

2/3/2011

U.S.C.A. - 7th Circuit  
FILED

No. 10-2627

JAN 10 2011 LEJ

GINO J. AGNELLO  
CLERK

UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

Wisconsin Interscholastic Athletic  
Association and American-HiFi, Inc.,

Plaintiffs-Appellees,

v.

Gannett Co., Inc. and Wisconsin  
Newspaper Association,

Defendants-Appellants.

U.S.C.A. - 7th Circuit  
RECEIVED  
JAN 10 2011 LMB  
GINO J. AGNELLO  
CLERK

Appeal from a Judgment and Order of the United States  
District Court for the Western District of Wisconsin  
Case No. 09-CV-155-WMC  
Hon. William M. Conley, Presiding

PLAINTIFFS-APPELLEES' MOTION TO EXCLUDE DOCUMENT FROM  
APPELLATE RECORD, OR IN THE ALTERNATIVE, SEAL

Plaintiff-Appellee American-HiFi, Inc., d/b/a When We Were Young  
Productions ("WWWY") respectfully requests the Court exclude from the appellate  
record Dkt. No. 104, Ex. B, which contains confidential financial information filed  
under seal in the Western District of Wisconsin. The document has not been cited  
by any party on appeal and is not relevant to the appeal. Accordingly, it is  
unnecessary for this document to be part of the appellate record in this matter, and  
WWWY requests that the document be returned to the Western District of

Wisconsin and be excluded from the appellate record. Alternatively, WWY requests that the document at least be ordered to remain sealed to protect the confidential financial information included. WWY has contacted Defendants-Appellants Gannett Co., Inc. and the Wisconsin Newspaper Association (collectively, "Appellants") regarding this motion. Appellants stated that they oppose WWY's motion to exclude the document from the appellate record, but do not oppose the motion to seal.

Dkt. No. 104, Exhibit B, provides detailed profit and loss information for WWY, including, *inter alia*, revenues, income and expenses, related both to WWY's agreement with WIAA and more generally to the business as a whole. More specifically, it contains general expenses, information regarding debt, health insurance, bank service charges, profits, and losses. It was produced pursuant to a discovery request by Appellants and submitted by Appellants during summary judgment briefing under the cover of a protective order of the district court.

However, the document is not germane to any issue on appeal;<sup>1</sup> no party has cited Exhibit B in briefing in this Court. Accordingly, in order to maintain the confidentiality of WWY's financial information, WWY respectfully moves to exclude the sealed document from the appellate record and return it to the district court. *See, e.g., United States v. Foster*, 564 F.3d 852, 854 (7th Cir. 2009) ("[I]t is

---

<sup>1</sup> Information specific to the contract between WWY and WIAA (the contract that is the subject of this dispute) is found in Dkt. No. 90, Ex. D, which document WWY has not moved to exclude or seal.

often better to exclude the documents from the appellate record than to analyze at length the reasons why they should or should not be sealed.”).

Should the Court deny this Motion, WWVY respectfully moves in the alternative to seal Dkt. No. 104, Ex. B. As noted above, Appellants do not oppose the motion to seal this document. The document contains a discrete subset of information—profit and loss information—that falls squarely within the four corners of this Court’s standards in retaining the confidential character of the information contained therein. The parties in this matter did not file a so-called “blanket” protective order in this matter; rather, the parties stipulated to—and the Court approved and ordered—a limited, targeted protective order covering confidential financial information. Dkt. Nos. 68-2, 70. WWVY does not seek to keep a large set of documents protected, but rather, with this motion seeks to protect a single document containing detailed, confidential profit and loss information that is not relevant to this appeal, and certainly not of the type that would “influence or underpin the judicial decision” as discussed in this Court’s *Baxter* decision. *Baxter Int’l, Inc. v. Abbott Labs.*, 297 F.3d 544, 545 (7th Cir. 2002). As noted in *Baxter*, “Information transmitted to the court of appeals is presumptively public because the appellate record normally is vital to the case’s outcome.” *Id.* at 545. This is not such a document. Any financial information germane to the appeal is contained in other documents that are part of the public record on this appeal. The detailed financial information in this document has not been cited by the parties on appeal and is not vital to any issues for consideration by

this Court. *See id.* at 548 (“The strong presumption of public disclosure applies *only* to the materials that formed the basis of the parties’ dispute and the district court’s resolution. If documents have reached this court unnecessarily, the parties could have asked us to send them back.”) (emphasis added). WWWY thus respectfully requests that this Court either return Dkt. No. 104, Exhibit B, to the Western District of Wisconsin or, alternatively, order that it remain sealed.

Respectfully Submitted,

January 10, 2011

By:  / JB

John S. Skilton  
Autumn N. Nero  
Sarah C. Walkenhorst  
Jeff J. Bowen  
Emily J. Lee  
PERKINS COIE LLP  
One East Main Street, Suite 201  
Madison, WI 53703  
(608) 663-7460  
[jskilton@perkinscoie.com](mailto:jskilton@perkinscoie.com)  
[anero@perkinscoie.com](mailto:anero@perkinscoie.com)  
[swalkenhorst@perkinscoie.com](mailto:swalkenhorst@perkinscoie.com)  
[jbowen@perkinscoie.com](mailto:jbowen@perkinscoie.com)  
[emilylee@perkinscoie.com](mailto:emilylee@perkinscoie.com)

Anderson, O’Brien, Bertz, Skrenes  
& Golla  
Gerald O’Brien  
1257 Main Street  
Post Office Box 228  
Stevens Point, WI 54484  
(715) 344-0890  
[gmo@andlaw.com](mailto:gmo@andlaw.com)

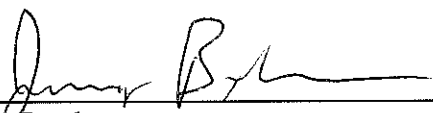
Jennifer S. Walther  
Mawicke & Goisman, S.C.  
1509 North Prospect Avenue  
Milwaukee, WI 53202  
(414) 224-0600  
[jwalther@dmgr.com](mailto:jwalther@dmgr.com)

*Attorneys for Plaintiffs-Appellees*

### PROOF OF SERVICE

I, Jeremy L. Buxbaum, an attorney with the law firm of Perkins Coie LLP, hereby certify that on January 10, 2011, I caused a hard copy of PLAINTIFFS-APPELLEES' MOTION TO SEAL to be served by hand delivery on the following persons listed below:

Robert J. Dreps  
Monica Santa Maria  
Godfrey & Kahn, S.C.  
One East Main Street  
Madison, WI 53703  
[rdreps@gklaw.com](mailto:rdreps@gklaw.com)  
[msantamaria@gklaw.com](mailto:msantamaria@gklaw.com)

  
\_\_\_\_\_  
Jeremy L. Buxbaum