

In the
Indiana Supreme Court



Travelers Casualty and Surety)
Company, et al.,)
)
Appellants (Defendants below),)
)
v.)
)
United States Filter Corporation,)
N/K/A Water Applications & Systems)
Corporation, U.S. Filter Surface Preparation)
Group Inc., N/K/A International Surface)
Preparation Group Inc., Wheelabrator)
Technologies Inc., Waste Management)
Holdings Inc. and Resco Holdings, L.L.C.,)
)
Appellees (Plaintiffs below).)

Supreme Court Cause No.
49S02-0712-CV-596

Trial Court Cause No.
49D01-0409-PL-1745

ORDER TO SHOW CAUSE

This case is presently before the Court on appeal from a judgment of the Marion Superior Court.

While the litigation was pending in the trial court, all or substantially all of the parties tendered a document styled as "Confidentiality Stipulation and Order." The trial court approved the stipulation and made it a court order on April 13, 2005.

The stipulation recited that the parties agreed that this litigation might involve discovery and disclosure of privileged or confidential and sensitive information, that extrinsic agreements might restrain the use of such material, and that it would be desirable to have in place a confidentiality order governing production of all confidential material in the case.

The stipulation proceeded to outline a framework under which information tendered or shared by the parties, both to each other and to the trial court, would be confidential. It provided that at the conclusion of the litigation, any party that had tendered to the trial court material it designated as confidential could request to retrieve it or that the trial court would purge such material from the court's records. It also provided that confidentiality stipulations would be retroactive to the date any confidential document was produced.

Both before and after this stipulation was entered as an order of the trial court, various parties tendered documents and pleadings to the court under seal. Likewise, some matters tendered during the appellate process were filed under seal.

Agreements between litigants governing the treatment of information exchanged *between them* are well recognized as fostering multiple objectives, including reduction of litigation costs, protection of legitimate trade secrets, and protection of recognized forms of privilege. Trial court orders confirming such agreements can likewise help secure these benefits.

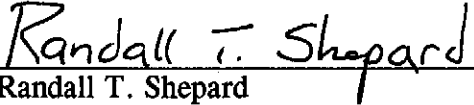
Material that litigants tender to the court stands on a very different footing. Both the Indiana General Assembly and this Court have adopted public accessibility as the default rule for information submitted to government entities, including the state's courts. The legislature has declared that "all persons are entitled to full and complete information regarding the affairs of government." Ind. Code § 5-14-3-1. Likewise, this Court has adopted rules on public access to court records, the objective of which is "to provide maximum public accessibility to court records, taking into account public policy interests that are not always fully compatible with unrestricted access." Ind. Administrative Rule 9(A) (Commentary).

The trial court's Chronological Case Summary appears to indicate that it issued the order of confidentiality without complying with Administrative Rule 9. Among other things, the Rule requires a public hearing before a court can grant a request to prohibit public access to information contained in court records. Rule 9(H)(2). Moreover, neither the stipulation nor the trial court's approval of it address the grounds which must exist if access is to be denied. Rule 9(H)(1) (public interest would be advanced, risk of substantial harm to the requester, etc.).

Accordingly, the Court ORDERS the parties to show cause why the trial court's order of April 13, 2005, should not be vacated as respects those items tendered to the trial and appellate courts, such that those items can be available for public inspection. The Court will consider any responses filed by September 19, 2008.

Done at Indianapolis, Indiana, this 25th day of August, 2008.

FOR THE COURT,



Randall T. Shepard
Chief Justice of Indiana