

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge
R. Lawton McIntosh, Circuit Court Judge

Case No.: 2019-CP-23-01438

Benigna Vargas Appellant,

v.

MGA Insurance Company, Inc., and
Calidad Latin, Inc. Respondents.

Motion to File Under Seal

Appellant respectfully requests to file under seal the attached document. The attached document shows the Net Admitted Assets, Surplus as Regards Policy Holders, Gross Revenue, and Net Income for Respondent MGA Insurance Company, Inc., for 2015 through 2021. Respondent MGA is a privately held company and this information is a closely guarded trade secret of the company. This document was produced under the protection of a confidentiality order, and should not be exposed for public perusal on the internet.

Rule 41.1(b), SCRCP, requires the moving party to state the reasons why sealing is necessary, explain why less drastic alternatives to sealing will not afford adequate protection, and address the following factors:

- (1) ensuring the parties' right to a fair trial or hearing;
- (2) the need for witness

cooperation; (3) the reliance of the parties upon expectations of confidentiality of the proceeding; (4) the public or professional significance of the proceeding; (5) the perceived harm to the parties from disclosure; (6) why alternatives other than sealing the documents are not available to protect legitimate private interests; and (7) why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents.

Id. When ruling on a motion to seal, the court may also consider the public interest in the proceeding; the private or public status of the litigants and case generally; whether release would enhance the public's understanding of an important historical event; whether the public already has access to information contained in the records; whether a particular decision will sustain or offend the fundamental interests of public access, and any other relevant factors. *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 12, 630 S.E.2d 464, 470 (2006). In an opinion relied upon by the Supreme Court of South Carolina, the Court of Appeals for the Seventh Circuit opined that “[w]hen there is a compelling interest in secrecy, as in the case of trade secrets, the identity of informers, and the privacy of children, portions and in extreme cases the entirety of a trial record can be sealed.” *Jessup v. Luther*, 277 F.3d 926, 928 (7th Cir. 2002).

When reviewing the factors set forth in Rule 41.1, SCRC, it is clear that the parties' motion should be granted. First, the document to be sealed will not impact either party's right to a fair trial or hearing as the document relates to the value of Respondent MGA, which is not at issue on appeal. Second, the sealing of this document will not impact witness cooperation as this is an appeal and Respondent MGA's 30(b)(6) deposition has already been taken. Third, the document to be sealed is already protected under a confidentiality order and, as such, the sealing of said document would keep with Respondent MGA's expectation of confidentiality when it produced

this document. Fourth, while the issues in this case are significant, the document to be sealed would not impact the public or professional significance of the proceeding as the document relates to the valuation of Respondent MGA as a privately held company. Fifth, Respondent MGA would likely suffer significant harm if its confidential financial information was disseminated to the public. Sixth, there are no suitable alternatives to sealing the document. Finally, public interest would be best served by sealing the document as it promotes full and honest disclosure between litigating parties, including that of confidential trade secrets. If business and trade secrets are made public despite being protected by a confidentiality order and both parties agreeing to file it under seal then, in the future, parties will strongly resist the disclosure of such materials leading to unnecessary motions and discovery delays.

Opposing counsel has been informed of this Motion to File Under Seal, and consents to this Motion.

When the factors are considered, it is clear that this document should be filed under seal. The document contains confidential and non-public information related to Respondent MGA's financial condition, Respondent MGA is a privately held company, and its public disclosure could negatively impact Respondent MGA.

s/ Raymond T. Wooten
Raymond T. Wooten (S.C. Bar No. 81483)
Smith Jordan, P.A.
Post Office Box 1207
Easley, SC 29641
(864) 855-1661
wooten@smithjordan.com
Attorney for the Appellant

Easley, South Carolina
December 16, 2024

I So Consent:

s/ Jeanmarie Tankersley
Jeanmarie Tankersley
Bar No.: 101068
200 E. Broad Street, Suite 450
Greenville, South Carolina 29601
Phone: (864) 331-8940
Fax: (864) 232-2921
Email: jtankersley@clawsonandstaubes.com