

**Zurich Am. Ins. Co. v Insurance Co. of the State of Pa.**

2020 NY Slip Op 32581(U)

August 5, 2020

Supreme Court, New York County

Docket Number: 650113/2018

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  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 3EFM

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ZURICH AMERICAN INSURANCE COMPANY

INDEX NO. 650113/2018

Plaintiff,

MOTION DATE N/A, N/A, N/A

- v -

MOTION SEQ. NO. 001, 004, 005

THE INSURANCE COMPANY OF THE STATE OF  
PENNSYLVANIA,

**DECISION + ORDER ON  
MOTION**

Defendant.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 72, 73, 74, 75, 111  
were read on this motion to SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 96, 97, 98, 99, 112  
were read on this motion to SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 107, 108, 109, 110,  
113  
were read on this motion to SEAL.

Motion Sequences 001, 004, and 005 are consolidated for purposes of this Decision and  
Order.

Plaintiff and Defendant jointly move for orders sealing certain documents filed in  
connection with the parties' motions for summary judgment. For the following reasons, the  
parties' sealing motions are Denied, without prejudice to filing a new motion proposing targeted  
redactions of the documents.

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 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] [internal citations omitted]).

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 fact that the parties have stipulated to sealing documents, or that they have designated the documents during discovery as protected by attorney-client privilege and/or the work-product doctrine, does not, by itself, move the needle toward granting the motion (*see, e.g., Maxim*, 145 AD3d at 518; *Gryphon*, 28 AD3d at 324).

In this case, the parties’ broad and categorical assertions of attorney-client privilege and work product doctrine do not establish a compelling justification to seal the entirety of dozens of documents at issue in these motions (*Darabont v AMC Network Entertainment LLC*, 2020 WL 3799132 [NY Sup Ct, NY County July 7, 2020]; *Aktiv Assets LLC v Centerbridge Partners, L.P.*, 2020 WL 2520019 [NY Sup Ct, NY County May 14, 2020]). While *portions* of certain documents may include information protected by the attorney-client privilege and work product doctrine, the record on these motions do not establish that is the case with sufficient specificity.

As an example, the motion seeks, without explanation, to seal certain *deposition transcripts* on the ground of attorney-client or work product privilege. While the Court reserves judgment pending review of the parties' explanation for the sealing specific documents, it is difficult to see how a deposition transcript – presumably involving information shared with adverse parties – could fall within the scope of attorney-client or work product privilege.

In view of the admonition that sealing of court records must be “narrowly tailored to serve compelling objectives,” (*Danco*, 274 AD2d at 6), the parties 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 Motions 001, 004, and 005 are **denied**, without prejudice to filing new motions within 21 days to redact confidential portions of documents consistent with this Decision and Order and applicable law; it is further

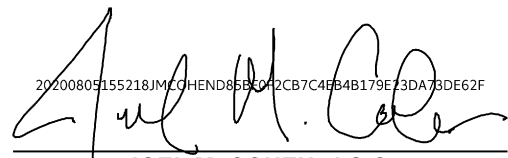
**ORDERED** that the documents filed as NYSCEF 36, 37, 38, 39, 40, 41, 42, 43, 46, 47, 51, 52, 53, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 71, 81, 83, 84, 85, 86, 87, 88, 89, 90, 92, 94, 95, 103, 104, 105, 106 **shall remain provisionally sealed** for 21 days from the date of the Court's 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.

This constitutes the decision and order of the Court.

8/5/2020  
DATE

  
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JOEL M. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE