

Post Update: Parties & Court Still Working Out How Much Confidentiality Providers' Antitrust Filings Will Get

UPDATE:

On November 6, we blogged about Judge Darrow's ruling that antitrust defendant OSF Healthcare System could not file its entire summary judgment motion, along with exhibits, under seal. In fact, it is not just OSF that wants confidentiality in the case. Plaintiff Methodist Health Services Corporation has also supported the imposition of a protective order, and the designation of documents as confidential. In the latest on the back-and-forth over how much of the summary judgment motion and opposition briefs will be to be filed under seal, plaintiff Methodist filed, on December 30, 2015, a motion for leave to file under seal, attaching a proposed redacted version of its 150-page opposition to OSF's motion for summary judgment (along with several other exhibits). Discovery battles over what gets sealed in this case may not be the most exciting news in healthcare|however, the court's ruling may shed some light on the issue of trade secrets and other facets of confidentiality of healthcare information as the issue of price transparency continues to be hotly debated ([all the way to the Supreme Court](#)). The district court still has not made its ruling on the issue.

The November 6th Source Blog Post:

Last spring, we [blogged](#) about Methodist Health Services Corporation's antitrust suit against OSF Healthcare System, based on OSF's alleged exclusive dealing arrangements with commercial health insurers including Midwest giant Blue

Cross/Blue Shield that kept Methodist from contracting those insurers. In March 2015, the federal district in Peoria, Illinois denied OSF's motion for judgment on the pleadings.

After several months of discovery, OSF is preparing to file its motion for summary judgment. In that connection, the defendant recently filed a 143 administrative motion, requesting permission from the court to file its motion for summary judgment, along with all 120 exhibits, entirely under seal. OSF argued basis for the request was that the motion and supporting evidence would contain material recognized by the case's protective order as confidential or highly confidential.

On Friday, November 6, 2015, Judge Sara Darrow denied OSF's motion to seal in a brief text order as follows:

"Defendant OSF has filed a 143 motion to Seventh Circuit precedent disfavors such opaque decision-making. See, e.g., *Baxter Intern., Inc. v. Abbott Labs.*, 297 F.3d 544 (7th Cir. 2002)|*Union Oil Co. of Calif. v. Leavell*, 220 F.3d 562, 567-68 (7th Cir. 2000). With rare exceptions, such as trade secrets, federal courts make decisions based on a publicly-accessible record. *Union Oil*, 220 F.3d at 567 ("Many a litigant would prefer that the subject of the case – how much it agreed to pay for the construction of a pipeline, how many tons of coal its plant uses per day, and so on – be kept from the curious (including its business rivals and customers), but the tradition that litigation is open to the public is of very long standing."). **Accordingly, OSF's motion to seal is DENIED without prejudice because it is far too broad.** The Court will unseal the motion for summary judgment and its exhibits in 21 days unless OSF files a redacted version of its motion for summary judgment along with an amended motion to seal that appropriately justifies the redactions." (emphasis added)

We expect that OSF will file a narrower version of its motion to seal and will be back with an update in the next few weeks!