

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**WILLIAM F. SHEA, LLC,**

**Plaintiff,**

**v.**

**BONUTTI RESEARCH, INC.,**

**Defendant.**

**Case No. 2:10-cv-615**

**JUDGE GREGORY L. FROST**

**Magistrate Judge Norah McCann King**

**OPINION AND ORDER**

This matter is before the Court for consideration of Plaintiff William F. Shea, LLC's ("Shea") motion to prevent disclosure of the settlement agreement and post-settlement documents reflecting settlement terms. (ECF No. 247.) For the reasons that follow, the Court **DENIES** the motion.

The background of this dispute is set forth in the Court's August 14, 2014 Opinion and Order. (ECF No. 246.) In that filing, the Court ordered all signatories to the Settlement Agreement not to disclose any confidential communications covered by Local Civil Rule 16.3 and/or the terms of the Settlement Agreement unless and until one of the exceptions set forth in Local Civil Rule 16.3(c)(3) is satisfied. The Court did not opine at that time on the issue of whether a court order from the parallel litigation in *A Communications Co. v. Bonutti*, No. 3:13-cv-1993 (S.D. Ill.) ("Acom Litigation") would satisfy the "otherwise required by law" exception to Southern District of Ohio Local Civil Rule 16.3(c)'s confidentiality provision or the "unless all parties otherwise agree in writing" exception to Section 3.5 of the Southern District of Ohio Supplemental Procedures for Alternative Dispute Resolution. Given the September 4, 2014

ruling from Magistrate Judge Williams in the Acom Litigation, that issue is now squarely before the Court.

**I. Local Rule 16.3(c)(3)(E)**

This Court has already found that, pursuant to Local Civil Rule 16.3(c), the communications that took place during the ADR proceedings before this Court are confidential unless one of the exceptions set forth in section (3) of that Rule applies. The issue is whether a court order in another case satisfies the “disclosure is otherwise required by law” exception set forth in section (3)(E).

The Court finds that it does not. Although the Local Civil Rules do not expressly define “otherwise required by law,” the obvious meaning of this phrase encompasses statutory or common law mandates that would necessitate disclosure. This meaning does not resolve the issue of disclosure here, however, where the source of the mandate to disclose would be a magistrate judge’s order from outside the District that promulgated the confidentiality rule and from outside the Circuit in which the rule has been approved and followed. There is no cause for necessarily interpreting “otherwise required by law” as used in the Local Civil Rules to include such an order, regardless of whether such an order would have a different effect outside the Local Civil Rules context.

Three main points are warranted. First, the structure and content of Local Civil Rule 16.3(c)(3) casts doubt on whether 16.3(c)(3)(E) encompasses a court order. The current version of Local Rule 16.3(c)(3) provides that “[c]ommunication deemed confidential by this Rule may be disclosed, if such disclosure is not *otherwise prohibited by law or court order*,” before listing the circumstances of the exceptions to confidentiality. S.D. Ohio Civ. R. 16.3(c)(3) (emphasis added). The Local Civil Rule therefore makes a distinction between “law” and “court order.”

This language makes explicit what was implicit in the pre-May 1, 2014 version of the Local Civil Rules.

The subsequent exceptions support this interpretation. The exception set forth in (A) addresses reports by neutrals to the Court, (B) addresses agreements to disclosure by all participants in an alternative dispute resolution process, and (C) and (D) address determinations by the judge presiding in the case or by the Chief Judge. Because a court speaks only through its orders, (C) and (D) necessarily and implicitly contemplate a determination formalized in a court order. If (E) also encompasses a court order, then both (C) and (D) are largely superfluous, in addition to subverting the distinction between “law” and “court order” that now precedes the listed exceptions in the current version of the Local Civil Rules.

Second, policy considerations related to court governance counsel against interpreting Local Civil Rule 16.3(c)(3)(E) to permit disclosure. Construing the court order involved here to satisfy the “otherwise required by law” provision at issue would in effect render this District’s ability to provide or guarantee confidentiality a sham, subject to disregard by any judicial officer in any court in any jurisdiction. That is neither the intent nor the effect of the local rule provision. Instead, this Court interprets “otherwise required by law” to exclude the order involved here. If this District intended the local rule exception to reach court orders, the District could and should have so expressly disclosed that intent in the rule.

Third, simple fairness dictates that the parties should be permitted to rely on the confidentiality guarantee set forth in Local Civil Rule 16.3(c) upon which they relied and that this Court implicitly approved when it accepted the settlement agreement over which the Court retains jurisdiction. Plaintiff in particular has an interest in protecting against disclosure of settlement communications in a lawsuit to which it was not originally a party, in which it is not

accused of having done anything improper so as to puncture its privacy interest, and in which it has had to involve itself only to protect its privacy interest.

For those reasons, the Court concludes that Magistrate Judge Williams' June 4, 2014 Order does not satisfy the exception set forth in Local Civil Rule 16.3(c)(3)(E).

## **II. Southern District of Ohio Supplemental Procedures for Alternative Dispute Resolution § 3.5**

Because Local Civil Rule 16.3(c) reaches only "communications" and not the terms of the parties' Settlement Agreement itself, section 3.5 of Southern District of Ohio Supplemental Procedures for Alternative Dispute Resolution ("Section 3.5") becomes relevant. That section provides that the parties may not disclose the "terms of any agreed upon settlement" unless all parties agree in writing or one of the exceptions set forth in Local Civil Rule 16.3 applies. None of the exceptions to Local Civil Rule 16.3 apply in this case; accordingly, the issue is whether all parties agreed in writing to disclose the terms of any agreed-upon settlement.

The Court finds that they have. The Settlement Agreement (filed under seal at ECF No. 233) contains a confidentiality provision. That provision memorializes the parties' agreement not to disclose the Settlement Agreement or its terms unless, *inter alia*, a "court order" requires them to do so. Because Magistrate Judge Williams' September 4, 2014 Order clearly constitutes a "court order" pursuant to the Settlement Agreement's broad, plain language, the Court concludes that the confidentiality exception set forth in Section 3.5 has been met.

Plaintiff's only argument on this point is unavailing. Plaintiff merely states, without justification or authority, that "[t]he confidentiality provision does not constitute an agreement in writing under Section 3.5 to waive [Plaintiff's] right to object to compelled disclosure of the Settlement Agreement by court order." (ECF No. 247, at 7.) It then asks this Court to violate standard rules of contract interpretation by qualifying the language in the Settlement Agreement.

*See id.* (asking the Court to limit the “court order” language in the confidentiality provision to situations in which the Southern District of Ohio “could overrule a signatory’s objections and order its production – in which case the clause at issue insulates the party compelled to product from allegations of breach”). Because the Court does not interpret the Settlement Agreement in that way, it concludes that Section 3.5 does not prevent disclosure of the Settlement Agreement or its terms. The Court therefore cannot issue an order “prohibiting any of the signatories to the Settlement Agreement, including the defendants in the Acom Lawsuit, from disclosing the Settlement Agreement itself and any post-settlement documents reflecting its terms” as Plaintiff requests.

### **III. CONCLUSION**

For the foregoing reasons, the Court **DENIES** Plaintiff’s motion. (ECF No. 247.)

**IT IS SO ORDERED.**

/s/ Gregory L. Frost \_\_\_\_\_  
GREGORY L. FROST  
UNITED STATES DISTRICT JUDGE