

Rosenblum, Carl

From: Montero, Guillermo (ENRD) [Guillermo.Montero@usdoj.gov]
Sent: Tuesday, February 08, 2011 3:15 PM
To: Rosenblum, Carl
Cc: Hainkel, Alida; Venn, Brett; jfcooney@Venable.com; mreimer@earthjustice.org; ababich@tulane.edu; Swanson, Kristofor (ENRD); Collins, Brian M. (ENRD)
Subject: Hornbeck et al v Salazar et al

Carl,

Thank you for your voicemail. I appreciate the clarification and I understand that, by proposing a motion to seal, you are not proposing to withhold contemporaneous billing records from the Defendants.

That aside, there are no circumstances making it necessary or appropriate to seal the billing records. Standard practice when seeking fees to be paid by the public fisc is to submit contemporaneous billing records that support the claim without denying public access to them. Therefore, if you file a motion to seal, I ask that you please paste the following into your motion, which represents Federal Defendants' position:

Defendants' Position: Federal Defendants oppose the proposed motion to seal any records submitted by Hornbeck in support of its petition for fees. As courts in the Eastern District of Louisiana have recognized, public access to such documents "serves important [judicial] interests, such as 'to promote trustworthiness of the judicial process, to curb judicial abuses, and to provide the public with a more complete understanding of the judicial system, including a better perception of fairness.'" See Detroit Diesel Corp. v. Delta Launch Servs., Civil Action No. 06-10912, 2010 WL 1037974, at *3 (E.D. La. March 18, 2010) (quoting S.E.C. v. Van Waeyenberghe, 990 F.2d 845, 849 (5th Cir. 1993)). Thus, in determining "whether to disclose or seal a judicial record, the Court must balance the public's common law right of access against interests favoring non-disclosure." Id.; see also id. ("[T]he district court's discretion to seal the record of judicial proceedings is to be exercised charily") (quoting Van Waeyenberghe, 990 F.2d at 848). In this case, we understand that counsels' contemporaneous billing records were not "intended for public disclosure," but that does not outweigh the public's interest in accessing documents relating to Plaintiffs' petition for attorney fees, especially since the petition involves a demand for payment from the public fisc.

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Incidentally, please be aware that, absent a protective order, an order granting a motion to seal documents would have no effect on the Government's obligation to disclose those same documents should they ever be requested under the Freedom of Information Act.

Thank you, --Guillermo

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EXHIBIT

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2/9/2011

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