



## Global Dimensions, LLC v. Tackett

2024 | Cited 0 times | E.D. North Carolina | February 15, 2024

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

WESTERN DIVISION No. 5:23-CV-00168-FL Global Dimensions, LLC, Plaintiff,

Order v. Randall Tackett & Special Operations Consulting and Development, LLC, Defendants.

Throughout this litigation Defendant Randall Tackett has requested that the court maintain various documents under seal. D.E. 42, 123, 141, 146. These documents include the preliminary injunction entered by the court, as well as various affidavits, documents, and briefs.

Before granting a party's motion to seal, the court "must comply with certain substantive and procedural requirements." *Va. Dep't of State Police v. Wash. Post*, 386 F.3d 567, 576 (4th Cir. 2004). Procedurally, the district court must (1) give the public notice and a reasonable chance to challenge the request to seal; (2) "consider less drastic alternatives to sealing"; and (3) if it decides to seal, make specific findings and state the reasons for its decision to seal over the alternatives. *Id.*

And "[a]s to the substance, the district court first must determine the source of the right of access with respect to each document, because only then can it accurately weigh the competing interests at stake." *Id.* (internal citation omitted). The right of access arises from either the common law or the First Amendment. *Id.* at 575. Determining the source of the right is essential because "the common law 'does not afford as much substantive protection to the interests of the press and the public as does the First Amendment.'" *Id.* (quoting *Rushford v. New Yorker Mag., Inc.*, 846 F.2d 249, 253 (4th Cir. 1988)). But no matter which standard applies, the public's right to access judicial documents "may be abrogated only in unusual circumstances." *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 178, 180 (4th Cir. 1988).

### I. Request to Maintain the Preliminary Injunction Under Seal

At the outset of this case, Global Dimensions sought a preliminary injunction to prevent Tackett from engaging in conduct that it believed violated his employment agreements. During a break in the hearing on that motion, the parties agreed upon the terms of a preliminary injunction. Tackett and his counsel, however, raised concerns that including language that connected certain Taiwanese individuals with the company they worked for would reveal classified information. May 10, 2023 Hr. Tr. at 13:17–14:1. The court allowed the order to be filed under seal, but noted that Tackett would



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eventually have to “show good cause why this order should be sealed.” Id. at 19:6–8. It later entered a show cause order requiring Tackett to do just that. May 17, 2023 Order, D.E. 36.

In response, Tackett claims that making the document publicly available would endanger the individuals named in it. He began by noting that “[t]here is a serious conflict between China and Taiwan . . . over whether Taiwan should be independent or under Chinese control.” Tackett’s Resp. to Show Cause Order ¶ 2, D.E. 42. And, according to Tackett, anyone who supports Taiwanese independence faces “grave danger” from various political entities on the other side of the issue if “their identities or intentions be made public.” Id. Given that, TTRDA “opposes Chinese control of Taiwan” Tackett asserts that “publicly disclosing the names of individuals involved with TTRDA creates a risk of serious harm” to them. Id. ¶ 3.

To support maintaining the order under seal, Tackett informed the court that the identities of “individuals involved with TTRDA are protected from public disclosure” in Taiwan. Id. ¶ 6. And he asserts that the Vice President of a political party in Taiwan “has classified any information tying people to the TTRDA and requires it to be closely held, sealed, and released only on a need-to-know basis.” Id. This classification was supposedly done with the approval of Taiwan’s Ministry of Justice. Id.

In light of all this, it is Tackett’s view that “safety concerns and national security considerations” support keeping the order under seal. Id. ¶ 7. He also argues that the public has a de minimis interest in learning the order’s terms and that there is no option short of keeping it under seal that will protect the individuals named in that document. Id. ¶¶ 8–13.

Global Dimensions disagrees. It begins by arguing that most of the information Tackett provided in support of his motion is inadmissible hearsay. Global Dimensions Resp. to Show Cause Order at 3–4, D.E. 43. It then points out that several individuals named in the preliminary injunction have publicly disclosed their involvement with TTRDA and Taiwan’s civil defense efforts. Id. at 4–7. Plus one of the named individuals has filed an affidavit here, and that document has never been sealed. Id. It also claims that Tackett has failed to adequately support his argument about the potential danger to the named individuals or show that the public has a limited interest in the order’s contents. Id. at 8–11.

The court begins by considering whether the public’s right to access the preliminary injunction order arises out of the common law or the First Amendment. Both parties argue that the common law right of access applies here. The court will assume, without deciding, that this is correct.

Under the common law, there is a presumption for allowing the public to access judicial documents. *Rushford*, 846 F.2d at 253. A party can overcome that presumption if it can show that “countervailing interests heavily outweigh the public interests in access.” Id. The factors the court considers in making this determination include “whether the records are sought for improper purposes, such as promoting public scandals or unfairly gaining a business advantage; whether release would enhance



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the public's understanding of an important historical event; and whether the public has already had access to the information contained in the records." In *re Knight Publ'g Co.*, 743 F.2d 231, 235 (4th Cir. 1984).

Given this standard, Tackett's request for sealing faces strong headwinds. Global Dimensions has shown that the public has already had access to much of the information in the preliminary injunction. Its response outlines the many ways several of the named individuals have openly linked themselves either with TTRDA specifically or Taiwanese civil defense efforts in general. Additionally, those same individuals have already been named in Global Dimensions' pleadings, and one of them submitted a publicly available affidavit. Thus there is no basis to seal portions of the preliminary injunction with respect to those individuals.

Tackett has also failed to show that compelling interests heavily outweigh the public's interest in accessing the rest of the preliminary injunction. To begin with, as Global Dimensions pointed out, much of the material in his supporting affidavit is inadmissible hearsay. Tackett's affidavit relays information he learned from an unnamed United States government official (Tackett Aff. ¶ 4), a representative of the Department of Defense's Inspector General Office (*id.* ¶ 5), the Vice President of the Democratic Progressive Party in Taiwan (*id.* ¶ 10), and unspecified representatives of Taiwan's Ministry of Justice (*id.* ¶¶ 10, 11) and its Ministry of Economic Affairs (*id.* ¶¶ 12). Information learned from out-of-court statements by third parties offered for the truth of that information is the textbook definition of hearsay. Fed. R. Evid. 801(c). Since Tackett has not shown that the statements fall outside the definition of hearsay or within one of the exceptions to the general inadmissibility of hearsay, the court will not consider these statements.

Once the hearsay statements are removed from consideration, all that is left to support Tackett's motion is his speculation that making the preliminary injunction public may endanger those named in it. That speculation is not enough to establish that countervailing interests heavily outweigh the public interests in access to the preliminary injunction. Thus Tackett's request to keep the preliminary injunction under seal is denied. The Clerk of Court must unseal the preliminary injunction order at Docket Entry 34.

## II. Motions to Seal Documents Related to First Motion to Stay Proceedings

Several months ago, Tackett asked the court to stay this case because of an assignment he received from the Defense Intelligence Agency. Mot. to Stay, D.E. 120. He claimed that this assignment would take him outside the United States and while abroad he would "be at a secure location with no availability." *Id.* ¶¶ 3,4. And when Tackett was in the United States he would be "restricted to the Washington, D.C. area and he will be working in a secure facility with very limited access to counsel." *Id.* ¶ 4. No matter where he was, he claimed his "duties will require 24/7 on call coverage." *Id.* ¶ 5.



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In connection with that motion, he submitted a document purportedly from the DIA regarding his upcoming assignment. Mem. from Defense Intelligence Agency (Oct. 30, 2023), D.E. 121. He also filed an email he sent to his attorney discussing, in a general sense, his assignment. Email from Randall Tackett to Tom Van Camp (Nov. 2, 2023 10:05 a.m.), D.E. 122.

Global Dimensions challenged Tackett's statements. It claimed that on November 6, 2023, its CEO, Chris Newton, had seen Tackett "working as a civilian contractor in an office setting" for the DIA. Resp. in Opp. to Mot. to Stay at 3, D.E. 130; Fifth Suppl. Decl. of Ronald Christopher Newton ¶ 7, D.E. 130–1. Newton said he was at the DIA that day in connection with his "duties as a member of the U.S. Army Reserves[.]" Id. ¶ 5. The company claimed that this sighting "bely[ed] Defendants' assertion that Tackett was on a mission critical assignment that would preclude him from participating in this case." Resp. in Opp. to Mot. to Stay at 3. Yet in response to an inquiry from Global Dimensions' counsel about Tackett's whereabouts that day, Tackett's counsel responded that his client was outside the United States. Email from Tom VanCamp to Emily G. Massey (Nov. 7, 2023), D.E. 130–2.

Tackett maintained, however, that Newton was lying to the court. Reply in Supp. of Mot to Stay, D.E. 135. To support his position, Tackett submitted a declaration stating that he was not at the DIA on November 6, 2023. Decl. of Randall Tackett ¶ 6, D.E. 136. His declaration included a letter signed by Anthony J. Cezlious, supposedly the Deputy Director for Operational Services for the Central Intelligence Agency, stating that Tackett was not at the DIA on November 6, 2023. Letter from Anthony J. Cezlious to Randall E. Tackett (Nov. 15, 2023), D.E. 136–1. The Cezlious Letter also explained that the CIA's Middle East Branch Chief had contacted the United States Army Human Resources Command and confirmed that Newton was not "on Reserve duty under official orders" on November 6, 2023. Id. And Cezlious requested that the court file the letter under seal "for agency safety measures." Id.

Along with his own declaration, Tackett submitted an affidavit from Jessica Kelly, another attorney who represented him. Aff. of Jessica L. Kelly, D.E. 139. This affidavit supported Tackett's claim that he was out of the country on November 6, 2023. Id. ¶¶ 11–13.

Tackett asked the court to seal the various documents he submitted in support of his stay motion, as well as the briefs supporting his motions to seal. Nov. 2, 2023 Mot. to Seal, D.E. 123; Am. Mot. to Seal, 141. According to Tackett, allowing the DIA Memo and his November 2, 2023 email to be on the public docket "would expose sensitive information regarding United States intelligence activities." Nov. 2, 2023 Mot. to Seal at 2. And sealing the other documents was essential because they "contain sensitive information regarding government military activities." Am. Mot. to Seal at 2. Making them publicly accessible "would expose classified or sensitive government information." Id.

Global Dimensions opposed the sealing requests based on its view that Tackett's statements were false and his documents were fabricated. Resp. in Opp. to Am. Mot. to Seal, D.E. 143. Tackett then



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filed yet another declaration in response. Second Dec. of Randall Tackett, D.E. 144. He wanted that declaration sealed since it discussed the Cezlious Letter and identified its author. Nov. 27, 2023 Mot. to Seal, D.E. 146; Mem. in Supp. of Nov. 27, 2023 Mot. to Seal, D.E. 145. And he also asked the court to seal the memorandum in support of that motion to seal. Nov. 27, 2023 Mot. to Seal at 1.

Since Tackett filed these documents and his motions, both the CIA and the DIA have said that the documents Tackett submitted to the court are fake. The CIA's Assistant General Counsel shared counsel that the Cezlious Letter "was not written or sent by, at the direction of, or with the consent of the Central Intelligence Agency." Letter from John Capehart to Emily G. Massey (Jan. 25, 2024), D.E. 171-1. On top of that "[t]he Agency also is unable to locate employment records for an individual named 'Anthony J. Cezlious,' or organizational records indicating the existence of a position known as 'Deputy Director, Operational Services.'" Id.

Similarly, the DIA's Associate General Counsel reviewed the letter Tackett submitted and found that it "was not drafted by, or sent at the direction or consent" of the person who allegedly approved it. Letter from Kalitamara L. Moody to Emily Massey (Feb. 7, 2024), D.E. 178-1. Plus, the DIA was "unable to locate employment records for the individual who signed the letter, Mr. David Salman." Id.

The DIA's Associate General Counsel also provided Tackett's access badge logs for DIA headquarters on November 6, 2023. Letter from Kalitamara L. Moody to Emily Massey (Jan. 23, 2024), D.E. 166-2. Those records showed Tackett used his access badge repeatedly at DIA headquarters that day. Id. Ex. A.

Given that the documents Tackett seeks to seal appear to be fabricated or contain false information, their public dissemination poses no threat to national security. This conclusion is bolstered by the lack of a request from the CIA or the DIA that their correspondence with counsel about the authenticity of those documents be kept from the public. The motions to seal documents related to his first motion to stay are denied. D.E. 123, 141, 146.

The Clerk of Court must unseal the documents at Docket Entries 121, 122, 136, 137, 139, 140, 144, 145. Dated:

ROBERT T. NUMBERS, II UNITED STATES MAGISTRATE JUDGE Dated:

\_\_\_\_\_ Robert T. Numbers, II United States Magistrate Judge  
February 15, 2024

