

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

OPTICAL AIR DATA SYSTEMS, LLC,)	
)	
Plaintiff,)	
)	C.A. No.: N17C-05-619 EMD CCLD
v.)	
)	
L-3 COMMUNICATIONS)	
CORPORATION, et al.,)	
)	
Defendants.)	

ORDER UNSEALING DECISION AFTER TRIAL

The Court has reviewed the Non-Party General Dynamics Corporation’s Motion for Continued Confidential Treatment of Proposed Redactions in the Court’s Written Decision after Trial (the “Motion”) filed by General Dynamics Corporation (“Gen’l Dynamics”); Exhibit A and Exhibit B to the Motion; Plaintiff Optical Air Data Systems, LLC’s Response in Opposition to General Dynamics Corporation’s Motion for Continued Confidential Treatment of Proposed Redactions in the Court’s Written Decision after Trial (the “Response”) filed by Plaintiff Optical Air Data Systems, LLC (“Optical Air”); the Decision after Trial issued by the Court on December 5, 2019; and the entire record of this civil action. After review, the Court finds that Gen’l Dynamics has failed to demonstrate cause and will DENY the Motion.

The Court has reviewed Gen’l Dynamics’ proposed redactions to the Decision after Trial. The Court has also re-read the Research and Development Memorandum of Agreement between Gulfstream Aerospace Corporation and Optical Air Data Systems, L.L.C. (the “Gulfstream Agreement”). The Court will assume, for purposes of this decision, that Gen’l Dynamics has the right to assert the confidentiality rights of its subsidiary Gulfstream Aerospace Corporation even

though Gen'l Dynamics is not a party to the Gulfstream Agreement and has not provided an explanation as to its standing.

Gen'l Dynamics did not attach any supporting affidavit that provides exactly why the Gulfstream Agreement contains proprietary or trade secret information. Gen'l Dynamics argues that the Redactions are necessary because Gulfstream negotiates separately with each supplier and these other contracts may have varying terms. Gen'l Dynamics also contends that “disclosure of the [Gulfstream Agreement’s] terms *could* result in commercial harm to Gulfstream, especially because there are only a small group of suppliers that cater to manufacturers of business jet aircraft.” Mot. at ¶ 3.

Gulfstream and Optical Air executed the Gulfstream Agreement on August 2, 2013. Mot., Ex. B. While the parties designated the Gulfstream as “confidential” in the litigation, the Court did not seal or restrict access to the courtroom during the trial. The parties, at most, designated the transcript as confidential. The fact remains, however, that any member of the public or press could have attended the trial and would have heard testimony on the Gulfstream Agreement, its terms and conditions and the interaction between Gulfstream and Optical Air under the Gulfstream Agreement.

“United States’ citizens have a fundamental right ... to an open court system.” *Cantor Fitzgerald, Inc. v. Cantor*, 2001 WL 422633, at * 1 (Del.Ch. Apr.17, 2001); *see also RE Newradio Group LLC v. NRG Media LLC*, 2010 WL 935622 (Del. Ch. Jan. 27, 2010). This principle translates into a presumption that the press and public have a common law right of access to judicial proceedings and court records. *Id.*

One manifestation of the common law right of access is Superior Court Civil Rule 5(g). The Court has not addressed issues similar to the one raised by the Motion, but the Court of

Chancery has addressed these issues under its Chancery Court Rule 5(g). *See, e.g., Kronenberg v. Katz*, 872 A.2d 568, 607 (Del.Ch.2004) (stating in discussion of Chancery Rule 5(g), “In this court, for example, the tradition of open proceedings is reflected in Rule 5(g) itself, which places strict limits on parties’ ability to maintain filings under seal.”). “The default position of Rule 5(g) maintains public accessibility of filed documents. The Rule also provides the court flexibility in balancing the need to protect sensitive material from public disclosure and the public’s right of access.” *One Sky, Inc. v. Katz*, 2005 WL 1300767, at *1 (Del.Ch. May 12, 2005).

A further manifestation of the common law right of access is that Delaware judicial proceedings are open to the public, absent a statute or specific ruling from the Court imposing a particular and limited restriction for good cause shown. *See Gannett Co., Inc. v. State*, 571 A.2d 735, 740 (Del. 1989) (providing that Delaware Constitution guarantees open courts); *see also In re Nat’l City S’holders Litig. .*, 2009 WL 1653536, at * 1 (Del.Ch. June 5, 2009) (“all court proceedings are presumptively open to the public.”); *Nucar Consulting, Inc. v. Doyle*, 2005 WL 820706, at *8 (Del.Ch. Apr.5, 2005) (holding that court proceedings are presumptively open to the public unless designated confidential by the court under Rule 5(g)).

The Delaware Constitution of 1897 provides that “[a]ll courts shall be open.” Del. Const. Art. I, § 9. Exhibits and evidence presented at trial becomes part of the public record, absent a specific judicial ruling. *Gannett Co., Inc.* 571 A.2d at 740; *see also Kronenberg*, 872 A.2d at 576 (discussing the “strong presumption in favor of openness governing evidence and other filings submitted in lawsuits in Delaware courts”); *Nucar Consulting*, 2005 WL 820706, at *8 (explaining that judicial proceedings and transcripts generally become part of public record). So generally, will materials relied upon by the Court when rendering judicial decisions. *Nat’l City*,

2009 WL 1653536, at *1 (explaining that “the public has a strong interest in ... ascertaining what evidence the court relied upon in reaching its decision.”) (internal citations omitted).

As stated above, the Court has reviewed the Decision after Trial and Gen'l Dynamics' proposed redactions. The Court agrees with the Response that Decision after Trial does not disclose any trade secret or sensitive information. The legal language used by Gulfstream in the Gulfstream Agreement may be unique, but the Decision after Trial does not disclose any trade secret or specifications relating to products or alike. Moreover, witnesses testified to most of the proposed redactions in open court, and there had been no specific request or order to seal the courtroom during that part of the testimony. The Court understands that Gen'l Dynamics is a non-party to the litigation and did not “consent” to the use of the Gulfstream Agreement at trial; however, the Court cannot override the constitutional principle that Delaware judicial proceedings and the public record are accessible to the public and redact the Decision after Trial in these circumstances. Accordingly, the Court will (i) **DENY** the Motion for failing to demonstrate cause for relief, and (ii) unseal the Decision after Trial without redactions.

IT IS SO ORDERED.

February 7, 2020
Wilmington, Delaware

/s/ Eric M. Davis
Eric M. Davis, Judge

cc: File&ServeXpress