

**Coronado Coal II LLC v Kinder Morgan Operating  
L.P.**

2022 NY Slip Op 30253(U)

January 21, 2022

Supreme Court, New York County

Docket Number: Index No. 655067/2021

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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CORONADO COAL II LLC

Plaintiff,

- v -

KINDER MORGAN OPERATING L.P. "C",

Defendant.

INDEX NO. 655067/2021

MOTION DATE 10/06/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to SEAL.

Plaintiff Coronado Coal II LLC moves for an order sealing of exhibits appended to the Complaint filed in this action. Plaintiff’s motion is **denied** without prejudice to filing a new motion consistent with the guidance provided below.

Pursuant to § 216.1(a) of the Uniform Rules for Trial Courts, this Court may seal a filing “upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties” (22 NYCRR § 216.1[a]).

The Appellate Division has emphasized that “there is a broad presumption that the public is entitled to access to judicial proceedings and court records” (*Mosallem v Berenson*, 76 AD3d 345, 348 [1st Dept 2010]). “Since the right [of public access to court proceedings] is of constitutional dimension, any order denying access must be *narrowly tailored to serve compelling objectives*, such as a need for secrecy that outweighs the public’s right to

access” (*Danco Labs., Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 [1st Dept 2000] [emphasis added]; *see also, e.g. Gryphon Dom. VI, LLC v APP Intern. Fin. Co., B.V.*, 28 AD3d 322, 324 [1st Dept 2006]). “Furthermore, because confidentiality is the exception and not the rule, ‘the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access’” (*Maxim, Inc. v Feifer*, 145 AD3d 516, 517 [1st Dept 2016] [citations omitted]).

In this case, Plaintiff’s broad and categorical assertions of good cause do not establish a compelling justification to seal the documents at issue (*Darabont v AMC Network Entertainment LLC*, 2020 WL 3799132 [Sup Ct, NY County 2020]). Plaintiff seeks to seal NYSCEF Document 2 in its entirety because the “Agreement contains a confidentiality provision that requires that the Agreement and its terms remain confidential” as the “Agreement contains proprietary business information regarding Coronado’s operations and the fees that are paid to Defendant for the services performed under the Agreement.” In connection with the Agreement, Plaintiff seeks to seal NYSCEF documents 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12<sup>1</sup> in their entirety because the Exhibits “contain confidential information pertaining to the storage and shipment of Coronado’s coal” and if revealed, it “would be detrimental and damaging to both Coronado and Defendant.”

First, the fact that the parties have entered into an Agreement with a confidentiality provision, is not, by itself, a reason to grant the motion, particularly where the provision contains a carve out for judicial or administrative proceedings. Given this, there is little basis for Plaintiff’s argument that the revealing of the “confidential information” contained in the

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<sup>1</sup> The Court notes Plaintiff refiled the exhibits with its motion to seal. Thus, NYSCEF Doc. Nos. 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 are duplicates of NYSCEF Doc. Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12. Everything contains in this Order applies to both sets of documents.

Agreement would put the parties in breach of that Agreement (*see Aktiv Assets LLC v Centerbridge Partners, L.P.*, 2020 WL 2520019 [Sup Ct, NY County 2020] [finding that parties argument that “the Agreements are subject to a confidentiality provision [was] unavailing,” as they did not demonstrate “that public access to the documents at issue will likely result in harm to a compelling interest or that no alternative to sealing can adequately protect the threatened interest”] [internal citations omitted]).

Second, while *portions* of certain documents may include confidential business information or proprietary information, the record on this motion does not provide enough context for the Court to determine whether and to what extent that is the case, particularly since the Court cannot determine exactly what terms are confidential or proprietary. To the extent the Exhibits contain some information related to fees, storage, or shipment of Coronado’s coal, Plaintiff has not shown why references to these confidential items cannot be properly protected through redaction. In view of the admonition that sealing of court records must be “narrowly tailored to serve compelling objectives,” (*Danco*, 274 AD2d at 6), Plaintiff will need to propose and justify targeted redactions that satisfy the requirements of 22 NYCRR § 216 (a) and applicable case law.

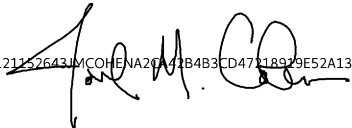
The documents will remain provisionally under seal to permit the prompt filing of a follow-up motion proposing and explaining the need for specific redactions.

Accordingly, it is:

**ORDERED** that Motion Seq. No. 001 is **denied**, without prejudice to filing a new motion within 21 days to redact confidential portions of documents consistent with this Decision and Order and applicable law; it is further

ORDERED that the documents filed as NYSCEF 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 shall remain provisionally sealed for 21 days from the date of the Court's entry of this Decision and Order on NYSCEF. If the parties file a new motion to seal or redact confidential portions of the documents consistent with this Decision and Order within that 21-day period, the documents shall remain provisionally sealed pending resolution of that motion. If no such motion is filed within 21 days from the entry of this Decision and Order, the parties shall within three business days thereafter file unredacted/unsealed copies of the documents on NYSCEF; and it is further

ORDERED that nothing in this Order shall be construed as authorizing the sealing or redaction of any documents or evidence to be offered at trial.

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JOEL M. COHEN, J.S.C.

1/21/2022  
DATE

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE