

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

2019 NY Slip Op 33025(U)

October 4, 2019

Supreme Court, New York County

Docket Number: 652933/2012

Judge: Andrea Masley

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

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

Plaintiff,

- 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, WESTPORT INSURANCE COMPANY,

Defendant.

INDEX NO. 652933/2012
MOTION DATE 07/31/2019
MOTION SEQ. NO. 023

**DECISION + ORDER ON
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 023) 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572

were read on this motion to/for

PREL INJUNCTION/TEMP REST ORDR

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Motion No. 023

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Upon the foregoing documents, it is GRANTED.

Thirty-two non-party NFL football teams (the "Non-Party Teams")¹ move pursuant to CPLR 3103(a) by OSC for relief from subpoenas served by the Insurers² in this action: (1) directing the Insurers to withdraw or stay all other proceedings they have commenced in any 25 other jurisdictions³ against any of the Non-Party Teams seeking to compel compliance with the nearly identical subpoenas issued to each of the Non-Party Teams (the "Subpoenas"); (2) directing the Insurers not to commence any other proceedings in any other jurisdiction to compel compliance with the Subpoenas; and (3)

¹ The teams include: Arizona Cardinals Football Club, LLC, the Chargers Football Company, LLC, the Forty Niners Football Company, LLC, The Los Angeles Rams, LLC, The Oakland Raiders, LLP, PDB Sports, Ltd. d/b/a Denver Broncos, the Jacksonville Jaguars, LLC, the Miami Dolphins, Ltd., the Buccaneers Team LLC, the Atlanta Falcons Football Club, LLC, The Chicago Bears Football Club, Inc., the Indianapolis Colts, Inc., the New Orleans Louisiana Saints, LLC, the Baltimore Ravens Limited Partnership, Pro-Football, Inc. d/b/a Washington Redskins, the New England Patriots, LLC, The Detroit Lions, Inc., the Minnesota Vikings Football Club, LLC, the Kansas City Chiefs Football Club, Inc., the New York Jets, LLC, the Panthers Football, LLC d/b/a Carolina Panthers, the Cincinnati Bengals, Inc., the Cleveland Browns Football Company, LLC, the Philadelphia Eagles, LLC, the Pittsburgh Steelers, LLC, the Tennessee Football, Inc., the Dallas Cowboys Football Club, Ltd., Houston NFL Holdings, LP d/b/a Houston Texans, Football Northwest, LLC d/b/a Seattle Seahawks, the Green Bay Packers, Inc., the Buffalo Bills, LLC and the New York Football Giants, Inc. (NYSCEF 542, OSC).

² The Insurers include: TIG Insurance Company, The North River Insurance Company, United States Fire Insurance Company, Discover Property & Casualty Insurance Company, St. Paul Protective Insurance Company, Travelers Casualty & Surety Company, Travelers Indemnity Company, Travelers Property Casualty Company of America, Continental Insurance Company, Continental Casualty Company, Allstate Insurance Company, solely as successor in interest to Northbrook Excess and Surplus Insurance Company, formerly Northbrook Insurance Company, Bedivere Insurance Company, ACE American Insurance Company, Century Indemnity Company, Indemnity Insurance Company of North America, California Union Insurance Company, Illinois Union Insurance Company, Westchester Fire Insurance Company, Federal Insurance Company, Great Northern Insurance Company, Vigilant Insurance Company, Munich Reinsurance America, Inc., XL Insurance America Inc., XL Select Insurance Company, American Guarantee and Liability Insurance Company, and Arrowood Indemnity Company. (NYSCEF 547, Insurers' Letter responding to OSC). Claims by and between Westport Insurance Company were discontinued on September 11, 2019. (NYSCEF 543, Affirmation of Irreparable Harm, April 26, 2019).

³ According to the Non-Party Teams, two of the Teams, the New York Football Giants, Inc. and the Buffalo Bills, LLC are located in New York, and the Insurers have submitted their motions to compel with respect to these Teams to Special Referee Dolinger. (NYSCEF 546, Non-Party Teams MOL, at 2).

consolidating all proceedings relating to the Subpoenas to a single proceeding before this Court. (NYSCEF Doc. No. [NYSCEF] 542, OSC).

The issue here is whether the National Football League and NFL Properties LLC (collectively the NFL) are entitled to insurance coverage for their defense costs and settlement payments in connection with the underlying litigation (the MDL Action).⁴ The background of this case is set forth in prior court decisions, with which familiarity is presumed, and which will not be repeated here except as relevant to this decision.

According to the Non-Party Teams, to date, the Insurers have commenced 18 separate proceedings against 21 Non-Party Teams in 14 different States, and confirmed that they intend to commence separate actions against all of the remaining Non-Party Teams in each of their respective local jurisdictions. (NYSCEF 546, MOL, 2).

At the argument on the TRO on April 29, 2019, the parties agreed to stay proceedings to enforce commissions in other states while the nonparty teams performed discovery consistent with the February 26, 2019 Order of Referee Dollinger.⁵ (NYSCEF 547, OSC; NYSCEF 571, Transcript of April 29, 2019). The Non-Party Teams agreed to jurisdiction of this court for resolution of discovery matters in this action. (NYSCEF 571, Transcript of April 29, 2019).⁷

⁴ In 2011, hundreds of former professional football players filed legal actions against the NFL, claiming that the NFL negligently failed to protect players from brain injuries allegedly caused by concussive head impacts. (*See In re Nat'l Football League Players' Concussion Injury Litig.*, 307 FRD 351, 361 [ED Pa 2015]).

⁵ On April 27, 2018, the parties entered into a Stipulation for Appointment of Referee to Supervise Disclosure Pursuant to CPLR 3104, which designated Hon. Michael H. Dolinger as Special Referee (Referee) and which the Court entered as an Order on April 30, 2018. (NYSCEF 489).

⁶ NYSCEF 510, Order of the Special Referee.

⁷ While the Non-Party Teams so stipulated on the record, the court also directed them to submit a stipulation documenting their agreement. However, a stipulation has yet to be filed.

A Protective Order, pursuant to CPLR 3103(a), may be issued to regulate the use of disclosure devices and "prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts." (*Westchester Rockland Newspapers, Inc. v Marbach*, 66 AD2d 335 (2d Dept 1979). New York courts have routinely enjoined parties from proceedings in other states or countries where doing so would prevent duplicative litigation, waste judicial resources and cause the parties to incur unnecessary expenses, and potentially result in inconsistent rulings. (See, e.g., *IRB-Brasil Resseguros S.A. v Protobello Int'l Ltd.*, 59 AD3d 366, 366-67 [1st Dept 2009] (affirming trial court's enjoinder of party from prosecuting its action in foreign country where such would have led to a "waste of judicial resources, unnecessary legal expenses and duplicative litigation that might lead to conflicting results."); *Certain Underwriters at Lloyds, London v. Millennium Holdings LLC*, 52 AD3d 295, 295-96 (1st Dept 2008) (enjoining party from pursuing parallel proceedings in Texas); *Jay Franco & Sons Inc. v G. Studios, LLC*, 34 AD3d 297, 298 (1st Dept 2006) (holding that trial court did not abuse its discretion by enjoining party from pursuing California action).

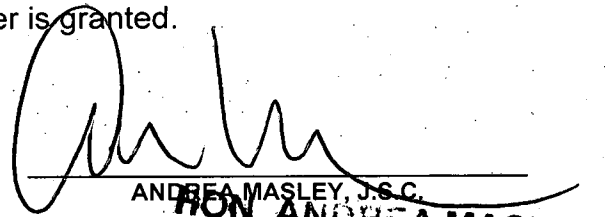
The court finds that the Non-Party Teams satisfy the standards for a protective order. The Insurers issued 32 nearly identical subpoenas in connection with this action. While two of those subpoenas will be litigated in this court,⁸ there is significant risk of inconsistent rulings. Litigating the subpoena motions before this court is the most

⁸ Since discovery is supervised by the Referee, the court is not current with the progress of the status of the production of discovery to which the Non-Party Teams agreed. Also since the argument of this motion on June 14, 2019 was brief in light of the limited time to hear eight motions, the parties did not report on their progress since the OSC at the argument.

efficient and orderly process to resolve discovery issues, particularly with the appointment of the Referee. While it is true that "NFL teams have common interests such as promoting the NFL brand, they are still separate, profit-maximizing entities, and their interests...are not necessarily aligned.... Common interests in the NFL brand partially unit[e] the economic interests of the parent firms, but the teams still have distinct, potentially competing interests," here the NFL joins the non-party teams in this motion. (*Am. Needle, Inc. v NFL*, 560 US 183, 198 [2010]). Finally, the Insurers selected this court to litigate their coverage dispute.

Accordingly, the motion for a protective order is granted.

10/4/19
DATE


ANDREA MASLEY, J.S.C.
HON. ANDREA MASLEY

CHECK ONE: CASE DISPOSED GRANTED DENIED NON-FINAL DISPOSITION GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER SUBMIT ORDER FIDUCIARY APPOINTMENT REFERENCE

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN