealed settlement agreement.

Rodríguez Meléndez v. First Hospital Panamericano (PR 3:01-cv-02050 filed 08/06/2001).

Labor action by a woman against her former employer, who terminated her after she continued to ask for time off to attend therapy for her carpal tunnel syndrome and to take her son to therapy for his hyperactivity. A sealed settlement agreement was filed.

Microsoft Corp. v. SkyTalkwest Telecom LLC (PR 3:01-cv-02127 filed 08/21/2001).

Designated a contract action, this is an action for infringement of computer software copyrights by a lessor of computer equipment. The complaint was filed under seal, the court issued a temporary restraining order, the complaint was unsealed, and the parties filed a sealed, consented preliminary injunctive decree. The case was closed that day.

Gracia Delgado v. Calderón (PR 3:01-cv-02198 filed 09/07/2001).

Employment action by an administrator against his former employer, the governor of Puerto Rico, for political discrimination. A sealed settlement agreement was filed. The court granted the motion to disburse funds in the amount of \$135,000 to the plaintiff.

Perez Salamán v. Banco Santander Puerto Rico (PR 3:01-cv-02208 filed 09/12/2001).

Employment action by a black bank employee against his former employer for race discrimination. A sealed settlement agreement was filed.

Rivera Bou v. Premier Farnell Co. (PR 3:01-cv-02373 filed 10/15/2001).

Employment action by a saleswoman against her former employer for age discrimination. A sealed settlement agreement was filed.

Colón Andujar v. Cooperativa de Ahorro y Credito Vegabajena Inc. (PR 3:01-cv-02378 filed 10/15/2001).

Designated a civil rights action, this is really an employment action by an executive vice president

against her former employer for age discrimination. A sealed stipulation for voluntary dismissal was filed.

Quinones v. Castro Rios (PR 3:01-cv-02495 filed 11/02/2001).

Contract case involving breach of a performance agreement by the defendants' band. The plaintiff filed a civil suit in Ohio and was awarded a default judgment of \$77,786. The plaintiff filed this case to domesticate the judgment. A sealed settlement agreement was filed. Four months later the plaintiff filed a motion for attachment of the defendants' property, because they did not pay the settlement.

Medina Tejada v. Dencaribbean Inc. (PR 3:01-cv-02518 filed 11/06/2001).

Designated a product liability action, this is really an employment action by a black waitress against her former employer for race discrimination. A sealed settlement agreement was filed.

Don King Productions Inc. v. Santana (PR 3:01-cv-02741 filed 12/28/2001).

Statutory action against the owner of a bar who charged customers to view a televised boxing match without a license agreement with the plaintiff. A sealed settlement agreement was filed.

Rodríguez v. Commonwealth of Puerto Rico (PR 3:02-cv-01193 filed 02/08/2002), consolidated with *Perez Hernández v. Commonwealth of Puerto Rico* (PR 3:02-cv-01582 filed 04/16/2002).

Employment actions by commonwealth employees for wrongful termination in retaliation for supporting a losing candidate for governor. Four cases were consolidated. The actions were dismissed pursuant to sealed settlement agreements, three of which were filed in the lead case and one of which was filed in a member case. Docket sheets in the four cases indicate settlement payments of \$160,223.59, \$141,025.95, \$110,153.72, and \$100,139.75.

Vázquez Ortiz v. Raytheon Aerospace Inc. (PR 3:02-cv-01682 filed 05/06/2002).

Classified as a personal injury case, this is an employment action for wrongful termination and disability discrimination. The case was dismissed pursuant to a sealed settlement agreement.

Popular Inc. v. Popular Staffing Services Corp. (PR 3:02-cv-02058 filed 07/11/2002).

Trademark action concerning use of the name "POPULAR." The action was dismissed pursuant to a sealed settlement agreement.

District of South Carolina

A new local rule proscribes the filing of a sealed settlement agreement. D.S.C. L.R. 5.03(C).

Statistics: 8,126 cases in termination cohort; 311 docket sheets (3.8%) have the word "seal" in them (but 136 of these merely have "seal" as the docket entry clerk identifier, and another 13 merely have "seal" in the party name); 25 complete docket sheets (0.31%) were reviewed; actual documents were examined for 8 cases (0.10%); 8 cases (0.10%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Doe v. Florence School District No. 1 (SC 4:99-cv-01007 filed 04/08/1999).

Civil rights action by a developmentally disabled 15-year-old girl for rape by a school security guard, who had been transferred to his current position from another school where he had been accused by parents of sexually harassing students. The court dismissed the case as settled and scheduled a settlement conference one week later to approve the settlement agreement because there was a minor party. The settlement agreement is sealed.

Johnson v. Prime Inc. (SC 8:00-cv-01523 filed 05/17/2000).

Motor vehicle action against a truck driver and trucking companies for wrongful death caused by the truck's colliding with traffic stopped for road construction. The plaintiff dismissed the trucker and settled with the trucking companies, whose liability insurer paid the settlement. The court dismissed the action without prejudice and then conducted a sealed settlement conference two weeks later, at which it dismissed the action with prejudice after the terms of the settlement apparently were satisfied.

Seeling v. Norfolk Southern Railway Co. (SC 3:00-cv-01893 filed 06/14/2000).

Action under the Federal Employer's Liability Act by a trainman for unspecified injuries allegedly resulting from his employer's negligence in maintaining a safe working environment. Documents filed in the case indicate the trainman may have fallen off a train. The judge issued an order

dismissing the case as "settled by the payment of a sum of money" and sealing "the record of this settlement, other than the fact of its existence."

Curry v. Fripp Co. (SC 9:00-cv-02579 filed 08/18/2000).

Contract action for payment of a \$4.5 million commission on facilitating the sale of a golf course business. The court dismissed the action without prejudice as settled, retaining jurisdiction for sixty days to enforce the settlement agreement. Near the end of that sixty-day period, the plaintiff filed a motion to enforce the agreement, attaching a sealed copy of the agreement. The defendants apparently missed the first settlement payment of \$100,000 and raised objections concerning drafts of the settlement documents. Court documents indicate that other material terms of the settlement agreement concern stock certificates and a golf course. Seven months after the motion to enforce was filed, the court dismissed the case with prejudice as fully resolved.

Fanning v. Columbia Housing Authority (SC 3:00-cv-02833 filed 09/12/2000).

Housing action for disability discrimination. The plaintiff alleged that she was wrongfully denied public housing on the incorrect ground that she could not live without assistance. The court dismissed the action without prejudice as settled on February 6, 2001, retaining jurisdiction for thirty days to enforce the settlement. On March 20 the court dismissed the action as settled with prejudice and ordered "these documents" sealed. On April 12 the court again dismissed the action with prejudice.

Williams v. Ford Motor Co. (SC 2:00-cv-03398 filed 10/26/2000).

Motor vehicle product liability action for wrongful death resulting from a Ford Aerostar van's rolling over. One plaintiff—who was not involved in the accident—represented himself as well as the estates of his late wife and his late 12-year-old daughter, who were killed. The other plaintiff was a 17-year-old son, who was injured. The court dismissed the action as settled without prejudice, retaining jurisdiction for sixty days to enforce the settlement. One month later the plaintiffs moved to reopen the case so that the court could approve the settlement agreement with the minor plaintiff. The court approved the agreement. The amounts of the settlement and the plaintiffs' attorneys' contingency fee were sealed, but unsealed records

show that 59% of the settlement went to the mother's claim, 40% went to the daughter's claim, and 1% went to the son's claim.

White v. DaimlerChrysler Corp. (SC 2:00-cv-03803 filed 12/05/2000).

Motor vehicle product liability action alleging that defective designs of the roof and seatbelts of a Jeep Grand Cherokee caused the death of the driver and two passengers, and the injuries of two additional passengers, in a rollover caused by another vehicle. The plaintiffs representing estates and a minor filed a sealed petition, which was granted, along with a sealed order approving a settlement. The court dismissed the action as settled without prejudice, retaining jurisdiction for sixty days to enforce the settlement agreement. Three months later the court granted a motion under seal.

Davis & Small Decor Inc. v. Desperate Enterprises Inc. (SC 2:01-cv-00914 filed 03/27/2001).

Copyright action concerning the novelty signs "Mom's Bed & Breakfast," "Dad's Fix-It Shop," and "Grandma's Babysitting Service." The plaintiff filed a sealed "motion . . . to file under seal, and for sanctions, or to enforce settlement agreement." The case was dismissed pursuant to an agreed order of injunction and dismissal permanently enjoining the defendant from selling signs similar to the plaintiff's.

District of South Dakota

No relevant local rule.

Statistics: 820 cases in termination cohort; 40 docket sheets (4.9%) have the word "seal" in them; 6 complete docket sheets (0.73%) were reviewed; actual documents were examined for 0 cases; no case appears to have a sealed settlement agreement.

Eastern District of Tennessee⁶⁶

Court records may be sealed only upon a showing of good cause. E.D. Tenn. L.R. 26.2(b). Absent a court order to the contrary, court records are unsealed thirty days after the conclusion of the case. *Id.* R. 26.2(d). "All such orders shall set a date for the unsealing of the Court Records." *Id.*

Statistics: 3,128 cases in termination cohort; 249 docket sheets (8.0%) have the word "seal" in them

66. This district was selected at random for the study, and it has a good-cause rule.

(but 52 of these merely have the word "seal" in a party name); 15 complete docket sheets (0.48%) were reviewed; actual documents were examined for 11 cases (0.35%); 8 cases (0.26%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Kunis v. Murray (TN-E 3:98-cv-00365 filed 06/18/1998).

Securities action for fraudulent sale of unregistered securities. The case settled. The details of the settlement agreement were sealed by the court's granting a protective order.

Gutierrez v. Bridgestone/Firestone Inc. (TN-E 3:98-cv-00484 filed 07/31/1998).

Product liability action concerning the defective manufacture of a tire, which caused the tread to separate and the vehicle to overturn, ejecting the plaintiffs from the car. The plaintiffs sustained severe injuries. One plaintiff died. The case settled. Each plaintiff received \$2,777.78 from the Ford Motor Company. The transcript of a minor's settlement hearing with regard to Bridgestone/Firestone was sealed.

Walker v. Hospital of Morristown (TN-E 2:99-cv-00081 filed 02/23/1999).

Medical malpractice action concerning negligent pulmonary care of a woman after the delivery of her child via cesarean section. As a result, the plaintiff's spouse suffered permanent brain damage, leaving her in a permanent vegetative state. She subsequently died. The case settled. The minutes of the minors' settlement hearing and the court order approving the minors' settlements were sealed for one year.

Monroe v. National Seating Co. (TN-E 3:99-cv-00363 filed 07/09/1999).

Employment discrimination action by a 51-year-old vice president for age discrimination and wrongful termination stemming from his refusal to sign allegedly fraudulent financial reports. The case was dismissed pursuant to a sealed settlement agreement.

Samaduroff v. Corrections Corp. of America (TN-E 1:00-cv-00062 filed 02/25/2000).

Civil rights action for the wrongful death of an inmate, alleging that a corrections facility's failure to provide medically necessary methadone treatment resulted in the inmate's suicide. The case

Appendix C. Case Descriptions

was dismissed pursuant to a sealed settlement agreement.

Conner v. DTS Truck Division Co. (TN-E 2:00-cv-00150 filed 05/04/2000).

Motor vehicle action for wrongful death caused by the defendant's negligent driving of a tractor-trailer, which resulted in a violent collision. The plaintiff's husband sustained serious external and internal injuries and died six days after the accident. The case settled. A minor's settlement conference and the court order approving the details of the minor's settlement agreement were sealed.

Lee v. Harper (TN-E 1:00-cv-00381 filed 11/10/2000).

Motor vehicle action for wrongful death, which occurred when the defendant's speeding car catapulted onto the decedent's car, crushing him. The case was dismissed pursuant to a sealed settlement agreement.

Floyd v. Tennessee Secondary Schools Athletic Association (TN-E 3:01-cv-00538 filed 11/14/2001).

Civil rights action arising from the defendants' dismissal of the plaintiff's daughter from the girls' basketball team in retaliation for the mother's voicing concerns about the coach's temperament and behavior. The case settled. The settlement agreement and the court order approving the minor's settlement, which detailed the settlement payments, were sealed.

Middle District of Tennessee

No relevant local rule.

Statistics: 3,162 cases in termination cohort; 581 docket sheets (18%) have the word "seal" in them; 39 complete docket sheets (1.2%) were reviewed; actual documents were examined for 24 cases (0.76%); 18 cases (0.57%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Catalano v. Federal Extradition Agency, Inc. (TN-M 3:97-cv-00790 filed 07/30/1997).

Motor vehicle action for wrongful death as a result of transporting prison inmates in a negligently maintained Ford Econoline Van, which caught on fire. Six companion cases also were filed. The court designated this to be the lead case. Ford settled. The court approved the settlement on behalf of a minor in the case by sealed order. The settlement agreement does not appear to be

filed in the other cases, nor does there appear to be a minor involved in the other cases. A year later, the court approved another settlement agreement on behalf of the minor by sealed order. However, an unsealed order reveals that the insurance company defendant had to pay the minor's guardian \$80,000 to be used for college.

Bryant v. Potter (TN-M 3:98-cv-00872 filed 09/18/1998).

Labor action by a postal employee alleging sexual harassment and discrimination by the town postmaster. The case settled, and the court ordered the settlement agreement filed under seal. The plaintiff filed a motion to reopen the case, alleging that the defendant failed to fulfill his obligations under the terms of the settlement agreement. The court denied the plaintiff's motion.

Murphy v. RMD Corp. (TN-M 3:99-cv-00886 filed 09/15/1999); *Murphy v. RMD Corp.* (TN-M 3:99-cv-00907 filed 09/23/1999).

Class action lawsuits pursuant to the Fair Labor Standards Act for failure to properly compensate restaurant managers and service employees for overtime work. The cases settled, and the settlement agreements were filed under seal.

EEOC v. Strategic Outsourcing Inc. (TN-M 3:99-cv-00938 filed 09/30/1999).

Age and sex discrimination employment action on behalf of a sales manager. The case settled. The plaintiffs filed a sealed motion to enforce the settlement agreement. The transcript of the original settlement conference later was filed under seal.

Pruitt v. Rutherford County (TN-M 3:99-cv-01155 filed 12/10/1999).

Section 1983 civil rights action on behalf of a minor, alleging rape by another minor while they both were serving time in a juvenile detention center. The case settled. The settlement agreement was approved by the court and sealed.

Matiaz v. Eidson (TN-M 3:00-cv-00485 filed 05/19/2000).

Wrongful death action arising from the negligent driving of a pickup truck, which resulted in the truck's rolling over and the plaintiff's husband, who was riding in the bed of truck, being pinned beneath the vehicle. Passengers who were able to escape from the vehicle attempted for thirty minutes to extricate the deceased. They then walked over an hour to a telephone, called a friend, and

Sealed Settlement Agreements

went home to change clothes before going to the police station to report the incident. A passerby with a tractor arrived at the scene of the accident and turned the truck upright. The defendant employer, who had remained at the scene, then threw the man into a nearby pig pond. To prevent the body from floating to the surface, the defendant held the body down in the pond with a stick. Drowning was the cause of death. The case settled. The court approved a minor's settlement and placed the settlement agreement under seal.

United States ex rel. Bledsoe v. Community Health Systems Inc. (TN-M 2:00-cv-00083 filed 09/22/2000).

Fraud action concerning Medicaid and Medicare claims. The government declined to intervene. The plaintiff, relying on government settlement drafts, maintained that the parties reached a settlement and filed under seal a motion to recognize the settlement. The motion was denied, and the case was dismissed.

Doe v. Aramark Educational Resources Inc. (TN-M 3:01-cv-00245 filed 03/13/2001); *Ridge v. Aramark Educational Resources Inc.* (TN-M 3:01-cv-00281 filed 03/23/01); *Doe v. Aramark Educational Resources Inc.* (TN-M 3:01-cv-00282 filed 3/23/2001).

Personal injury actions on behalf of minors, alleging rape and sexual molestation by a teacher. The cases settled. The court approved the minors' settlement agreements and placed them under seal.

Heil v. Gotee Records Inc. (TN-M 3:01-cv-00284 filed 03/26/2001).

Trademark infringement action concerning records. The case settled. The court reporter filed under seal the transcript of the settlement agreement announced in open court. The court found no reason for the transcript to be maintained under seal in the file. Accordingly, the court ordered the docket entry stricken and the transcript destroyed.

Clinard v. M.J. Halgard Construction (TN-M 3:01-cv-00467 filed 05/22/2001).

Employment discrimination action for retaliatory discharge after the plaintiff attempted to end her affair with her supervisor. The case settled. The settlement agreement was filed under seal.

Chargois v. Troxell (TN-M 3:01-cv-00554 filed 06/22/2001).

Section 1983 civil rights action on behalf of a minor, alleging sexual molestation by a teacher. The plaintiff further alleged that the school principal and other school personnel were aware of the sexual relationship but failed to intervene on the minor's behalf or notify her parents. The case settled. The court approved the minor's settlement and sealed the settlement agreement.

Deuss v. Ebenezer Home of Tennessee Inc. (TN-M 3:01-cv-00589 filed 06/29/2001).

Class action pursuant to the Fair Labor Standards Act, alleging that a nursing home failed to properly compensate its employees, including the activities director and nursing technician, for overtime work. The case settled. The settlement agreement was filed under seal.

United Shows of America Inc. v. Rubin (TN-M 3:01-cv-01331 filed 09/20/2001).

Anticipatory breach of contract action concerning investment in an expo center. The case was dismissed as settled. The defendant filed a sealed motion to enforce the settlement agreement. The plaintiffs filed for bankruptcy, which has stayed the action.

Dolgenercorp Inc. v. Big Lots Inc. (TN-M 3:01-cv-01533 filed 11/28/2001).

Trademark infringement action. The case settled. The plaintiffs filed a sealed motion to enforce the settlement agreement. A final settlement was reached, and the clerk was directed to "terminate minutes for enforcement of settlement agreement."

Fletcher v. Kolcraft Enterprises Inc. (TN-M 3:02-cv-00422 filed 04/25/2002).

Personal injury action for the negligent manufacture of a stroller, which collapsed and severed the tip of a child's finger. The case settled. The plaintiff filed a sealed motion to approve the minor's settlement agreement. The court granted the motion.

Western District of Tennessee

No relevant local rule.

Statistics: 2,759 cases in termination cohort; 222 docket sheets (8.0%) have the word “seal” in them; 37 complete docket sheets (1.3%) were reviewed; actual documents were examined for 16 cases (0.58%); 7 cases (0.25%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Lammy v. Ford Motor Co. (TN-W 2:99-cv-02156 filed 02/19/1999).

Product liability action for the negligent manufacture of a car, resulting in the car’s rolling out of the plaintiff’s driveway and rolling over the 3-year-old plaintiff’s head. The case was dismissed as settled. The court order approving the minor’s settlement and settlement payment was sealed.

Doe v. City of Memphis Board of Education (TN-W 2:99-cv-03075 filed 12/09/1999), consolidated with *C.W. v. City of Memphis Board of Education* (TN-W 2:99-cv-03076 filed 12/09/1999).

Civil rights actions for failure of the principal and school board to intervene on behalf of children to prevent emotional, physical, and sexual abuse by their special education teachers. The court appointed a guardian ad litem for the minors. The cases were dismissed as settled. The court orders approving the minors’ settlements and detailing the payments to the plaintiffs were sealed.

Reed v. Corrections Corp. of America (TN-W 2:00-cv-02473 filed 05/26/2000).

Section 1983 civil rights action for failure of a juvenile detention center to prevent the plaintiff’s suicide attempt, which resulted in severe and permanent brain injury. The case settled. The transcript of the settlement hearing and the order approving the cash settlement were sealed.

Warner v. Owens (TN-W 2:01-cv-02250 filed 03/28/2001).

Motor vehicle action by a child arising from a car accident, claiming that the uninsured defendant negligently drove her car over the median and into oncoming traffic. The plaintiff suffered severe permanent injuries to her head, face, mouth, teeth, and entire nervous system, which required extensive medical treatment. The case settled. The order approving the minor’s settlement and detailing payment was sealed.

Harper v. Gordon (TN-W 2:02-cv-02347 filed 05/07/2002); *Northfield Insurance Co. v. Gordon* (TN-W 2:02-cv-02503 filed 06/21/2002).

Harper is a personal injury action for wrongful death by a father for the negligent driving of a day care center’s bus driver, which resulted in an accident and the death of his son and several other children. The plaintiff alleged that the bus driver, who had a history of drug use, allowed the bus to leave the road and strike highway structures and that the defendants failed to provide proper safety restraints and procedures in and for the bus.

Northfield Insurance is an insurance contract action against the owner of the day care center that hired the bus driver. The insurance company claimed that the accident was not covered under the day care center’s policy.

The cases were dismissed as settled. Settlement agreements were sealed and filed in a related case, *Robinson v. Tennessee Department of Human Services* (TN-W 2:02-cv-2370 filed 5/13/02) (still pending).

District of Utah⁶⁷

The sealing of a court document requires a showing of good cause. D. Utah L. Civ. R. 5-2(a). Absent an order to the contrary, sealed documents are unsealed at the end of the case. *Id.* R. 5-2(f).

Statistics: 2,387 cases in termination cohort; 3 docket sheets are sealed (0.13%)—all of these cases’ disposition codes suggest no sealed settlement agreements;⁶⁸ 179 unsealed docket sheets (7.5%) have the word “seal” in them; 11 complete docket sheets (0.46%) were reviewed; actual documents were examined for 8 cases (0.34%); 8 cases (0.34%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Flying J Inc. v. Comdata Network Inc. (UT 1:96-cv-00066 filed 07/01/1996).

Antitrust action by a truck-stop company against a credit company. The case settled. The plaintiffs filed a motion to enforce the settlement agreement. Attached to the motion was a sealed exhibit containing the settlement agreement and release; however, the accompanying memorandum of

67. This district is included in the study because of its good-cause rule.

68. One dismissal for lack of jurisdiction, 2 “other” dismissals.

support reveals that the defendants agreed to provide the plaintiffs with unrestricted fuel-card access to their point-of-sale devices at major truck stops.

Icon Health & Fitness Inc. v. Keys Fitness Products Inc. (UT 1:97-cv-00114 filed 10/02/1997).

Patent infringement action concerning treadmills. The case settled. The plaintiffs filed a motion to enforce the settlement agreement. The accompanying memorandum was sealed. Another document—perhaps the settlement agreement—also was filed under seal.

Scott v. Riddle (UT 2:99-cv-00042 filed 01/25/1999).

Class action alleging violation of the Fair Debt Collection Practices Act. The case settled, and the settlement agreement was filed under seal. An order allows the class administrator to distribute unclaimed funds in the amount of \$5,121.47 to a charity.

Iomega Corp. v. Castlewood Systems Inc. (UT 1:99-cv-00080 filed 07/06/1999).

Patent infringement action by a data storage manufacturer. The case settled. The defendants failed to fulfill their obligations under the settlement agreement. The plaintiffs filed a sealed motion for entry of a stipulated judgment pursuant to the settlement agreement. The judgment later was unsealed. For the defendants' failing to make the \$10,000 payment by the date specified in the settlement agreement, the court awarded the plaintiffs \$1,775,000 in damages plus attorney fees.

Mohamed v. International Rescue Committee (UT 2:00-cv-00588 filed 07/26/2000).

Employment discrimination action. The case settled at mediation. A dispute arose regarding the amount of the settlement, and both parties filed motions seeking to enforce the settlement agreement; however, only the defendant's motion was sealed. The plaintiff's motion notes that he would only accept an after-tax offer of \$24,000. The court, unable to determine if there was a meeting of the minds, denied the motions. The case ultimately was dismissed as settled.

Crosslin v. Hansen (UT 2:00-cv-00648 filed 08/15/2000).

Medical malpractice action arising from the negligent insertion of a feeding tube, resulting in the

plaintiffs' daughter's death. The case settled, and the settlement agreement appears to be sealed. However, the docket shows a check in the amount of \$39,000 payable to a third party claiming to have a lien.

Financial Freedom International v. International Credit Repair Services Inc. (UT 2:00-cv-00659 filed 08/17/2000).

Copyright infringement action concerning the reproduction of credit education materials. The case settled, and the settlement agreement was filed under seal.

Turner v. MacKenzie (UT 2:00-cv-00697 filed 09/01/2000).

Personal injury action concerning defamatory comments posted on the Internet regarding the plaintiff's professional competence and integrity. The parties entered into settlement discussions. Although the defendant maintained that parts of the discussions have appeared on the Internet, the court sealed all matters dealing with the settlement agreement. The defendant filed a sealed motion to enforce the settlement agreement, which the court granted.

Eastern District of Virginia

No relevant local rule. Practices vary among the divisions: in Alexandria a document can be sealed by handwriting the word "sealed" on the document, but in Richmond a motion to seal is required. The district's rules committee will consider a proposed uniform rule this spring.

Statistics: 14,448 cases in termination cohort; 330 docket sheets (2.3%) have the word "seal" in them; 57 complete docket sheets (0.39%) were reviewed; actual documents were examined for 47 cases (0.33%); 44 cases (0.30%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

United States ex rel. Groshans v. Unisys Corp. (VA-E 1:02-cv-01589 filed 02/29/1996).

Qui tam action under the False Claims Act for false billing in contracting for the Trident Missile Program. The docket shows only the four documents that the government asked to be unsealed, including an amended complaint. The case was dismissed pursuant to a settlement agreement. Because of sealed docket entries, however, it cannot be determined with certainty that the agreement was filed.

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America Online Inc. v. CN Productions Inc. (VA-E 1:98-cv-00552 filed 04/16/1998).

Statutory action under the Lanham Act, alleging that the defendants sent the plaintiff's subscribers unsolicited electronic mail containing the plaintiff's trademark along with information on pornographic Web sites, products, and services. The defendants were held in contempt for violating a permanent injunction. An additional sixteen individuals and thirteen entities were held in civil contempt for conspiring with the defendants to violate the injunction. The plaintiff was awarded \$6,904,712 in damages. The court sealed the memorandum opinion and judgment because it contained details of the settlement amount. The plaintiff filed a motion to partially unseal the judgment and memorandum opinion to show that this type of public violation will be punished and substantial damages awarded. One month later a redacted version of the order was unsealed.

United States ex rel. Doe v. University of Virginia Health System (VA-E 1:01-cv-01691 filed 07/16/1998).

Qui tam action under the False Claims Act for fraudulent Medicare billing. A settlement agreement initially was filed under seal, but it, the complaint, and other documents were unsealed when the case was dismissed. The defendant paid the United States \$3 million and the relator \$600,000.

Price v. Foster (VA-E 1:99-cv-00549 filed 04/19/1999).

Personal injury action for wrongful death resulting from the defendants' severing a hospital oxygen line. A sealed settlement agreement was filed and approved, and the order of approval stated that the decedent's three adult children each would receive \$1,000 and the plaintiff's attorneys would receive \$35,000. The guardian ad litem rejected the settlement of \$1,000 for the decedent's minor grandchild. One month after the case was dismissed, the plaintiff filed a motion to reconfirm approval of the settlement agreement. The court reconfirmed approval and awarded the minor grandchild \$5,000 to be used solely for education and support.

Franklin v. First Union Corp. (VA-E 3:99-cv-00344 filed 05/05/1999), consolidated with *Franklin v. First Union Corp.* (VA-E 3:99-cv-00610 filed 09/07/1999).

ERISA actions including RICO allegations concerning 401(k) plans of current and former bank employees. The defendants denied liability, but agreed to pay \$26 million to named plaintiffs and a class of approximately 150,000. The list of potential class members was filed under seal.

MCI Communications Corp. v. Essential Voice Computing Inc. (VA-E 3:00-cv-00105 filed 02/25/2000).

Patent infringement action involving a telephone-based personnel tracking system. Three months after a settlement agreement was reached, the defendants refused to execute the final documents. The plaintiff filed a motion to enforce the settlement agreement, and the court granted a motion to seal the motion because it contained settlement terms. The court ordered a consent judgment with a permanent injunction. The court retained jurisdiction to enforce the consent judgment and permanent injunction.

Advantel LLC v. Sprint (VA-E 1:00-cv-01074 filed 04/17/2000).

Statutory action concerning collection of telecommunications charges, alleging that Sprint used ninety plaintiffs' telephone lines without paying applicable tariffs. Sprint filed a counterclaim for overbilling. A few plaintiffs dismissed their actions pursuant to confidential settlement agreements as the litigation proceeded. After Sprint reached settlement agreements with all plaintiffs but one, it filed under seal a motion to enforce the settlement agreement. Disagreements with the remaining plaintiff ultimately were resolved, and the case was dismissed as settled.

Fordham v. OneSoft Corp. (VA-E 1:00-cv-01078 filed 06/29/2000).

Computer software copyright infringement action. An order concerning settlement proceeds stated that the defendant deposited \$644,285. The plaintiff filed a motion and memorandum under seal for disbursement of the settlement proceeds. One week later the plaintiff filed a suggestion of bankruptcy. The court granted the plaintiff's motion for disbursement of settlement proceeds eleven weeks later. The attorney in the case was granted a lien against the settlement funds, and

Sealed Settlement Agreements

the court ordered that the attorney fees and expenses be paid out of the settlement funds.

Garcia v. Gloucester Seafood Inc. (VA-E 4:00-cv-00069 filed 06/30/2000).

Class action under the Fair Labor Standards Act for failure to pay minimum and overtime wages. The plaintiffs were Mexican citizens recruited to work at the defendants' seafood-processing plant. The court dismissed the action as settled, retaining jurisdiction to enforce the settlement agreement. Approximately three months later the court issued an agreed order to reopen the case for entry of judgment pursuant to a sealed settlement agreement. Approximately three months later the case was closed upon the court's satisfaction that settlement payments had been made.

Alegre v. United States (VA-E 4:00-cv-00074 filed 07/19/2000).

Medical malpractice action for severe brain injury resulting from improper treatment after routine surgery at a Veterans Administration Hospital. The government admitted liability and agreed to pay \$950,000. The government's attorney filed under seal a motion to approve the settlement agreement, but unsealed documents disclose the settlement agreement's terms.

Doe v. Holcomb (VA-E 2:00-cv-00597 filed 08/15/2000).

Personal injury action for sexual molestation of a Headstart student by a school bus driver. An agreed protective order held confidential (1) medical and psychological information about the plaintiff, (2) information concerning the criminal investigation of the bus driver, and (3) the identity of the plaintiff. The court approved a sealed settlement agreement.

*Opsahl v. E*Trade Group* (VA-E 1:00-cv-01501 filed 09/06/2000).

Contract action for breach of a corporate acquisition agreement. After acquiring a company in which the plaintiff was a corporate officer with significant stock options, the defendants allegedly failed to timely file a registration statement with the SEC, causing the plaintiff significant delay in his ability to exercise his stock options. A sealed settlement agreement was attached as an exhibit to the plaintiff's motion to enforce. The motion involved disputed escrow arrangements. Six days later the plaintiff withdrew the motion to enforce and asked the court to destroy the sealed settle-

ment agreement or return it to the plaintiff's counsel. In the final order of dismissal the court ordered that the settlement agreement remain permanently sealed.

Bryant v. Southside Gin Inc. (VA-E 3:00-cv-00616 filed 09/22/2000).

RICO action by farmers, alleging that the defendants stole their cotton while it was being processed at the defendants' gins. A sealed settlement agreement was filed. A confessed judgment was granted in favor of some plaintiffs for \$184,106. In the order of dismissal the court ordered that the plaintiffs "shall not pursue enforcement of the confessed judgment."

Zeller v. America Online Inc. (VA-E 1:00-cv-01603 filed 09/27/2000).

Employment discrimination action by a manager against his former employer for wrongful termination resulting from his reporting sexual harassment of co-workers. The case was dismissed as settled. One month after the case was dismissed, the defendant filed a motion to enforce the settlement agreement and attached a sealed settlement agreement as an exhibit. The plaintiff also filed a motion to enforce the settlement agreement. A report and recommendation were filed under seal, and the court granted the defendant's motion to enforce the settlement agreement.

Asbestos Multidistrict Litigation: Estate of Lott v. American Standard Inc. (VA-E 2:00-cv-03931 filed 10/10/2000); *Blackburn v. American Standard Inc.* (VA-E 2:00-cv-03981 filed 10/19/2000); *Estate of Chapman v. American Standard Inc.* (VA-E 2:01-cv-04223 filed 02/01/2001); *Estate of Smith v. American Standard Inc.* (VA-E 2:01-cv-04291 filed 02/09/2001); *Estate of Johnson v. American Standard Inc.* (VA-E 2:01-cv-04343 filed 02/22/2001); *Estate of Carpenter v. American Standard Inc.* (VA-E 2:01-cv-04451 filed 03/26/2001); *Dreyer v. American Standard Inc.* (VA-E 2:01-cv-04787 filed 04/17/2001); *Estate of Russell v. American Standard Inc.* (VA-E 2:01-cv-04977 filed 04/23/2001); *Estate of Howell v. American Standard Inc.* (VA-E 2:01-cv-05007 filed 04/23/2001); *Estate of Dickey v. American Standard Inc.* (VA-E 2:01-cv-05427 filed 05/14/2001); *Estate of Holland v. American Standard Inc.* (VA-E 2:01-cv-05431 filed 05/14/2001); *Estate of Boyette v. American Standard Inc.* (VA-E 2:01-cv-05511 filed 06/01/2001).

Asbestos product liability litigation for the wrongful deaths of workers who were exposed to the

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inhalation of asbestos and industrial dust and fibers. These cases were transferred by the MDL Panel to the Eastern District of Pennsylvania as MDL 875. All of the plaintiffs were represented by the same law firm in Norfolk, Virginia. Claims were dismissed against two of the defendants. A settlement was reached with one of the defendants, and the petition for approval of the compromised settlement was sealed. The order approving the compromised settlement also was sealed.

Wyatt v. S. C. Jones Service Inc. (VA-E 3:00-cv-00720 filed 11/01/2000).

Employment discrimination action by a black plaintiff who sued a former employer for wrongful termination. The defendant sought sanctions against the plaintiff for filing a frivolous lawsuit, because the plaintiff had filed similar claims in the past. The court ordered sanctions prohibiting the plaintiff from filing a civil action or filing pro se without prior approval of the court for five years. The plaintiff also was ordered to pay the defendants' attorney fees and expenses. The court granted the defendants' motion to dismiss and motion for summary judgment. A sealed settlement agreement was filed eight days after the sanctions were imposed.

Cousino v. Sunbeam Corp. (VA-E 2:00-cv-00876 filed 11/22/2000).

Product liability action by two parents and their five-year-old daughter, alleging that an electric blanket caught fire. The court conducted a sealed settlement conference and approved a sealed settlement agreement.

Haider v. American Honda Motor Co. (VA-E 1:00-cv-02079 filed 12/14/2000).

Motor vehicle action for wrongful death in a traffic accident in which the driver of a Honda Accord survived, but two passengers were killed. A mediation report was filed under seal. The defendants' response to the plaintiff's petition for approval of the settlement agreement stated that confidentiality of the agreement was an essential term.

SY Technology Inc. v. System Studies and Simulation Inc. (VA-E 1:00-cv-02129 filed 12/22/2000).

Contract action for breach of a proprietary data agreement by the defendant, who alleged that a former employee used sensitive financial and trade secrets to benefit his new company. After a

jury trial had commenced the parties reached a settlement. The case was dismissed, and the final order was placed under seal presumably because it contained terms of the settlement agreement.

Alley v. Core Inc. (VA-E 2:01-cv-00065 filed 01/29/2001).

Designated a product liability case, this is an ERISA action for wrongful denial of disability benefits to an employee for a work injury to a knee and subsequent unsuccessful arthroscopic surgery. The case was consolidated with *Alley v. Sickness and Accident Disability Plan for Bell Atlantic Employees* (VA-E 2:01-00123 filed 02/26/2002). The court awarded the plaintiff summary judgment, and the plaintiff moved for \$53,432.50 in attorney fees and \$2,770.97 in costs. The defendant appealed the summary judgment. While the case was on appeal, it settled pursuant to a settlement agreement, which was filed under seal in district court.

Jappell v. American Association of Blood Banks (VA-E 1:01-cv-002228 filed 02/09/2001).

Personal injury action involving the wrongful death of a woman who contracted HIV from the defendant's blood products. The complaint alleged that the defendant failed to properly screen blood donors. A sealed settlement agreement was filed, and the case was dismissed as settled. Eight days after the case was dismissed, the plaintiff filed a motion to enforce the settlement agreement. The hearing on the motion to enforce the settlement agreement has not occurred.

Verizon Online Services Inc. v. McDonald (VA-E 1:01-cv-00432 filed 03/19/2001).

Statutory action under the Computer Fraud and Abuse Act, alleging that the defendants sent unsolicited electronic mail advertising goods and services to the plaintiff's subscribers. A sealed settlement agreement was filed as an attachment to the motion for stipulated judgment.

Breeden v. PYA/Monarch Inc. (VA-E 2:01-cv-00194 filed 03/20/2001).

Employment action for disability discrimination by a warehouse worker who was not relieved of lifting duty while he recovered from an off-work wrist injury. The action was dismissed as settled, but nearly four months later the plaintiff filed a sealed motion to enforce the settlement agreement, which subsequently was sealed by agreed order. The motion to enforce was denied by a sealed order.

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Vance v. Everly Funeral Homes Inc. (VA-E 1:01-cv-01048 filed 07/05/2001).

Employment action in which an assistant manager sued a former employer for sexual harassment and constructive termination. The plaintiff filed a sealed motion to enforce the settlement agreement. The defendant's memorandum in opposition to the settlement agreement also was sealed. The case was dismissed as settled.

Canon USA Inc. v. Lease Group Resources Inc. (VA-E 1:01-cv-01086 filed 07/10/2001).

Contract action seeking nearly \$5 million in payment for the provision of several hundred photocopiers to the federal government. The parties moved for dismissal pursuant to a settlement agreement and asked the court to appoint a magistrate judge as special master to supervise the settlement, "[g]iven the complex nature of the settlement obligations, the period of time over which they will be performed, and the possibility that the resolution of disputes will require factual determinations and legal analysis." The memorandum in support of the motion, presumably containing a copy of the settlement agreement, was sealed. But the 23-page settlement agreement was filed unsealed as an exhibit to two enforcement motions subsequently filed by the defendant. The court continues to oversee the agreement.

Estate of Bui v. DaimlerChrysler Corp. (VA-E 2:01-cv-00612 filed 08/13/2001).

Motor vehicle product liability action for wrongful death resulting from a wheel coming off a Dodge van carrying church group youths. The decedent's estate sued manufacturers of the van, the wheel, and the tire. The estate filed a sealed petition for approval of a settlement agreement, which initially was approved by sealed order and subsequently approved by unsealed order after the decedent's sisters in Vietnam had been given notice of the agreement. An unsealed Vietnamese translation of the settlement agreement suggests that the settlement was for \$282,500—\$82,500 from the van manufacturer, \$140,000 from the wheel manufacturer, and \$60,000 from the tire manufacturer.

Fredley v. Huthwaite Inc. (VA-E 1:01-cv-01337 filed 08/29/2001).

Employment discrimination action alleging that the defendants paid the plaintiff less than her male counterparts for equal work. The plaintiff

filed a motion to enforce a settlement agreement two weeks after the case was settled and filed the sealed settlement agreement as an exhibit. In their response to the plaintiff's motion, the defendants reported that they attempted to pay the plaintiff \$14,500 by check, but she wanted cash. The court ordered the case dismissed as settled because the parties had reached an agreement.

Hoffstaetter v. Gwaltney of Smithfield Ltd. (VA-E 2:01-cv-00665 filed 08/31/2001).

Class action under the Fair Labor Standards Act by employees of a pork-processing and hog-slaughtering facility for failure to pay overtime wages. A sealed settlement agreement was filed.

Automall Online Inc. v. American Express Travel Related Services Co. (VA-E 1:01-cv-01705 filed 11/08/2001).

Contract action for breach of a rewards participation agreement. After a jury trial had commenced, the parties settled. The settlement was placed on the record under seal pursuant to a confidentiality order.

Leavitt-Imblum v. McNeil (VA-E 2:01-cv-00942 filed 12/18/2001).

Copyright infringement action alleging that the defendants incorporated the plaintiffs' cross-stitch patterns into a computer program, allowing users to stitch uncountable copies of the plaintiffs' designs without payment of royalties. The settlement agreement was filed under seal.

Drexler v. Aeon Knowledge Inc. (VA-E 1:02-cv-00174 filed 02/01/2002).

Statutory action under wiretapping law for misappropriation of the Internet domain name "wonderful.com," which was registered by an individual for his personal use. The case was dismissed pursuant to a sealed settlement agreement.

Fenelus v. Dav-El Capital City Inc. (VA-E 1:02-cv-00417 filed 03/21/2002).

Designated a civil rights action, this is an employment discrimination action by a black chauffeur for discrimination, assault and battery, and constructive termination. The plaintiff filed a motion and memorandum under seal to enforce the settlement agreement. The case was dismissed before the court ruled on the motion.

Western District of Virginia

A standing order “governs the unsealing of documents,” but a presiding judge may make exceptions. Sealing of a document generally may be considered “only upon written motion.” W.D. Va. L.R. Part XIII.A. Documents generally “are to be unsealed within thirty (30) days from the date of the order to seal.” *Id.*

Statistics: 3,593 cases in termination cohort; 112 docket sheets (3.1%) have the word “seal” in them; 41 complete docket sheets (1.1%) were reviewed; actual documents were examined for 31 cases (0.86%); 28 cases (0.78%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Sales v. Grant (VA-W 6:96-cv-00027 filed 04/01/1996).

Civil rights action by two assistant election registrars for the City of Lynchburg, who alleged that they were not reappointed to their positions because they are Democrats. The court awarded the defendants judgment as a matter of law at the close of evidence in a jury trial, but the court of appeals reversed. After a second appeal, a second jury awarded one plaintiff \$55,000 in compensatory damages and \$40,000 in punitive damages and the other plaintiff, \$57,000 in compensatory damages and \$35,000 in punitive damages. Following the trial the parties settled the action pursuant to a sealed settlement agreement incorporated by reference into an unsealed consent decree. Although the defendants denied liability, they agreed to pay each plaintiff \$26,000 plus ten years of periodic payments in accordance with the agreement, with payments totaling close to \$400,000. Thereafter the court awarded the plaintiffs \$814,893 in attorney fees and \$28,893.19 in expenses for the five-and-a-half years of litigation in this case. The court destroyed the sealed settlement agreement eight months later.

Thompson v. Town of Front Royal (VA-W 5:98-cv-00083 filed 11/04/1998); *Blackman v. Town of Front Royal* (VA-W 5:99-cv-00017 filed 03/19/1999).

Employment race discrimination actions by a public works laborer and a public works carpenter, who alleged overt and severe racism against African-Americans by the director of public works and another supervisor. Parties agreed to a settlement at a settlement conference before a magistrate judge, who filed the terms of settlement under seal for review by the district judge, who in turn dismissed the action as settled.

Weber v. Rivanna Solid Waste Authority (VA-W 3:98-cv-00109 filed 11/17/1998).

Environmental action by twenty-six plaintiffs against operators of a landfill dump. The defendant filed a motion for a protective order against discovery of material the defendant claimed was protected by attorney–client privilege and as attorney work product. A few months later sealed documents were filed, including reports and recommendations and orders. One sealed document was labeled “order and settlement agreement.” But the action by most of the plaintiffs was dismissed pursuant to a lengthy settlement agreement that was filed unsealed. Two separate orders each dismissed the action as settled as to a pair of plaintiffs. Documents pertaining to an interpleader action by a third party refer to settlement with the remaining pair of plaintiffs.

Spanky’s LLC v. Travelers Commercial Insurance Co. (VA-W 7:99-cv-00095 filed 02/11/1999), consolidated with *Spanky’s of Virginia LLC v. Travelers Commercial Insurance Co.* (VA-W 7:99-cv-00096 filed 02/11/1999) and *Macher v. Travelers Commercial Insurance Co.* (VA-W 7:99-cv-00097 filed 02/11/1999).

Insurance actions for a pattern of unreasonable practices by an adjuster. After mediation by a magistrate judge, a sealed memorandum of settlement was filed and the case was dismissed.

Rogers v. Pendleton (VA-W 7:99-cv-00164 filed 03/16/1999).

Civil rights action against two police officers for unlawful search and seizure when the officers responded to a noise complaint concerning the plaintiff’s party. A sealed document was filed the same day as a stipulation of dismissal.

Carter Machinery Co. v. Time Collection Solutions Inc. (VA-W 7:99-cv-00255 filed 04/15/1999).

Contract and fraud action for a faulty payroll system. The defendant filed a counterclaim for unpaid bills. A memorandum of settlement was filed under seal, and the case was dismissed four and a half months later. Four months after that, the parties were ordered to remove sealed materials.

Dean v. Crescent Mortgage Corp. (VA-W 3:00-cv-00035 filed 04/19/2000).

Truth in lending action for the defendant’s refusal to let the plaintiff rescind a \$400,000 loan secured by the plaintiff’s home. After a settlement confer-

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ence before a magistrate judge, a sealed settlement agreement was filed.

Green v. Ford Motor Co. (VA-W 3:00-cv-00049 filed 06/01/2000), consolidated with *Carey v. Ford Motor Co.* (VA-W 3:00-cv-00050 filed 06/01/2000).

Consolidated motor vehicle product liability actions against Ford and U-Haul for the wrongful deaths of the driver and a passenger of a U-Haul truck. The truck burst into flames—allegedly because of a design defect—in a rollover accident apparently caused by the driver’s falling asleep at the wheel. Ford filed a cross-claim against U-Haul for destroying the damaged truck without letting Ford inspect it. The parties reached a confidential settlement agreement, which the court had to approve because Virginia law requires court approval of wrongful death settlements. (An action by an additional passenger who survived also was consolidated, but approval of the settlement in that case apparently was not necessary.) Several sealed documents subsequently were filed.

Longwall-Associates Inc. v. Wolfgang Preinfalk GmbH (VA-W 1:00-cv-00086 filed 06/23/2000).

Contract product liability action against a German manufacturer of mining equipment. The defendant’s North American distributor alleged that gearboxes sold to a third party were defective. The defendant filed a counterclaim for 767,520.96 DM and \$155,312 US in unpaid bills, plus additional damages. Four days after the court denied the defendant’s motion for partial summary judgment on two of the plaintiff’s five claims, a sealed document was filed and the case was closed as settled.

Lashea v. Ringwood (VA-W 7:00-cv-00556 filed 07/12/2000).

Prisoner petition against a prison nurse, challenging the quality of medical care for appendicitis. The case settled, and on the same day that a stipulation of dismissal was filed a sealed document was filed.

Village Lane Rentals LLC v. Capital Financial Group (VA-W 5:00-cv-00061 filed 07/13/2000).

Securities action by investors in a Texas apartment complex for false and misleading statements about the condition, occupancy rate, and profits of the complex. On the eve of trial, an unsuccessful settlement conference was held in the morning, and a sealed settlement conference was held in the afternoon. Approximately three weeks later, a

stipulated dismissal was filed, and a sealed document was filed a week and a half after that. This sealed document most likely contained terms of the settlement agreement.

Hale v. Elcom of Virginia Inc. (VA-W 3:00-cv-00085 filed 09/28/2000).

Class action under the Fair Labor Standards Act against the CBS television affiliate in Richmond for denial of overtime compensation to television announcers. The parties settled and filed their settlement agreement under seal for the court’s approval pursuant to the court’s order “and applicable law.” The dismissal order disclosed that one provision of the settlement agreement was that the plaintiff’s attorney not represent “similarly-situated individuals in future litigation against the defendants.”

Advance Stores Co. v. Exide Corp. (VA-W 7:00-cv-00853 filed 11/03/2000).

Breach of contract action by an auto parts retailer against a motor vehicle battery wholesaler. The case was litigated under a protective order, and many sealed documents were filed. The action was dismissed as settled the same day that a sealed settlement agreement was filed. Three sealed documents were filed three months later, and then an unsealed response to the defendant’s motion to enforce the agreement was filed. Six sealed documents of renewed litigation followed two to three months later, and the matter ultimately was dismissed again as settled.

Bryant v. Delta Star Inc. (VA-W 6:00-cv-00113 filed 12/11/2000).

Employment action, originally filed pro se, for discrimination on the basis of age and disability. The plaintiff ultimately obtained representation, and her case was consolidated with two others against the same defendant. The court dismissed the disability discrimination claims as not first presented to the EEOC, and the cases went to trial on the age discrimination claims. A memorandum of settlement pertaining to all three cases was filed under seal but docketed only for the lead case, and the lead case was dismissed.

Ebelt v. Dotson (VA-W 4:01-cv-00025 filed 05/04/2001).

Personal property damage action against a car dealer for odometer fraud. The parties filed a sealed document one day, and a sealed motion to

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dismiss the next day. On the third day, the court dismissed the action as settled.

Comsonics Inc. v. TVC Communications Inc. (VA-W 5:01-cv-00053 filed 06/20/2001).

Patent infringement case concerning a portable sampling spectrum analyzer. A sealed settlement and licensing agreement was filed under seal, and the case was dismissed as settled.

American Red Cross v. Central Virginia Safety Concepts LLC (VA-W 3:01-cv-00068 filed 06/22/2001).

Contract action against former employees who started a competing health training business for improper use of confidential business information. A consent order of dismissal ordered the defendants to refrain from soliciting new business from parties on a sealed list.

Smith v. Goodyear Tire & Rubber Co. (VA-W 4:01-cv-00041 filed 07/24/2001).

Employment discrimination action by a quality inspector at a tire plant against a supervisor for sexual harassment and against their employer for failure to stop it. After the case was referred to a magistrate judge for mediation, two sealed documents and a sealed motion to dismiss were filed, followed by an order to dismiss the action as settled.

Epperly v. Southstar Corp. (VA-W 7:01-cv-00654 filed 08/27/2001).

Employment action by a person with epilepsy for wrongful failure to rehire because of disability. A memorandum of settlement was filed under seal, and the case was dismissed.

Palmer v. Shire Richwoods Inc. (VA-W 7:01-cv-00739 filed 09/26/2001).

Employment action by a male 47-year-old recovering alcoholic with a brain tumor, alleging discrimination on the basis of age, disability, and sex, and violation of the Family and Medical Leave Act in his employer's replacing him with a younger, healthier woman. The case was dismissed pursuant to a sealed memorandum of settlement.

Teamsters National Automobile Transporters Industry Negotiating Committee v. Hook Up Inc. (VA-W 7:02-cv-00035 filed 01/10/2002).

Labor action alleging that the closing of a truck distribution terminal violated the Worker Adjustment and Retraining Notification Act by not giving employees sixty days' notice. The case was dismissed pursuant to a sealed memorandum of settlement, which was subsequently destroyed.

Phi Delta Theta International Fraternity v. Phi Delta Alpha (VA-W 3:02-cv-00028 filed 03/05/2002).

Designated a trademark infringement action, this is an action by the international Phi Delta Theta fraternity against an expelled University of Virginia chapter, which changed its name to Phi Delta Alpha, but continued to suggest association with Phi Delta Theta, such as by referring to its members as "Phi Delts." The chapter was expelled for serving alcohol, which resulted in the hospitalization of an underage student. The case was dismissed pursuant to a sealed "sketch settlement agreement." The unsealed consent order dismissing the action states that the settlement did not include an award of damages.

Reyes-Ibarra v. Miller (VA-W 7:02-cv-00681 filed 05/23/2002).

Action by migrant agricultural workers under the Migrant and Seasonal Agricultural Worker Protection Act and the Fair Labor Standards Act for improper wages, working conditions, and notice of labor regulations. The plaintiffs were hired to create Christmas decorations from evergreens. The action was dismissed pursuant to a sealed memorandum of settlement.

Younger v. FWC Inc. (VA-W 6:02-cv-00038 filed 06/19/2002).

Employment discrimination action for sexual harassment and retaliatory discharge. The case was dismissed pursuant to a sealed memorandum of settlement.

Eastern District of Washington

No relevant local rule.

Statistics: 1,355 cases in termination cohort; 70 docket sheets (5.2%) have the word "seal" in them; 3 complete docket sheets (0.22%) were reviewed; actual documents were examined for 2 cases (0.15%); 2 cases have sealed settlement agreements (0.15%).

Cases with Sealed Settlement Agreements

United States ex rel. Carbaugh v. Westinghouse Hanford Co. (WA-E 2:96-cs-00171 filed 03/19/1996).

Qui tam action under the False Claims Act for fraudulently billing for workers' fringe benefits. A sealed settlement agreement was filed.

Lohr v. Komatsu Electronic Materials (WA-E 2:00-cs-00225 filed 06/29/2000).

Product liability case in which two employees were seriously injured and one was killed when a pressure line exploded. Three minor plaintiffs in the case had guardians ad litem. The court sealed five documents filed during the thirty days preceding the filing of the recommendation by the guardians ad litem and ordered that "counsel shall file all further pleadings concerning settlement of this matter under seal." A stipulation order dismissing the case gives no additional information.

Western District of Washington⁶⁹

"There is a strong presumption of public access to the court's files and records which may be overcome only on a compelling showing that the public's right of access is outweighed by the interests of the public and the parties in protecting files, records, or documents from public review." W.D. Wash. L. Civ. R. 5(g)(1). In civil actions, after the case is over, if the entire record is sealed, the file is destroyed, *id.* R. 5(g)(5)(D); if part of the record is sealed, then sealed documents are returned to submitting parties, *id.* R. 5(g)(5)(C).

Statistics: 6,116 cases in termination cohort; 741 docket sheets (12%) have the word "seal" in them; 23 complete docket sheets (0.38%) were reviewed; actual documents were examined for 16 cases (0.26%); 12 cases (0.20%) appear to have sealed settlement agreements.

Cases with Sealed Settlement Agreements

Costco Wholesale Corp. v. Commonwealth Insurance Co. (WA-W 2:98-cv-01454 filed 10/14/1998).

Contract action involving an insurance coverage dispute for losses suffered by the plaintiff for excessive soil settlement at the plaintiff's warehouse. A cross-claim was filed against the architect and the engineer who were responsible for the design, planning, and construction of the warehouse. A

settlement was reached with the engineer. A motion for setoff of the amount paid by the settlement was filed under seal. A stipulated protective order noted that the settlement agreement was confidential. The plaintiff was awarded \$10,845,740 from the insurance company. The decision was affirmed on appeal.

MetroNet Services Corp. v. U.S. West Communications Inc. (WA-W 2:00-cv-00013 filed 01/05/2000).

Antitrust case challenging the defendant's monopoly over local and long-distance telecommunication services. The plaintiff filed a motion under seal to enforce the settlement agreement. The court denied the plaintiff's motion. The court granted the defendant's motion for summary judgment. The case currently is under appeal.

Kim v. Méndez (WA-W 2:00-cv-00071 filed 01/14/2000).

Employment action by a Korean cook against his former employer and two former co-workers for race discrimination and retaliation. A guardian ad litem was appointed to oversee the interests of the plaintiff, who was hospitalized for psychiatric care. The court granted a partial summary judgment for one of the co-worker defendants. A joint stipulated agreement provides that the terms of the settlement agreement remain confidential. The court approved and sealed the guardian ad litem report.

Supnick v. Amazon.com Inc. (WA-W 2:00-cv-00221 filed 02/11/2000).

Class action involving Web navigation software that gave the defendant access to users' names, passwords, and other confidential information. A sealed settlement agreement was filed. One week after the settlement agreement was filed, it was unsealed. The defendant agreed to modify its software so that it does not collect confidential information. The defendant agreed to pay \$1.9 million to named plaintiffs and a class of approximately 47,500, and \$100,000 to a fund that will provide grants to university-based programs with Internet public policy issues.

Lambert v. Henderson (WA-W 3:00-cv-05165 filed 03/21/2000).

Employment discrimination action by a black mailman against his former employer for refusing to provide light-duty work for him after his surgery. Minutes of the settlement were placed on

69. This district was selected at random for the study, and it has a good-cause rule.

Appendix C. Case Descriptions

the record under seal during the settlement conference.

Savage v. Combined Insurance Co. of America (WA-W 3:00-cv-05319 filed 06/01/2000).

Labor litigation involving failure to pay commissions on the sale of Medicare supplemental policies. The settlement agreement was placed on the record under seal during the settlement conference.

White v. Johnston & Culberson Inc. (WA-W 2:00-cv-00982 filed 06/07/2000).

Action under the Fair Labor Standards Act for failure to pay overtime wages. A sealed settlement agreement was filed. The court approved the settlement.

Gorchoff v. North Shore Agency (WA-W 2:00-cv-01329 filed 08/07/2000).

Class action under the Fair Debt Collection Act for failing to provide the name of the original creditor in a collection letter and for threatening to take action not legally allowed by the defendant. The case was dismissed as settled, and the order of dismissal was filed under seal. A sealed settlement agreement apparently was filed.

Precor Inc. v. Brunswick Corp. (WA-W 2:00-cv-01392 filed 08/17/2000).

Patent infringement case involving a patent for a treadmill. Six weeks after the case was dismissed, the defendant filed a motion under seal to enforce the settlement agreement. The court granted the defendant's motion.

Chance v. Avenue A Inc. (WA-W 2:00-cv-01964 filed 11/20/2000).

Class action by persons who were secretly tracked by the defendant as they surfed the Internet. The defendant's motion for summary judgment was granted. The plaintiffs appealed, but later voluntarily dismissed the appeal. The court granted a joint motion for preliminary approval of the class action settlement that was filed under seal.

Chilbeck v. Deere & Co. (WA-W 3:01-cv-05287 filed 05/29/2001).

Product liability wrongful death case involving a man who suffocated when his tractor tipped over, pinning him between the tractor's rollover protective structure and the ground. The decedent's minor child was represented by a guardian ad litem, whose report on the settlement was sealed. A joint stipulation was filed that the settlement documents be filed under seal.

In re Arctic Rose LLC (WA-W 2:01-cv-01360 filed 08/31/2001).

Statutory action in admiralty by owners of a fishing vessel for exoneration from or limitation of liability arising from an accident that resulted in the deaths of thirteen people. Seven guardian ad litem reports were filed under seal and approved by the court for the decedents' minor children. The order authorizing settlement was filed under seal.

The Federal Judicial Center

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