Sealing Your Settlement Agreement from the Public Eye

By Christopher R. Christensen and Evan M. Kwarta

IN TWO previous editions of the IADC Privacy Project, William B. Crow examined how and when settlement agreements that require court approval can be kept under seal. In 2004, Mr. Crow examined the arguments in favor of, and in opposition to, sealing settlement agreements, as well as specific efforts by certain jurisdictions to prevent settlement agreements from being filed under seal (hereinafter "Crow I"). In 2007, Mr. Crow examined a variety of hypotheticals involving sealed settlement agreements, and the legal and ethical considerations attorneys must confront when attempting to shield settlement agreements from the public eye (hereinafter "Crow II"). Both articles cautioned that parties, particularly defendants, should not expect that judges will accept settlement agreements for filing under seal, and advised that to the extent litigants hope to shield those agreements from the public, they must make every effort to refrain from entering into settlement agreements that require judicial approval. That advice remains the same today – even where the parties to a settlement agreement agree to keep that settlement confidential, they should not expect it to remain so where the settlement agreement requires judicial approval.

Since Mr. Crow's articles were published, the movement among certain state legislatures, judges and plaintiffs' attorneys to prevent sealed settlement agreements has become even stronger. This article focuses on forums that embrace the movement against confidentiality, and examines recent exemplary cases, including the success of arguments commonly made in support of motions to seal settlement agreements.

Christopher R. Christensen is a partner with Condon & Forsyth LLP in New York City. He concentrates his practice in the areas of complex aviation, product liability and commercial litigation.

Evan M. Kwarta is an associate who works in the same practice group.

I. Additional Forums that Disfavor Sealed Settlement Agreements

In 2004, Mr. Crow carefully reviewed certain forums that employ "Sunshine Acts" or similar rules that prohibit or restrict the sealing of any court records, including settlement agreements, when those records contain information related to a so-called "public hazard."[1] Crow I noted that when defending cases in any of those forums, parties must be prepared for the probability that their settlement agreement, even if intended to be kept confidential, could be revealed to the public.[2] That advice is applicable to several additional forums identified below.

State courts in South Carolina, much like their federal counterparts, are specifically prohibited from approving settlements that are conditioned upon being filed under seal.[3] State courts in Louisiana and Arkansas prohibit

confidentiality provisions in any contracts, including settlement agreements, where those contracts relate to public[4] or environmental[5] hazards, respectively.

Like Texas, the state of Washington has made a specific legislative finding that the public health is promoted by a prohibition of confidentiality provisions that conceal matters that relate to public health.[6] And under Virginia law, protective orders entered in personal injury and wrongful death cases cannot prohibit attorneys from conferring with other attorneys, who are not involved in the case in which the protective order was entered, but who are involved in similar or related matters.[7] Counsel defending cases in any of these jurisdictions should be aware that each of these rules reflects a policy preference in favor of transparency and against sealed settlement agreements. Accordingly, in those jurisdictions, if a settlement agreement requires judicial approval, it is unlikely to be accepted for filing under seal.

This policy preference has made it to the halls of the U.S. Congress where three "Sunshine in Litigation" bills[8] are pending that would modify the Federal Rules of Civil Procedure to (1) prohibit federal courts from entering Rule 26(c) protective orders and orders sealing a settlement agreement, where such orders would restrict the disclosure of information relevant to the public health or safety; (2) dissolve all protective orders (except those that sealed a settlement agreement) upon the entry of final judgment, unless the court makes a separate finding that the protective order should remain in effect; and (3) prohibit federal courts from enforcing the terms of a settlement agreement that precludes the parties from revealing the fact or terms of a settlement (other than the amount of money paid), or precludes the dissemination of evidence from that case if the case involved matters relating to the public health or safety.

"Sunshine" amendments to the Federal Rules of Civil Procedure have been proposed and rejected before.[9] Moreover, because these particular bills were opposed both by the ABA and the Judicial Conference of the United States they are not likely to become law. However, the continued proposal of "Sunshine" acts in the U.S. Congress[10] and the increasing number of jurisdictions with "Sunshine" acts,[11] coupled with a growing preference among judges for open settlement agreements, should give pause to attorneys who either believe that their client's settlement agreement is certain to remain confidential or who factor the need for confidentiality into their settlement negotiations. That growing preference among judges is encapsulated in the recent case law detailed below.

II. The Judicial Movement Against Sealed Settlement Agreements

Before examining recent case law concerning judicially approved sealed settlement agreements, it is worth examining the landscape in which the need for judicial approval of settlement agreements arises and how that need factors into a judge's decision as to whether to accept a settlement agreement for filing under seal. This article will primarily address cases decided subsequent to Crow II because Mr.

Crow's articles deftly addressed cases decided in 2007 and before.

Very few settlement agreements require judicial approval. A Federal Judicial Center study[12] of federal cases with sealed settlement agreements revealed that sealed settlement agreements are filed in approximately four-tenths of one percent of all federal cases.[13] The Federal Judicial Center also concluded that less than two-tenths of one percent of all cases both had sealed settlement agreements[14] *and* arguably were related to the public health or safety.[15] Ultimately, the Federal Judicial Center concluded that the number of cases with sealed settlement agreements was too small to necessitate a change in the Federal Rules of Civil Procedure.[16]

Of that four-tenths of a percent of cases that had sealed settlement agreements, a plurality of those cases were ones that typically require judicial approval, such as those involving a minor, or actions filed pursuant to the Fair Labor Standards Act (hereinafter the "FLSA"), where, particularly among FLSA cases, courts have found that the public interest in open access to judicial records can outweigh the parties' need for privacy.[17] The growing reluctance among judges to seal FLSA cases is discussed below.

III. The Refusal to Seal FLSA Cases

A primary concern among those opposed to sealed settlement agreements is that confidentiality will conceal from the public certain vital information in which the public has an interest. In other words, certain settlement agreements serve not just a private function, but also a public function.[18] Judicial construction of plaintiffs' FLSA rights has similarly recognized a public-private interest because, courts state, the FLSA was intended not simply to compensate employees for lost wages, but also to publicly punish employers for violating the FLSA, and to put other employees on notice that they may have a claim against their employer.[19] Accordingly, courts have found that sealing FLSA settlement agreements thwarts the public-private objective of the FLSA by permitting employers to hide their violations from the public and their employees.[20] Judicial analysis of the balance between the public and private interests that arise in FLSA cases, therefore offers an effective window into the challenges judges confront with sealed settlement agreements, as well as how attorneys can expect motions to seal settlement agreements to be resolved.

In recent cases analyzing motions to seal FLSA settlement agreements, courts have considered and rejected most of the common arguments defendants make in favor of sealing settlement agreements. For instance, defendants frequently argue that confidentiality plays a vital role in settlement negotiations and that settlement agreements often cannot be reached without the assurance that the settlement terms will not be disclosed.[21] While courts are mindful that they must balance the harm that disclosure could wreak on the settlement process against the presumption of access to judicial records,[22] courts typically have been persuaded that the public interest in access to FLSA records, and judicial records generally, is superior to defendants' amorphous arguments

regarding the nature of settlements.[23] This should be particularly alarming because almost all motions to seal FLSA settlement agreements are unopposed; courts are denying these motions for reasons that they come up with on their own.

Courts analyzing motions to seal FLSA settlement agreements also have rejected other common, but non-specific arguments made by defendants, such as the fact that the parties privately agreed to a confidentiality provision and they should be entitled to the benefit of their bargain;[24] that unsealing a settlement agreement may have a chilling effect on future, similar settlement negotiations;[25] that businesses are entitled to keep their legal proceedings private;[26] and that disclosure of settlement agreements would prompt additional litigation and make the defendant a target for similar but frivolous lawsuits.[27]

Plaintiffs often favor sealing FLSA settlement agreements as well, in the hope that their personal and private information, and the settlement amount, will not become public.[28] Yet courts deciding recent FLSA cases have found that the plaintiff's personal privacy interests are ultimately subordinate to both the public-private nature of FLSA claims, as well as the need for judicial transparency.[29]

Courts often reject these common arguments while offering the parties the opportunity to withdraw their settlement agreement,[30] essentially challenging the parties to prove how important confidentiality really is. Having already expended substantial resources in order to reach a settlement, and faced with the possibility of a trial, few parties withdraw their settlement.

In short, courts considering motions to seal FLSA settlement agreements are likely to reject the common and non-specific arguments that parties ordinarily make in support of these motions. While courts have not given any particularly helpful examples of what sorts of interests might tip the balance in the favor of parties seeking to file a settlement agreement under seal (apart from the potential harm that could result from the release of trade secrets or other proprietary information[31]), it appears that in order to prevail on these motions, the parties must present the court with specific and significant harms that would result from unsealing.[32]

IV. Public Hazards and High-Profile Cases

The classic case involving so-called "public hazards" is a product liability case, and the movement against sealed settlement agreements in those cases is strong. For instance, in *Perreault v. The Free Lance-Star*,[33] a defendant pharmaceutical company settled four wrongful death claims arising from an allegedly contaminated liquid solution that was used in the decedents' open heart surgeries. Pursuant to Virginia law requiring judicial approval of wrongful death settlement agreements,[34] the parties jointly moved the trial court for an *in camera* inspection, and approval, of the settlement agreements.[35] Several news-papers intervened, objecting to the *in camera* review, and the parties moved to file the settlement agreements under seal.[36] The case ultimately made its way

to the Virginia Supreme Court, which concluded that where parties are required to obtain court approval of their settlement agreements, a public interest in seeing that the judiciary is fairly and honestly administering justice attaches, and outweighs the parties' interests in keeping settlement agreements sealed.[37] The court then went a step further and placed the burden in motions to seal settlement agreements squarely on parties seeking to seal records, requiring them to put forth facts upon which a court could make specific factual findings that support sealing court records, rather than placing the burden on intervenors to demonstrate how they would be harmed if the records were maintained under seal.[38]

High profile cases arguably involving the public interest, or so-called "public hazards," can also attract judicial scrutiny of sealed settlement agreements even in jurisdictions without a clearly stated legislative or judicial preference for open settlements. In these jurisdictions, the common law regarding protective orders governing discovery can be instructive in predicting whether a court would allow parties to file a settlement agreement under seal, because the same motivation applies to both the prohibition of protective orders in cases relating to public hazards and the prohibition of sealed settlement agreements.

For instance, in *Verni v. Lanzaro*,[39] a mother brought suit on her own behalf and her infant daughter's behalf after they were injured by a drunk driver who became intoxicated at a New York Giants football game. After settling with some defendants, the plaintiff entered into a separate settlement agreement with Aramark, the concession operator at Giants Stadium.[40] The trial court granted a motion to seal the Aramark settlement agreement, but Public Citizen, a self-described public interest group focused on protecting public health and safety,[41] intervened and moved to unseal it.[42] The parties opposed the motion, the plaintiff on the grounds that the seal protected the information of a minor, and Aramark on the grounds that the seal furthered the public interest in settlements.[43] The trial court denied Public Citizen's motion.

The appellate court reversed, finding that the public interest in whether alcohol could be safely dispensed at a football game outweighed the plaintiff's desire for privacy.[44] The court applied the analysis from *Hammock v. Hoffman-La-Roche, Inc.*,[45] a case where Public Citizen also intervened. In *Hammock*, the New Jersey Supreme Court spelled out guidelines for when court records that potentially affect the public health and safety should remain under seal and applied those guidelines to discovery that was attached to summary judgment motions.[46] In doing so, the New Jersey Supreme Court did not specifically refer to settlement agreements, but did analyze "Sunshine" acts such as those in Florida, Texas, Virginia and New York, that are discussed above. The *Verni* court's application of the principles announced in *Hammock* highlights the interplay between the rules governing protective orders and those concerning sealed settlement agreements, and suggests that the courts' analysis of protective orders in cases where the public health is arguably at issue can be instructive in forming arguments in support of motions to seal settlement agreements.[47]

Even high-profile cases that do not concern matters of public health can draw judicial scrutiny. In *Schoeps v. Museum of Modern Art*,[48] plaintiffs claimed that two world-famous New York art museums owned Picassos taken from plaintiffs' ancestors by the Nazis, and that the museums had turned a blind eye to the theft.[49] The museums vigorously denied the accusations, and the case received a great deal of media attention.[50] On the morning that trial was scheduled to start, the parties reached an agreement allowing the museums to keep the paintings, but the parties refused to disclose the term of the settlement to the public.[51] The court urged the parties to submit the agreement under seal for the court's review – which they did – and convinced the museums to drop their objection to public disclosure of the settlement agreement, but the plaintiffs refused to relent.[52] In a published opinion, the court strongly criticized the parties for agreeing to a confidential settlement in such a high-profile case.[53] But constrained by rule and precedent, the court concluded it could not disclose the terms of the settlement.[54] Although the agreement remains under seal, the fact that the court felt it necessary to publish an opinion that did nothing but urge the parties to disclose the terms of their settlement speaks volumes about the trend among some judges toward greater transparency.

In perhaps the most highly publicized settlement since the last edition of the Privacy Project, the trial court *In re Sept. 11th Litigation*, decided not only to remove the seal, but also to disclose the settlement's terms, eviscerating the parties' ability to successfully pursue the issue on appeal.[55]

The litigation arose out of a claim by certain multi-national property insurers and property owners that a group of airlines, airport security companies, an aircraft manufacturer, and the municipal owner of the departure airport were responsible for the property destruction that occurred as a result of the 9/11 terrorist attacks. Most of the plaintiffs settled with some of the defendants, and the settling parties jointly moved the court to approve their settlement, and maintain under seal information relating to (1) the total settlement amount; (2) the amount that each defendant was paying; and (3) the amount that each plaintiff was receiving (collectively, the "settlement agreement information").[56] The parties even secured a recommendation from the former federal judge who mediated their settlement, who advised the court that he believed the settlement agreement information should remain under seal.[57] The motion to seal was initially unopposed and was granted.[58] However, the court noted its reluctance in maintaining the settlement agreement information under seal, stressed the public importance of the case, and reserved its right to revisit its ruling should a motion for reconsideration be presented.[59]

Nearly three months later, the *New York Times* (hereinafter "the *Times*") intervened, moved to unseal the settlement agreement information.[60] The defendants argued that they had reasonably relied on the sealing order, and that the *Times* needed to show some compelling need justifying disclosure in order to unseal the settlement agreement information.[61] The court found that the defendants could not have reasonably

relied on the sealing order because the court had reserved its right to reconsider its decision, and therefore rejected that argument.[62] The defendants also argued that unsealing the settlement agreement information would have a chilling effect on the defendants' attempt to settle unresolved property damage cases, and that it would cast them in a false light by suggesting that the amounts they were paying to settle the cases meant that they were responsible for the 9/11 attacks.[63] The court was unsympathetic to these arguments because, as in most cases, the parties intended to go forward with their settlement agreement regardless of how the court resolved the motion to unseal.[64] However, the court left under seal the amount each settling plaintiff was to receive,[65] a peculiar result considering that the plaintiffs, most of which were multi-national insurance companies or sizable domestic businesses, arguably had a lesser interest in maintaining the amount of their settlement proceeds under seal than did the defendants with respect to the amounts that they paid. Moreover, the court took the unusual step of not simply vacating its prior order maintaining the confidentiality of the settlement agreement, but of publicizing the details in an order issued that same day approving the settlement.[66]

V. Conclusion

The bottom line when it comes to keeping settlement agreements under seal is that if the settlement requires judicial approval, it is unlikely to remain confidential. This is particularly true of high-profile cases, ones that arguably involve a so-called "public hazard," or ones in a jurisdiction that has a "Sunshine" act or similar rule disfavoring or prohibiting sealed settlement agreements. Parties also can look to cases involving public hazards and protective orders over discovery to help predict whether their settlement agreement is likely to be accepted for filing under seal in their jurisdiction. To the extent that defendants are able to convince courts to maintain settlement agreements under seal, they probably will have to do so by referring the court to specific prejudice that one or both parties will incur absent confidentiality. Arguments relying on vague assertions as to the parties' expectation of confidentiality, the importance of maintaining private information, the chilling effect unsealed settlement agreements will have on future settlement negotiations, or the potential that a defendant could become a target for future frivolous lawsuits, are increasingly likely to be rejected without a showing of a more specific harm. Ultimately, whenever attorneys negotiate a settlement agreement, they need to be mindful that although it does not appear that sealed settlement agreements will be outlawed completely any time soon, judges increasingly are taking matters concerning sealed settlement agreements into their own hands.

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[1] Crow I identified Florida's "Sunshine in Litigation Act," FLA. STAT. § 69.801, which prohibits a court from sealing any record or information that has the effect of concealing a "public hazard." "Public hazards" are typically defined as products, persons or procedures that have caused, or are likely to cause, injury. *See id.* The article also identified (1) Texas Rule of Civil Procedure

76a, which creates a presumption that court records are open to the public that can be overcome only by a showing of a specific, serious, and substantial interest that outweighs both the presumption and any probable adverse effect that sealing the record will have on the public health and safety; (2) Uniform Rules for New York State Trial Courts § 216.1 that prohibits the sealing of any court record without a court first issuing a written finding of good cause that outweighs the presumption of public access to court records; and (3) Local Civil Rule 5.03 of the United States District Court, District of South Carolina that specifically prohibits any settlement agreement from being filed under seal.

[2] *See* Crow I at 112.

[3] S.C. R. CIV. P. 41.1. South Carolina also requires that all settlement agreements to which a minor is a party and that are in excess of $25,000 be approved by a court. *See* S.C. CODE § 62-5-433. The combination of these two rules means that any settlement with a minor in excess of $25,000 cannot be filed under seal.

[4] LA. CODE CIV. PROC. § 1426.

[5] ARK. CODE § 16-55-122.

[6] WASH. REV. CODE § 4.24.601. Despite this legislative finding, this provision of Washington code has not been applied in any cases.

[7] VA. CODE § 8.01-420.01.

[8] Two of the bills are pending in the House (H.R. 5419, 111th Cong. (2010), and H.R. 1508, 111th Cong. (2009)), and one bill is pending in the Senate (S. 537, 111th Cong. (2009)). S. 537 and H.R. 1508 are identical. H.R. 5419 is nearly identical to S. 537 and H.R. 1508, except that it contains additional clauses relating to civil actions, wherein the pleadings state facts relevant to public health or safety. The difference is semantic, however, as the other two bills contain fewer, but similar, clauses and the judicial interpretation of H.R. 5419 would not likely be affected by its additional clauses.

[9] *See Sunshine in Litigation Act of 2009: Hearing Before the H. Subcomm. on Commercial and Admin. Law*, 111th Cong. 60 (2009) (statement of Judge Mark R. Kravitz on behalf of the Rules Committees of the Judicial Conference of the United States) (hereinafter "Kravitz Statement").

[10] A "Sunshine in Litigation" bill was first introduced to Congress 1991. *See id.* at 60.

[11] *But see* Crow I at 112 (noting that twelve states have considered but rejected similar legislation).

[12] *See Sealed Settlement Agreements in Federal District Court*, Federal Judicial Center, 3 (2004) (hereinafter the "FJC Report"). The FJC Report examined cases decided in 2001 and 2002.

[13] In approximately one quarter of those cases, the settlement agreement was not initially filed with the court and was only filed under seal later because it was attached as an exhibit to a motion to enforce the settlement agreement, or as an exhibit to an otherwise sealed proceeding or transcript. *See id.* at 6. Those cases are not addressed here.

[14] Kravitz Statement, *supra* note 9, at 65.

[15] FJC Report, *supra* note 12, at 8. The FJC Report considered the following types of cases as related to public health or safety: (1) environmental; (2) product liability; (3) professional malpractice; (4) public-party defendant; (5) death or serious injury; and (6) sexual abuse.

[16] Kravitz Statement, *supra* note 9, at 65-67. The FJC also noted that a rule prohibiting sealed settlement agreements was unnecessary because in 97% of the cases identified in the FJC Report, *supra* note 12, the complaint or some other document detailing the nature of any potential public hazard was not sealed. *See id.*; FJC Report, *supra* note 12, at 6-7. This finding is critical because a common argument in opposition to permitting the filing of sealed settlement agreements is that they conceal the nature of potential public hazards. *See, e.g.*, Crow I, at 107; *Sunshine in Litigation Act of 2009: Hearing Before the H.*

Subcomm. on Commercial and Admin. Law, 111th Cong. 24-37 (2009) (statement of Leslie A. Bailey of Public Justice) (hereinafter "Bailey Statement").

[17] FJC Report, at 5.

[18] *See e.g.*, Crow I at 107; Richard A. Zitrin, *The Laudable South Carolina Rules Must Be Broadened*, 55 S.C. L. Rev. 883, 887-890 (2004); Bailey Statement, at 25-28.

[19] *See* Brooklyn Savings Bank v. O'Neil, 324 U.S. 697, 704-08 (1945); Stalnaker v. Novar Corp., 293 F. Supp.2d 1260, 1263 (M.D. Ala. 2003).

[20] *See e.g.*, Dees v. Hydrady, Inc., 706 F. Supp.2d 1227, 1242 (M.D. Fla. 2010).

[21] Crow I, at 107.

[22] *See* Hens v. Clientlogic Operating Corp., No. 05-CV-381S, 2010 WL 4340919, at *3 (W.D.N.Y. Nov. 2, 2010).

[23] *See, e.g.*, Taylor v. AFS Tech., Inc., No. CV-09-2567, 2010 WL 2079750, at * 2-3; Poulin v. General Dynamics Shared Res. Inc., No. 3:09-cv-00058, 2010 WL 1257751, at *2-3 (W.D. Vir. Mar. 26, 2010).

[24] *See, e.g.*, *Dees*, 706 F. Supp.2d at 1242, 1246; White v. Bonner, No. 4:10-CV-105-F, 2010 WL 4625770, at *2 (E.D.N.C. Nov. 4, 2010); *Taylor*, 2010 WL 2079750, at *2.

[25] *See, e.g.*, Tabor v. Fox, No. 5:09-CV-338, 2010 WL 2509907, at * 2 (E.D.N.C. June 17, 2010); In re Sepracor Inc. FLSA Litig., MDL No. 2039, 2009 WL 3253947, at *1 (D. Ariz. Oct. 8, 2009).

[26] *See, e.g.*, *Poulin*, 2010 WL 1257751, at *3; Prater v. Commerce Equities Mgmt. Co., No. H-07-2349, 2008 WL 5140045, at *9-10, (S.D. Tex. Dec. 8, 2008).

[27] *See, e.g., id.* at *3-4.

[28] *See, e.g.*, McCaffrey v. Mortgage Sources Corp., No. 08-2660, 2010 WL 4024065, at *1-2 (D. Kan. Oct. 13, 2010); *In re Sepracor Inc. FLSA Litig.*, 2009 WL 3253947, at *9-10.

[29] *See, e.g.*, *McCaffrey*, 2010 WL 4035065, at *2; *In re Sepracor Inc. FLSA Litig.*, 2009 WL 3253947, at *1-2.

[30] *See, e.g.*, *Hens*, 2010 WL 4340919, at *4; *Tabor*, 2010 WL 2509907, at *2; *Taylor*, 2010 WL 2079750, at *3; *Poulin*, 2010 WL 1257751, at *3; *In re Sepracor Inc. FLSA Litig.*, 2009 WL 3253947, at *3.

[31] *See, e.g.*, *Poulin*, 2010 WL 1257751, at *3; *Prater*, 2008 WL 5140045, at *9; Arthur Miller, *Private Lives or Public Access?*, 77 A.B.A.J. 65, 68 (1991).

[32] *See, e.g.*, *Hens*, 2010 WL 4340919, at *3-4; *McCaffrey*, 2010 WL 4024065, at *2; *Taylor*, 2010 WL 2079750, at *3; *Poulin*, 2010 WL 1257751, at *3; *In re Sepracor Inc. FLSA Litig.*, 2009 WL 3253947, at *2; *Prater*, 2008 WL 5140045, at *9-10.

[33] 276 Va. 375 (2008).

[34] VA. CODE § 8.01-55.

[35] *Perreault*, 276 Va. at 381.

[36] *Id.* at 381-83.

[37] *Id.* at 389-90.

[38] *Id.* at 390. The court also rejected the parties' arguments (1) that if the settlements were unsealed they would not obtain the benefit of their bargain; (2) that their privacy interests were superior to the public's interest in accessing court records; and (3) that the defendant could become a target of nuisance suits. *Id.* at 390-91.

[39] 960 A.2d 405, 407 (N.J. Super. Ct. App. Div. 2008).

[40] *Id.*

[41] *See* Public Citizen Homepage, http://www.citizen.org (2010).

[42] *Verni*, 960 A.2d at 408.

[43] *Id.*

[44] *Id.* at 409-11.

[45] 142 N.J. 356 (1995).

[46] *Id.* at 371-83.

[47] *See also* Gleba v. Daimler Chrysler Corp., 13 Mass. L. Rptr. 576, 2001 WL 1029678 (Super. Ct. Mass. 2001) (rejecting a motion to seal a settlement agreement and applying Massachusetts law regarding sealed discovery to a sealed settlement agreement).

[48] 603 F. Supp.2d 673 (S.D.N.Y. 2009).

[49] *Id.* at 674.

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *Id.* at 675-76.
[54] *Id.* at 676.
[55] *Compare In re* Sept. 11th Litig., 723 F. Supp.2d 526 (S.D.N.Y. 2010) *with Perreault*, 276 Va. at 383-84 (where the Virginia Supreme Court noted that the court below kept settlement agreements under seal pending appeal).
[56] No. 21 MC 101, 2010 WL 637789, at *1 (S.D.N.Y. Feb. 19, 2010).
[57] *Id.*
[58] *Id.*
[59] *Id.* at *2.
[60] *In re* Sept. 11th Litig., 723 F. Supp.2d 526 (S.D.N.Y. July 1, 2010).
[61] *Id.* at 531.
[62] *Id.* at 531-32.
[63] *Id.* at 532.
[64] *Id.*
[65] *Id.* at 533.
[66] *See In re* Sept. 11th Litig., 723 F. Supp.2d 534 (S.D.N.Y. 2010).