

**Certain Underwriters at Lloyd's, London v AT&T,
Corp.**

2019 NY Slip Op 30876(U)

April 1, 2019

Supreme Court, New York County

Docket Number: 653090/2013

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOEL M. COHEN

PART

IAS MOTION 3EFM

Justice

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INDEX NO. 653090/2013

MOTION DATE 02/06/2019

MOTION SEQ. NO. 024

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON, CERTAIN LONDON MARKET INSURANCE COMPANIES INCLUDING BUT NOT LIMITED TO ACCIDENT & CASUALTY INSURANCE COMPANY OF WINTERTHUR (NO. 2A/C), ALBA GENERAL INSURANCE COMPANY LIMITED (AS PART OF GIBBON A33, B02, C13, AND D10 POOLS), ANGL FRENCH INSURANCE COMPANY LIMITED, ASSICURAZIONI GENERALI SPA (UK BRANCH), BRITTANY INSURANCE COMPANY LIMITED, BRITISH MERCHANTS INSURANCE COMPANY LIMITED (AS PART OF CF&AU GROUP C POOL), CX REINSURANCE COMPANY LIMITED, EAGLE STAR INSURANCE COMPANY OF CANADA, EXCESS INSURANCE COMPANY LIMITED, FIDELIDADE INSURANCE COMPANY OF LISBON (AS PART OF GIBBON A33, B02, C13 POOLS), HARPER INSURANCE LTD F/K/A TUREGUM INSURANCE COMPANY, HELVETIA ACCIDENT SWISS INSURANCE COMPANY LIMITED (AS PART OF GIBBON A22, C13, AND D10 POOLS), LONDON AND EDINBURGH GENERAL INSURANCE COMPANY LIMITED (FOR ITSELF AND AS PART OF CF & AU GROUP C POOL HS WEAVERS AND LONDON AND ENDINBURGH GENERAL INSURANCE COMPANY LIMITED TOWER X POOL), NATIONAL CASUALTY COMPANY (FOR ITSELF AND AS PART OF GIBBON B02 AND GIBBON NATIONAL CASUALTY POOLS), NATIONAL CASUALTY COMPANY OF AMERICA LIMITED, NEW LONDON REINSURANCE COMPANY LIMITED, RIVER THAMES INSURANCE COMPANY LIMITED, ROYAL SCOTTISH INSURANCE COMPANY LIMITED (FOR ITSELF AND AS PART OF UMA POOL), SOUTHERN INSURANCE COMPANY LIMITED, STRONGHOLD INSURANCE COMPANY LIMITED, SWISSNATIONAL INSURANCE COMPANY LIMITED (AS PART OF GIBBON D10 POOL), SWITZERLAND GENERAL INSURANCE COMPANY (AS PART OF GIBBON D10 POOL), THE ANGLO SAXON INSURANCE ASSOCIATION (FOR ITSELF AND AS PART OF CF & AU GROUP C POOL), THE BRITISH AVIATION INSURANCE COMPANY LIMITED, THE DOMINION INSURANCE COMPANY LIMITED (FOR ITSELF AND AS PART OF CF&AU GROUP C POOL), THE EDINBURGH ASSURANCE COMPANY NUMBER 2 ACCOUNT, THE MOTOR UNION INSURANCE COMPANY LIMITED, THE WORLD MARINE & GENERAL INSURANCE COMAPNY (AS PART OF UMA POOL), TRENT INSURANCE COMPANY LIMITED (AS PART OF UMA POOL), UNIONAMERICAN INSURANCE COMPANY LIMITED (FOR ITSELF AND AS SUCCESSOR IN INTEREST TO ST KATHERINE INSURANCE COMPANY PLC), WINTERTHUR SWISS INSURANCE COMPANY, WORLD AUXILIARY INSURANCE CORPORATION LIMITED, YASUDA FIRE & MARINE INSURANCE COMPANY (UK) LIMITED, AIU INSURANCE COMPANY, AMERICAN HOME ASSURANCE COMPANY, COLUMBIA CASUALTY COMPANY, CONTINENTAL CASUALTY COMPANY, CONTINENTAL INSURANCE COMPANY (FOR ITSELF AND AS SUCCESSOR IN INTEREST TO FIDELITY & CASUALTY COMPANY OF NEW YORK HARBOR

DECISION AND ORDER

INSURANCE CO AND PACIFIC INSURANCE COMPANY), GRANITE STATE INSURANCE COMPANY, ILLINOIS NATIONAL INSURANCE COMPANY, LEXINGTON INSURANCE COMPANY, NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH PA, ONEBEACON AMERICA INSURANCE COMPANY (AS SUCCESSOR IN INTEREST TO EMPLOYERS LIABILITY ASSURANCE COMPANY AND EMPLOYERS SURPLUS LINES INSURANCE COMPANY), STARR INDEMNITY & LIABILITY CO (AS SUCCESSOR TO REPUBLIC INSURANCE COMPANY),

Plaintiff,

- v -

AT&T, CORP., AT&T, INC., ALCATEL-LUCENT USA, INC., AIU INSURANCE COMPANY, ALLIANZ UNDERWRITERS INSURANCE COMPANY, ALLSTATE INSURANCE COMPANY, AMERICAN EXCESS INSURANCE ASSOCIATION, AMERICAN HOME ASSURANCE COMPANY, AMERICAN RE-INSURANCE COMPANY, ARROWOOD INDEMNITY COMPANY, ARROWOOD SURPLUS LINES INSURANCE COMPANY, ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES, LIMITED, CENTURY INDEMNITY COMPANY, CERTAIN LONDON MARKET INSURANCE COMPANIES, ACCIDENT & CASUALTY INSURANCE COMPANY OF WINTERTHUR (NO.2 A/C), ALBA GENERAL INSURANCE COMPANY LIMITED, ANGLO-FRENCH INSURANCE COMPANY LIMITED, ASSICURAZIONI GENERALI SPA (UK BRANCH), BRITTANY INSURANCE COMPANY LIMITED, BRITISH MERCHANTS' INSURANCE COMPANY LIMITED, CX REINSURANCE COMPANY LIMITED, EAGLE STAR INSURANCE COMPANY OF CANADA, EXCESS INSURANCE COMPANY LIMITED, FIDELIDADE INSURANCE COMPANY OF LIBSON, HARPER INSURANCE LTD, HELVETIA-ACCIDENT SWISS INSURANCE COMPANY, LONDON AND EDINBURGH GENERAL INSURANCE COMPANY LIMITED, NATIONAL CASUALTY COMPANY, NATIONAL CASUALTY COMPANY OF AMERICA LIMITED, NEW LONDON REINSURANCE COMPANY LIMITED, RIVER THAMES INSURANCE COMPANY LIMITED, ROYAL SCOTTISH INSURANCE COMPANY LIMITED, SOUTHERN INSURANCE COMPANY LIMITED, STRONGHOLD INSURANCE COMPANY LIMITED, SWISS NATIONAL INSURANCE COMPANY LIMITED, SWITZERLAND GENERAL INSURANCE COMPANY, THE ANGLO SAXON INSURANCE ASSOCIATION, THE BRITISH AVIATION INSURANCE COMPANY LIMITED, THE DOMINION INSURANCE COMPANY LIMITED, THE EDINBURGH ASSURANCE COMPANY NUMBER 2 ACCOUNT, THE MOTOR UNION INSURANCE COMPANY LIMITED, THE WORLD MARINE & GENERAL INSURANCE COMPANY, TRENT INSURANCE COMPANY LIMITED, UNION AMERICA INSURANCE COMPANY LIMITED, WINTERTHUR SWISS INSURANCE COMPANY, WORLD AUXILIARY INSURANCE CORPORATION LIMITED, AND, YASUDA FIRE & MARINE INSURANCE COMPANY (UK) LIMITED, COLUMBIA CASUALTY COMPANY, CONTINENTAL CASUALTY COMPANY, CONTINENTAL INSURANCE COMPANY, EMPLOYERS MUTUAL CASUALTY COMPANY, EVEREST REINSURANCE COMPANY, FEDERAL INSURANCE COMPANY, FIREMANS FUND INSURANCE COMPANY, FIRST STATE INSURANCE COMPANY, GENERAL REINSURANCE CORPORATION, GERLING KONZERN ALLGEMEINE VERSICHERUNGS AG, GRANITE

STATE INSURANCE COMPANY, GREAT AMERICAN INSURANCE COMPANY, HARTFORD FIRE INSURANCE COMPANY, HARTFORD INSURANCE COMPANY, ILLINOIS NATIONAL INSURANCE COMPANY, LEXINGTON INSURANCE COMPANY, MT. MCKINLEY INSURANCE COMPANY, NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, NEW YORK MARINE AND GENERAL INSURANCE COMPANY, NEW ENGLAND REINSURANCE COMPANY, NORTH RIVER INSURANCE COMPANY, NUTMEG INSURANCE COMPANY, OLD REPUBLIC INSURANCE COMPANY, ONEBEACON AMERICA INSURANCE COMPANY, PEERLESS INSURANCE COMPANY, SAFETY MUTUAL INSURANCE COMPANY, STARR INDEMNITY AND LIABILITY COMPANY, STONEWALL INSURANCE COMPANY, ST. PAUL SURPLUS LINES INSURANCE COMPANY, SWISS REINSURANCE COMPANY, LTD, THE TRAVELERS INSURANCE COMPANY, TIG INSURANCE COMPANY, TRANSAMERICA, TRANSAMERICA PREMIER INSURANCE COMPANY, TRAVELERS CASUALTY AND SURETY COMPANY, TRAVELERS, TRAVELERS INDEMNITY COMPANY, TWIN CITY FIRE INSURANCE COMPANY, U.S. FIRE INSURANCE COMPANY, WESTPORT INSURANCE CORPORATION, ZURICH AMERICAN INSURANCE COMPANY, DOE INUSURERS 1 - 50., HARTFORD ACCIDENT & INDEMNITY COMPANY, FAIRMONT PREMIER INSURANCE COMPANY FORMERLY KNOWN AS TRANSAMERICA PREMIER INSURANCE COMPANY, TRANSAMERICA INSURANCE COMPANY, ALLIANZ VERSICHERUNGS - AG, ZURICH INSURANCE COMPANY, LTD, ZURICH INTERNATIONAL (BERMUDA), LTD.,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 024) 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 763, 764, 765

were read on this motion to/for

AMEND CAPTION/PLEADINGS

Upon the foregoing documents, it is

ORDERED that Defendant Alcatel-Lucent USA Inc's motion to Amend the Caption, and to the extent the Complaint also needs to be amended to comport with the Amended Caption, is Granted.

Leave to amend a caption is left in the sole discretion of the Court. CPLR §305(c) provides that "[a]t any time, in its discretion and upon such terms as it deems just, the court may allow any summons or proof of service of a summons to be amended, if a substantial right of a party against whom the summons issued is not prejudiced." CPLR. §305(c). New York courts

have routinely permitted case captions to be amended where, as here, a party has changed its name after the inception of the litigation. See, e.g., *Bank of Suffolk Cty. v. All Shores Wholesale Foods, Inc.*, 90 A.D.2d 530 (2d Dep't 1982) (granting defendant's motion to amend caption to reflect plaintiff's new corporate name, Extebank, which had been changed from Bank of Suffolk County); *Wantickets RDM. LLC v. Eventbrite, Inc.*, No. 654277, 2017 N.Y. Slip Op. 31548, (Sup. Ct. N.Y. County July 21, 2017) (granting motion to amend caption where plaintiff converted to LLC).

Here, Plaintiffs opposition goes to the underlying issue of whether Plaintiffs will owe entity coverage to the newly named party. To alleviate this concern, Alcatel-Lucent also has represented that it will not seek coverage under the Plaintiff Insurers' policies for any legacy Nokia Corporation asbestos liabilities that may exist. (Reply Memo at 4). Plaintiffs have not demonstrated they would suffer from any prejudice from a largely ministerial amendment to the caption.

Therefore it is:

ORDERED that Alcatel-Lucent USA Inc.'s Motion to Amend the Caption is Granted; and it is further

ORDERED that the caption in this action be amended as follows:

 CERTAIN UNDERWRITERS AT LLOYD'S, LONDON, et al.

Plaintiffs,

Index No.: 653090/2013


-against

AT&T CORP.; AT&T INC.; NOKIA OF AMERICA CORPORATION
 FORMERLY KNOWN AS ALCATEL-LUCENT USA INC. et al.,
 Defendants

ORDERED that the County Clerk is to note this change in the minutes and all future filed documents shall bear the above caption.

This Constitutes the Decision and Order of the Court.

4/1/2019
DATE


JOEL M. COHEN, J.S.C.

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