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PREFERRED HOME HEALTHCARE AND NURSE SERVICES, INC., Plaintiff, v. ALLSTATE NEW JERSEY INSURANCE COMPANY, Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MONMOUTH COUNTY DOCKET NO. MON-L-4408-18 Civil Action **OPINION** **(CBLP)**

Argued: February 4, 2022

Decided: March 3, 2022

Joseph C. Harraka, Jr., Esq. and Erik B. Derr, Esq. of Becker LLC, attorneys for Third-Party Intervenor CS Brighton CS Network, LLC, formerly MagnaCare Administrative Services.

Sherilyn Pastor, Esq., and Joseph Vila, Esq., of McCarter & English, LLP, attorneys for plaintiff Preferred Home Healthcare and Nurse Services, Inc.

Marc E. Wolin, Esq., and Alexander C. Banzhaf, Esq., of Saiber, LLC, attorneys for defendant Allstate New Jersey Insurance Company.

HONORABLE MARA ZAZZALI-HOGAN, J.S.C.

Third-Party Intervenor Brighton CS Network, LLC (formerly MagnaCare Administrative Services, LLC and hereinafter MagnaCare) has filed a motion to seal two documents that are the subject of pending motions for summary judgment filed by Plaintiff Preferred Home Healthcare and Nurse Services, Inc. (Preferred) and Defendant Allstate

New Jersey Insurance Company's (Allstate). The court previously denied the motions to seal filed by plaintiff and defendant in the underlying case, stating that they failed to meet their burden under the Court Rules and case law. Although the facts differ slightly because the movant is a party to the contracts but not a party to the litigation, those facts do not ultimately change the analysis, which must be fact sensitive.[1]

I. Background

Although cumbersome, it is important to set forth the underlying facts. In this lawsuit, Preferred seeks approximately $1.1 million in what it considers to be unpaid medical services. Allstate contends that Preferred was reimbursed for what it was entitled to as a "covered service" under the contract even though those services were rendered at a rate below New Jersey's PIP fee schedule.

The parties dispute whether the rates for various health care services should have been determined by the parties' underlying contracts, billing companies, third-party claims administrators or the PIP benefits statute. For purposes of this motion, there are two specific documents at issue: a Service Agreement between MagnaCare and Optum Inc., formerly known as Procura Management Services, Inc. (Procura) dated April 1, 2003 and a Provider Participation Agreement between Preferred and MagnaCare (Preferred's PPO Contract) dated April 1, 2015.

Preferred is a company that provides home nursing and home health aide services and was assigned PIP benefits by insureds who were injured in car accidents. MagnaCare is a healthcare management company that operates a network of

[1] The prior opinion should be read in conjunction with this decision because the former offers suggestions regarding how attorneys and the court should process these applications in the future because there currently is no clear guidance.

participating hospitals, providers and other healthcare entities. MagnaCare's contracts with those providers require them to accept a certain amount of reimbursement for their services that is reduced from their standard rate. In exchange, MagnaCare advertises the providers' services to payor clients and ensures guaranteed reimbursement rates for those services. MagnaCare plays the role of a broker, whose function is to bring providers (such as Preferred) and payors (for example, insurers like Allstate) together in a network. By entering into its PPO Contract with MagnaCare, Preferred joined MagnaCare's PPO Network and became subject to the reimbursement rate schedule.

Within this system, many payors contract with medical bill review companies or third-party claims administrators such as Procura to evaluate the necessity of medical treatment for those services. Here, Procura contracted with MagnaCare on April 1, 2003 to be the exclusive distributor of MagnaCare's PPO Network in New Jersey. The contract between Procura and MagnaCare allows Procura to distribute the MagnaCare PPO Network to its customers or members like Allstate, which is why Allstate does not contract directly with MagnaCare.

In 2010, Allstate also contracted with Procura to provide bill review services for care rendered to Allstate insureds for PIP claims, allowing Procura to distribute MagnaCare's PPO Network to Allstate. In 2016, Procura and Allstate entered into another contract that allowed Allstate the same access to Procura's PPO network partners but altered the compensation arrangement between Procura and Allstate. Preferred contends it was not properly reimbursed although Allstate contends it was Procura's decision not Allstate's. Regardless, those two documents are not the subject of this motion.

On September, 28, 2021, the court denied motions to seal that had been filed by plaintiff and defendant regarding these two documents (and other documents) holding that (1) the motions to seal failed to "explain how the purported right to secrecy of those documents outweighs the public's right to access," (2) "neither party articulate[d] why information is confidential – only that it is confidential as defined by the discovery confidentiality agreement; and (3) "no potential harm to MagnaCare's legitimate business interests [was] articulated."[2]

II. Motions to Seal and the Presumption of Public Access

In its prior decision, the court set forth the jurisprudence explaining why public access is pivotal to the judicial process. If a proceeding is required to be conducted in open court, no record of any portion thereof shall be sealed by order of the court except for good cause shown, as defined by R. 1:38-11(b), and which shall be set forth on the record. Hammock by Hammock v. Hoffman-Laroche, 142 N.J. 356, 367 (1995). In other words, all papers shall be accessible to the public and all proceedings shall be conducted in open court unless otherwise provided by caselaw, rule or statute such as to protect the identity of a confidential informant in order to enable a criminal investigation, protect a victim of child abuse or domestic violence from further trauma or minimize risks of identity theft. See Rules 1:36-4 and 1:38-1A.

Notwithstanding those fundamental tenets, the presumption of access may be rebutted by showing that "society's interest in secrecy outweighs the need for access." Spinks v. Township of Clinton, 402 N.J. Super. 454, 460 (App. Div. 2008). And our courts

[2] Although MagnaCare was not a party to the prior motion, this is in essence a motion for reconsideration. MagnaCare fails to articulate how fairness and justice mandate a different result pursuant to Lawson v. Dewar, 468, N.J. Super. 128 (App. Div. 2021). Nonetheless, the court will consider the arguments and legal standards raised by MagnaCare.

have made clear that the person or persons seeking to deprive the public of access to certain information must "establish by a preponderance of the evidence that the interest in secrecy outweighs the presumption" for each and every document at issue. Hammock, 142 N.J. at 381-82. Applying a reasonableness standard and in weighing the interests, the public interest is independent from the interests of parties and their attorneys, particularly when matters of health, safety and consumer fraud are at issue. Id. at 379.

"A determination of what standard should guide our courts when deciding whether to unseal judicial records filed with the court should begin with our court rules." Id. at 367 and 376. More specifically, Rule 1:38-11 provides that:

> (a) Information in a court record may be sealed by court order for good cause as defined in this section. The moving party shall bear the burden of proving by a preponderance of the evidence that good cause exists.
>
> (b) Good cause to seal a record shall exist when:
> (1) Disclosure will likely cause a clearly defined and serious injury to any person or entity; and
> (2) The person's or entity's interest in privacy substantially outweighs the presumption that all court and administrative records are open for public inspection pursuant to R. 1:38.

Rule 1:38-11, however, did not eliminate the requirement that a party seeking to seal a record must demonstrate with specificity the need for secrecy for each document sought to be sealed. Hammock,142 N.J. at 381-82. "Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, are insufficient." Ibid.

III. Analysis

A. Whether the Subject Matter Involves a "Public Interest"

As a threshold issue, MagnaCare asserts that it is entitled to greater privacy as a private entity and that this case does not trigger any public interest because the subject matter does not relate to health, safety or consumer fraud. In favor of that argument,

MagnaCare relies on Verni ex rel. Burnstein v. Lanzaro, 404 N.J. Super. 16, 24 (App. Div. 2008) and In Re Trust Created by Johnson, 299 N.J. Super. 415, 423 (App. Div. 1997). Those cases, however, do not support MagnaCare's argument. Specifically in Verni, the court rejected an effort to seal documents, which in that case related to a settlement involving a minor who was catastrophically injured in a car accident. Verni, 404 N.J. Super. at 24. Likewise, the circumstances in In re Trust Created by Johnson, are easily distinguishable. There, the court rejected a trust beneficiary's relative's efforts to access financial information of the beneficiary at issue. The court found that the general public does not have a right to inspect sealed private documents relating to an individual's personal financial records, stating it was "a private matter not infected with any meaningful degree of public interest." In re Trust Created by Johnson, 299 N.J. Super. at 423.

In fact, the leading case of Hammock debunks MagnaCare's argument and makes clear that the "applicability and importance of the interests favoring public access are not lessened because they are asserted by a private party that was not a party to the litigation." Hammock, 142 N.J. at 379 (internal alterations omitted). In addition to Verni, the courts have rejected other litigant's efforts to assert that a private agreement was not subject to public access. See, e.g., Lederman v. Prudential Life Insurance Co., 385 N.J. Super. 307, 317-18 (App. Div. 2006) (holding that an employer's interest in vindicating a contractual confidentiality agreement with its employees did not override or outweigh the presumption in favor of public access).

Here, the court also disagrees with MagnaCare's contention that this case does not implicate any meaningful public interest as this matter concerns health or medical benefits and automobile insurance, both of which are highly regulated industries because

of the public interest. See In re "Plan for Orderly Withdrawal from New Jersey" of Twin City Fire Ins. Co., 248 N.J. Super. 616, 632 (App. Div. 1991) (stating that the business of insurance is considered not to be merely a private right, but a matter of public concern, a franchise subject to regulation by the state for the public good). While the dispute in this case indeed implicates private contracts, that distinction does not eliminate the presumption of public access. If the court were to accept MagnaCare's argument, then any contract between private entities or individuals could be filed under seal.

B. Whether MagnaCare Has Sufficiently Described the Information and the Potential Harm

As a threshold issue, the court finds MagnaCare's overall argument to be somewhat disingenuous as one or more of these documents were already subject to a prior litigation when Preferred sought to rescind the contract in 2016 in the Chancery Court for Middlesex County, Docket No. MID-C-160-16. After Preferred appealed the motion for summary judgment that was granted in MagnaCare's favor, it was affirmed. See Preferred Home Healthcare & Nurse Servs. v. MagnaCare Admin. Servs., LLC, No. A-3353-17T2 (App. Div. July 5, 2019). At oral argument in this matter, MagnaCare proffered that this was a mistake or oversight that it did not wish to compound. Regardless, in that litigation, the courts examined on the record specific rates and who was obligated to do what. More importantly there are no documents or transcripts that were subject to a confidentiality order or filed under seal in that litigation, although that fact would not necessarily change the outcome here. See Hammock, 142 N.J. at 382.

To that point, recently-amended Rule 1:38-1A states that courts "may quote from or make reference to information in court records even when those records are excluded from public access."

1. What Information Is At Issue

Here, in identifying what should be sealed, MagnaCare does not cite to any specific terms that it believes should be redacted. Rather, it wants the entire agreements protected from the public's view, which constitutes an improper over designation.

To the underlying parties' credit, they at least attempted to limit the redactions of terms and definitions including, but not limited to, "covered person," "covered services," "health benefit plan," "rates" and "payors" as well as "savings," "provider contracting services," "exclusivity," "network fees," "payment of participating providers," and "solicitation of payors." The court clearly stated in its prior decision, however, that the information was essential to analyzing and adjudicating the motions for summary judgment as the parties dispute what constitutes a "health benefit plan;" whether the PPO contract with MagnaCare specifically applies to these PIP claims; whether the PPO rate or the statutory rate applies to those claims; who or what constitutes a "covered person;" what constitutes a "covered service" and whether Allstate waived its right to the MagnaCare PPO rate. Consequently, the presumption of access attaches to all documents filed in support of, or in opposition to, a dispositive motion such as the one at issue. Hammock, 142 N.J. at 380-81 (stating that a motion on the ultimate issue of a case as compared with a discovery motion, "crosses the threshold" requiring a presumption of public access).

2. Whether Trade Secret or Proprietary Information Is At Issue

In addition to failing to cite to specific parts of the agreements that should be redacted, MagnaCare does not explain why the information at issue is a "trade secret" or "proprietary." MagnaCare states only that it "requests the sealing of its most confidential and commercially sensitive business information" and that the documents contain "specific information relating to MagnaCare's internal business strategy and analysis." It is not clear what that information is.

Likewise, MagnaCare contends that the contract rates with "Optum [formerly Procura] encapsulate MagnaCare's strategic and marketing plans, and other highly sensitive proprietary and trade secret information." The rate schedule at issue, however, is not based on any secret formula but rather, is a fixed dollar amount. More importantly, the allowance or applicable rate is at the heart of the dispute.

The closest MagnaCare came to identifying what information was proprietary occurred when it asserted that various algorithms affected its decision making when it drafted the agreements, through which they sought to maximize the profit margin. During those discussions, concededly, some important financial information may have been discussed. Those behind-the-scenes discussions, however, relate to financial information that was considered when structuring the contracts, not what information was expressly stated in the contracts. Even though MagnaCare emphasizes that the information discussed was so sensitive that it was not even accessible to general employees, that factor does not entitle it to protection even though it should be considered. See, e.g., Smith v. Bic Corp., 869 F.2d 194, 200 (3d Cir. 1989) (enumerating additional

considerations when determining whether information should be afforded protection from the public view).

Based upon the foregoing, none of the information cited by MagnaCare is a trade secret such as a patent, formula, pattern, design specification, safety or quality information, a unique manufacturing or assembly process or a customer list, all of which are entitled to a greater level of protection than confidential or proprietary information, See Hammock, 142 N.J. at 383.

3. Whether There Is a Clearly Defined and Serious Injury

MagnaCare contends that if it were required to disclose these agreements, which "are at the heart of its business relationships," it would lose its "competitive edge in the marketplace when it comes to the negotiation of prices and terms with its business partners." According to MagnaCare, disclosure "would provide MagnaCare's direct market competitors significant insight into MagnaCare's key business metrics and strategy decisions." This is what MagnaCare has essentially identified as the "specific financial competitive harm."

While the court appreciates why information not known to competitors or deemed proprietary could provide another company with an advantage, that information is not automatically entitled to protection. Likewise, that the information may be reverse engineered does not trigger the need to conceal that information from the public. Id. at 384.

As the court stated in the prior opinion, when filing an application to seal, it does not suffice to simply state in a conclusory fashion that good cause exists because disclosure will result in harm to one's personal life or to business interests or that

disclosure will put the individual or business entity at a competitive disadvantage. Likewise, the movant must demonstrate "why public access to the documents should be denied currently, rather than rely on the fact that a protective order was entered earlier." Hammock, 142 N.J. at 382. Here, MagnaCare fails to explain how these two documents, which were executed nineteen and seven years ago, respectively, pose any current threat. Most importantly, MagnaCare does not cite to any case where the court concluded that a contract between two private entities should be sealed because their interests outweighed those of the public, particularly when the contract involved a heavily regulated industry like insurance as is the case here. Regardless, this is a fact-sensitive inquiry, meaning that there may be circumstances that would entitle parties in litigation to seal the information in a contract.

Based upon the foregoing, MagnaCare has failed to demonstrate by a preponderance of the evidence that any of the information at issue is proprietary or constitutes a trade secret that is entitled to protection. Nor has it demonstrated that disclosure of the information will likely cause a clearly defined and serious injury to any entity and that its interest in maintaining privacy substantially outweighs the presumption that court records are open to public review.

/s/ MARA ZAZZALI-HOGAN, J.S.C.