

**Discover Prop. & Cas. Co. v National Football League**

2024 NY Slip Op 31427(U)

April 11, 2024

Supreme Court, New York County

Docket Number: Index No. 652933/2012

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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DISCOVER PROPERTY & CASUALTY COMPANY, ST.  
PAUL PROTECTIVE INSURANCE COMPANY,  
TRAVELERS CASUALTY & SURETY COMPANY,  
TRAVELERS INDEMNITY COMPANY, and TRAVELERS  
PROPERTY CASUALTY COMPANY,

Plaintiffs,

- v -

NATIONAL FOOTBALL LEAGUE, NFL PROPERTIES  
LLC,ALTERRA AMERICA INSURANCE COMPANY,  
FIREMAN'S FUND INSURANCE COMPANY, TIG  
INSURANCE COMPANY, CENTURY INDEMNITY  
COMPANY, FEDERAL INSURANCE COMPANY, GREAT  
NORTHERN INSURANCE COMPANY, GURANTEE  
INSURANCE COMPANY, HARTFFORD ACCIDENT &  
INDEMNITY COMPANY, NORTH RIVER INSURANCE  
COMPANY, U.S. FIRE INSURANCE COMPANY, ACE  
AMERICAN INSURANCE COMPANY, ILLINOIS UNION  
INSURANCE COMPANY, ALLSTATE INSURANCE  
COMPANY, AMERICAN GUARANTEE AND LIABILITY  
INSURANCE COMPANY, ARROWOOD INDEMNITY  
COMPANY, CHARTIS SPECIALTY INSURANCE  
COMPANY, CHARTIS PROPERTY CASUALTY  
COMPANY, CONTINENTAL CASUALTY COMPANY,  
CONTINENTAL INSURANCE COMPANY, ILLINOIS  
NATIONAL INSURANCE COMPANY, MUNICH  
REINSURANCE AMERICA INC.,NATIONAL UNION FIRE  
INSURANCE CO OF PITTSBURGH, PA, NEW ENGLAND  
REINSURANCE CORPORATION, ONEBEACON  
AMERICA INSURANCE COMPANY, VIGILANT  
INSURANCE COMPANY, WESTCHESTER FIRE  
INSURANCE COMPANY, XL INSURANCE AMERICA,  
INC.,DOE DEFENDANTS 1-100, CHARTIS SELECT  
INSURANCE COMPANY (3RD PARTY DEFT.), CHARTIS  
EXCESS LTD. (3RD PARTY DEFT.), PACIFIC  
INDEMNITY COMPANY, XL SELECT INSURANCE  
COMPANY, and WESTPORT INSURANCE COMPANY,

Defendants.

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 035) 1203, 1204, 1205,  
1206, 1207, 1208, 1212, 1317, 1318, 1331

were read on this motion to/for

SEAL

The following e-filed documents, listed by NYSCEF document number (Motion 039) 1311, 1312, 1313, 1314, 1315, 1316, 1327, 1329, 1330, 1332

were read on this motion to/for

SEAL

The following e-filed documents, listed by NYSCEF document number (Motion 040) 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384

were read on this motion to/for

SEAL

Upon the foregoing documents, it is

In motion sequence number 035, defendants National Football League and NFL Properties LLC (NFL) move, by order to show cause, pursuant to Section 216.1 of the Uniform Rules for the New York State Trial Courts, to redact NYSCEF Doc No. (NYSCEF) Nos. 1059, 1070, 1079, 1082, 1084, 1086, 1088, 1108, 1118, 1124, 1143, 1149, 1168, 1174, 1053, 1110, 1112, 1137, 1162, 1188, 1190, 1191, 1194, 1196, 1198, 1200, and 1202<sup>1</sup>. (NYSCEF 1208, NFL's Memo of Law [mot. seq. no. 035] at 5.) The NFL also seeks to remove from the docket those portions of the confidential deposition transcripts submitted in connection with the parties' summary judgment motions, NYSCEF 1080 and 1089, that are not cited by either party.

In motion sequence number 039, the NFL moves, by order to show cause, pursuant to Section 216.1 of the Uniform Rules for the New York State Trial Courts, to redact NYSCEF 1222, 1224, 1226, 1231, 1245, 1247, 1249, 1254, 1268, 1270, 1272,

<sup>1</sup> In the OSC (NYSCEF 1212, OSC [mot. seq. no. 035]), the NFL identified the redacted version of these documents. They seek to file redacted versions of NYSCEF 1058, 1070, 1078, 1081, 1083, 1085, 1087, 1107, 1117, 1124, 1142, 1149, 1167 and 1174, 1052, 1109, 1111, 1136, 1161, 1187, 1189, 1192, 1193, 1195, 1197, 1199, 1201. Going forward, the parties are directed to cite the NYSCEF numbers of the documents (in their unredacted form) they are seeking to redact (instead of the redacted copy) in their OSC.

1277, 1291, 1293, 1295, 1300<sup>2</sup>. (NYSCEF 1316, NFL's Memo of Law [mot. seq. no. 039] at 4.) The NFL also seeks to file redacted versions of NYSCEF 1213, 1219, 1236, 1242, 1259, 1265, 1282, and 1288.

In motion sequence number 040, the NFL moves, by order to show cause, pursuant to Section 216.1 of the Uniform Rules for the New York State Trial Courts, to file redacted versions of the exhibits at NYSCEF 833-842, 844, 857, 969, 987, 997, 1001, 1003, 1005, 1007, 1009, and 1011 and Exhibits 3-42 to the Affirmation of Colin P. Watson, dated January 26, 2024.

## **Discussion**

### Legal Standard

Section 216.1(a) of the Uniform Rules for Trial Courts empowers courts to seal documents upon a written finding of good cause. It provides:

“(a) [e]xcept where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except 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 the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and an opportunity to be heard.”

“Under New York law, 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] [citations omitted].) The “party seeking to seal court records

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<sup>2</sup> In the OSC (NYSCEF 1327, OSC [mot. seq. no. 039]), the NFL identified the redacted version of these documents. They seek to file redacted versions of NYSCEF 1221, 1223, 1225, 1230, 1244, 1246, 1248, 1253, 1267, 1269, 1271, 1276, 1290, 1292, 1294, 1299. Going forward, the parties are directed to cite the NYSCEF numbers of the documents (in their unredacted form) they are seeking to redact (instead of the redacted copy) in their OSC.

has the burden to demonstrate compelling circumstances to justify restricting public access” to the documents. (*Id.* at 349 [citations omitted].) Good cause must “rest on a sound basis or legitimate need to take judicial action.” (*Danco Lab, Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 8 [1st Dept 2000] [internal quotations omitted].)

### **Motion Seq. No. 035**

#### **NFL’s request to seal/redact documents**

The NFL identified three categories of information which they seek to redact in the parties’ filings: (i) confidential defense strategy information; (ii) information regarding confidential settlements of legal claims against the NFL; and (iii) personal health information of non-parties in underlying litigation. (NYSCEF 1208, NFL’s Memo of Law [mot. seq. no. 035] at 7-8.) Each of these categories are dealt with in turn below. There is no opposition to this branch of the NFL’s request to seal/redact.

#### ***Confidential Defense Strategy Information***

In its decision dated January 12, 2024, the court held that there exists good cause to redact confidential defense strategy information as the information discloses confidential communications between the NFL, their insurers and NFL counsel including assessments about the merits of the underlying head injury claims. (NYSCEF 1333, Decision & Order dated January 12, 2024 [mot. seq. nos. 031, 032] at 5.) The disclosure of this information could adversely affect the NFL’s ability to effectively defend themselves in future head injury claims where similar issues might be implicated. Further, any public interest in this information is not compelling or substantial enough to outweigh the NFL’s interest in protecting the confidentiality of this

information. The court similarly finds good cause to redact portions of NYSCEF 1059, 1118, 1143, 1168, 1053, 1112, 1137, 1162, 1188, 1190, 1191, 1194, 1196, 1198, 1200, 1202, 1079, 1082, 1084, 1086, 1088 to the extent they disclose confidential defense strategy information<sup>3</sup>. The NFL also sought to redact NYSCEF 1070 and its duplicates at NYSCEF 1124, 1149 and 1174 to the extent they contain confidential defense strategy information. However, a copy of this document has not been filed in unredacted form with yellow highlights in accordance with the Part 48 Procedures. (NYSCEF 1208, NFL's Memo of Law [mot. seq. no. 035] at 5.) The NFL's motion to redact/file on record the redacted version of NYSCEF 1070, 1124, 1149 and 1174 is denied without prejudice.

#### *Confidential Settlement Information*

In its decision dated January 12, 2024, the court found good cause to redact confidential settlement information between the NFL and third parties, such information being NFL's internal financial information. (NYSCEF 1333, Decision & Order dated January 12, 2024 [mot. seq. nos. 031,032] at 6.) The court similarly finds good cause to redact portions of NYSCEF 1053, 1112, 1137, 1162, 1088, 1108, 1110 to the extent they disclose confidential settlement information.

#### *Personal Health Information From the Underlying Litigation*

The NFL also seeks to redact portions of NYSCEF 1088 to the extent it discloses personal health information of a non-party. There exists good cause to redact personal medical information of third parties, which is itself not at issue in this litigation. (See *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v Fresenius Med. Care Holdings, Inc.*, 2021

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<sup>3</sup> See NYSCEF 1205, Chart Re Proposed Redactions or Sealing.  
652933/2012 DISCOVER PROPERTY & CASUALTY vs. NATIONAL FOOTBALL LEAGUE  
Motion No. 035 039 040

WL 4841024, at \*2 (NY Sup Ct, NY Cty Oct. 13, 2021) [internal citation omitted] [there exists “good cause to seal the nonparty medical information, which itself is not at issue in this litigation.”].) The NFL’s motion to redact NYSCEF 1088 to the extent it discloses personal health information of a non-party is granted.

NFL’s request to remove documents from the docket

In mot. seq. no. 035, the NFL is also seeking to remove from the docket those portions of the confidential deposition transcripts submitted in connection with the parties’ summary judgment opposition papers, NYSCEF 1080 and 1089, that are not cited by either party. In the alternative, the NFL sought permission to file complete transcripts under permanent seal, and then file only excerpted portions containing the cited testimony on the public docket. (NYSCEF1208, NFL’s Memo of Law [mot. seq. no. 035] at 16-17.) Defendants TIG Insurance Company, The North River Insurance Company, and United States Fire Insurance Company (TIG) object to this request. (NYSCEF 1331, TIG Memo of Law [mot. seq. no. 035] at 2.)

Judiciary Law § 4 provides that judicial proceedings shall be public. “The public needs to know that all who seek the court’s protection will be treated evenhandedly,” and “[t]here is an important societal interest in conducting any court proceeding in an open forum.” (*Baidzar Arkun v Farman-Farma*, 2006 NY Slip Op 30724[U], \*2 [Sup Ct, NY County 2006] [citation omitted].) While the public right to access is not absolute, (see *Danco Lab, Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 [1st Dept 2000]), the “party seeking to seal court records bears the burden of demonstrating compelling circumstances to justify restricting public access” to the documents. (*Mosallem v Berenson*, 76 AD3d 345, 348-349 [1st Dept 2010] [citations omitted].) The

relief sought by the NFL is unduly broad and the NFL has failed to show good cause to restrict public access to the 'uncited' portions of the deposition testimony. Further, "[a] party's designation of a document as confidential or restricted, without further explanation or supporting case law, is insufficient to support a finding of good cause to seal court records in whole or in part. (See *Spot & Co. of Manhattan, Inc. v Rudin*, 2022 NY Slip Op 33980[U], \*5 [Sup Ct, NY County 2022].) The NFL's request to remove from the docket portions of the deposition transcriptions which are not cited by any party is denied. The alternative relief sought by the NFL is also denied. The NFL may refile an application to seal portions of the deposition testimony and should comply with Part 48 procedures in this regard.

### **Motion Seq. No. 039**

In motion sequence number 039, the NFL moves, by order to show cause, pursuant to Section 216.1 of the Uniform Rules for the New York State Trial Courts, to redact NYSCEF 1222, 1224, 1226, 1231, 1245, 1247, 1249, 1254, 1268, 1270, 1272, 1277, 1291, 1293, 1295, 1300. The NFL also seeks to file redacted versions of NYSCEF 1213, 1219, 1236, 1242, 1259, 1265, 1282, and 1288.

At the outset, the court denies the NFL's request to file redacted versions of NYSCEF 1213, 1219, 1236, 1242, 1259, 1265, 1282, and 1288. These documents are redacted. The NFL does not identify the NYSCEF numbers of the corresponding documents in unredacted form (with all proposed redactions highlighted in yellow) which documents will be permanently sealed (with the redacted copy of the documents being available publicly) if the NFL's motion to seal/redact is granted.



This branch of the mot. seq. no. 039 is denied without prejudice and the NFL is permitted to move, by Order to Show Cause, to seal portions of the documents filed in this action while clearly identifying the NYSCEF numbers of these documents (and the corresponding redacted versions), if so advised.

The NFL's request to redact the remaining documents is dealt with below. The NFL has identified three categories of information which they seek to redact in the parties' filings: (i) confidential defense strategy information; (ii) information regarding confidential settlements of legal claims against the NFL; and (iii) personal identifying information of non-parties. (NYSCEF 1316, NFL's Memo of Law [mot. seq. no. 039] at 6; NYSCEF 1313, Chart of Redactions.)

*Confidential Defense Strategy Information and Confidential Settlement Information*

The court has already found in the previous section that there exists good cause to redact confidential defense strategy information and confidential settlement information.

*Personal Identifying Information*

In its decision dated January 12, 2024, the court held that there exists good cause to redact personal identifying information of third parties. (NYSCEF 1333, Decision & Order dated January 12, 2024 [mot. seq. nos. 031,032] at 6-7.)

The court finds that there exists good cause to redact portions of NYSCEF 1222, 1224, 1226, 1231, 1245, 1247, 1249, 1254, 1268, 1270, 1272, 1277, 1291, 1293, 1295, 1300 to the extent they disclose confidential defense strategy information, confidential settlement information and personal identifying information of non-parties.

**Motion Seq. No. 040**

In motion sequence number 040, the NFL moves, by order to show cause, pursuant to Section 216.1 of the Uniform Rules for the New York State Trial Courts, to file redacted versions of NYSCEF 833-842, 844, 857, 969, 987, 997, 1001, 1003, 1005, 1007, 1009, and 1011 and Exhibits 3-42 to the Affirmation of Colin P. Watson, dated January 26, 2024. The affirmation of Colin P. Watson dated January 26, 2024 indicates that the NFL seeks to file under seal/redact NYSCEF 833-842, 844, 857, 969, 987, 997, 1001, 1003, 1005, 1007, 1009, and 1011 and the exhibits 3-42 to his affirmation are the redacted and highlighted (proposed redactions highlighted in yellow) copies of these documents. (NYSCEF 1338, Watson aff ¶¶ 8-28.) The NFL does not identify the precise NYSCEF numbers of these redacted and highlighted copies in their memorandum of law or in the Watson affidavit. Mot. Seq. No. 040 is denied without prejudice and the NFL is permitted to move, by Order to Show Cause, to seal portions of the documents filed in this action while clearly identifying the NYSCEF numbers of these documents (and the corresponding redacted versions), if so advised. If the NFL seeks to redact identical information in these documents that the court has previously permitted to be redacted, then the NFL shall submit a proposed sealing order to the court (via SFC-Part48@nycourts.gov and NYSCEF) instead of filing another seal motion.

Accordingly, it is

ORDERED that motion sequence number 035 is granted, in part, and the County Clerk is directed to permanently seal NYSCEF 1059, 1118, 1143, 1168, 1053, 1112, 1137, 1162, 1188, 1190, 1191, 1194, 1196, 1198, 1200, 1202, 1079, 1082, 1084, 1086,

1088, 1108 and 1110. The NFL is directed to ensure that copies of the redacted documents are publicly filed if not already done. The NFL's motion to redact/file on record the redacted version of NYSCEF 1070, 1124, 1149 and 1174 is denied without prejudice; and it is further

ORDERED that the portion of the NFL's motion to move documents from the docket is denied; and it is further

ORDERED that motion sequence number 039 is granted, in part, and the County Clerk is directed to permanently seal NYSCEF 1222, 1224, 1226, 1231, 1245, 1247, 1249, 1254, 1268, 1270, 1272, 1277, 1291, 1293, 1295, 1300. The NFL's motion to file redacted versions of NYSCEF 1213, 1219, 1236, 1242, 1259, 1265, 1282, and 1288 is denied without prejudice; and it is further

ORDERED that motion sequence number 040 is denied without prejudice; and it is further

ORDERED that the parties are directed to meet with the court to discuss the motions that have been denied. Parties are directed to contact the Part Clerk to schedule a conference; and it is further

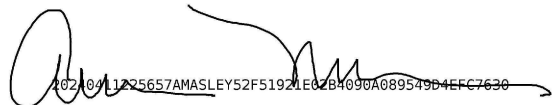
ORDERED the County Clerk shall restrict access to the sealed documents with access to be granted only to authorized court personnel and designees, the parties and counsel of record in the above-captioned action, and any representative of a party or of counsel of record upon presentation to the County Clerk of written authorization from counsel; and it is further

ORDERED that counsel for the movants shall serve a copy of this order upon the Clerk of the Court; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that if any party seeks to redact identical information in future filings that the court is permitting to be redacted here, that party shall submit a proposed sealing order to the court (via [SFC-Part48@nycourts.gov](mailto:SFC-Part48@nycourts.gov) and NYSCEF) instead of filing another seal motion; and it is further

ORDERED that this order does not authorize sealing or redacting for purposes of trial.



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4/11/2024  
DATE

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ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION  
 GRANTED IN PART  OTHER

APPLICATION:

SETTLE ORDER  
 INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER  
 FIDUCIARY APPOINTMENT  REFERENCE

CHECK IF APPROPRIATE: