

Novolex Holdings, LLC v Illinois Union Ins. Co.

2021 NY Slip Op 32833(U)

December 16, 2021

Supreme Court, New York County

Docket Number: Index No. 655514/2019

Judge: Andrea Masley

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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 48

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NOVOLEX HOLDINGS, LLC,	INDEX NO.	<u>655514/2019</u>
Plaintiff,	MOTION DATE	_____
- v -	MOTION SEQ. NO.	<u>011</u>
ILLINOIS UNION INSURANCE COMPANY, LLOYD'S SYNDICATE 4000, BARBICAN TRANSACTION LIABILITY CONSORTIUM 9804, and ARCH REINSURANCE (BERMUDA) LTD.,	DECISION + ORDER ON MOTION	
Defendants.		

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 011) 297, 298, 349, 350, 369, 370, 371, 372, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504

were read on this motion to/for

SEAL

In motion sequence number 011, plaintiff Novolex Holdings, LLC (Novolex) moves pursuant to Section 216.1(a) of the Uniform Rules for Trial Courts, by Order to Show Cause, to redact NYSCEF Doc. Nos. (NYSCEF) 265, 283, 326, 334, 336, 338, 345, 505, and 507 and to seal NYSCEF 349 and 350. Non-party Newell Brands (Newell), supports Novollex's motion and asks the court to redact or seal confidential NYSCEF 410-438.¹ The requested records to be sealed/redacted were filed as exhibits in connection with Novolex's motion for partial summary judgment (NYSCEF 259, affidavit of John Del Monaco, Esq.) or with Illinois Union Insurance Company (IUIC), Lloyd's Syndicate 4000, Barbican Transaction Liability Consortium 9804, and Arch

¹ The cited NYSCEF numbers refer to the unredacted exhibits filed by the respective parties.

Reinsurance (Bermuda) Ltd.'s motion for summary judgment as to liability. (NYSCEF 374, affidavit of Chael J. Clark, Esq.)

Background

In 2018, Novolex acquired The Waddington Group (TWG) from Newell pursuant to an Equity Purchase Agreement (EPA) ("the Acquisition"). (NYSCEF 1, Complaint ¶ 1.) Under the EPA, Novolex also acquired TWG's wholly owned subsidiary, Waddington North America, Inc. (WNA). (*Id.*) Novolex alleges that Newell breached multiple representations under the EPA for which defendant insurers provide insurance coverage. (*Id.* ¶¶ 2, 4.) Accordingly, Novolex commenced this action in September 2019. This dispute primarily concerns defendant insurers' alleged refusal to cover losses under the insurance policy or the representations and warranties made in the EPA. (*Id.* ¶ 1.)

On September 30, 2021, Novolex filed its motion for partial summary judgment and concurrently moved by Order to Show Cause to redact and seal exhibits filed in connection its partial summary judgment motion. (NYSCEF 259 DelMonaco Aff; NYSCEF 371, affidavit of John Del Monaco, Esq. in support of Novolex's Order to Show Cause.)

IUIC opposes Novolex's motion to seal arguing that good cause does not exist to seal these documents, specifically contending that Novolex did not provide an affidavit detailing how it would be harmed by the disclosure and that sealing certain records in their entirety was not warranted. (NYSCEF 504, Transcript 19:24-20:2, 10:23-24.) Additionally, during oral argument, IUIC asked the court to redact portions of two transcripts included as exhibits on Novolex's motion for partial summary judgment, which are filed as NYSCEF 297 and 298. (*Id.* at 9:6-17.) According to IUIC, their

proposed redactions are portions of deposition testimony that are not cited to or used by Novolex in its summary judgment motion. (*Id.* at 10:3-6.)

After argument, on November 22, 2021, Novolex filed proposed redacted versions of NYSCEF 505 and 507, which Novolex previously moved to seal in their entirety. (NYSCEF 506, Proposed Redactions; NYSCEF 508, Proposed Redactions.) However, Novolex did not file proposed redacted versions of NYSCEF 349 and 350.

There is no indication in the record that the press or public are interested in this action. (NYSCEF 504, 8:4-8, 9:11-12.)

Novolex's Exhibits

Novolex seeks to redact sensitive and confidential information from the following: NYSCEF 265 is a series of email communications which contain detailed international and domestic customer sales information. NYSCEF 283 is a series of email communications with a customer, discussing their rates, discounts, and annual sales. NYSCEF 326 is an email communication containing marketing and promotional offers for a customer. NYSCEF 334 is an email communication containing annual sales volume information and promotional rates for a customer. NYSCEF 336 is an email communication containing promotional and sales offers given to a customer, and financial projections based on that information. NYSCEF 338 is an email communication containing promotional and sales offers given to a customer. NYSCEF 345 is a letter from Novolex responding to Euclid Transactional, LLC's request for documents, which contains information about annual sales revenue with a customer. NYSCEF 505 is the Seller Disclosure Letter between Novolex and Newell, which contains various financial information, such as assets and liabilities, customer information, permits, capitalization information, tax audit information, and employee

information. NYSCEF 507 is an expert report of Glenn Hubbard, was prepared for a related litigation between Newell and Novolex and contains confidential analyses and information concerning Novolex's damages and valuation regarding the Acquisition.

Novolex seeks to seal in their entirety NYSCEF 349 and 350, which are settlement agreements with the first excess insurers and third excess insurers, respectively.

Newell's Documents

NYSCEF 410-414, 416, 418, 421, 423-424, and 426 are excerpts of deposition testimony from depositions of party and third-party witnesses. NYSCEF 410 contains excerpts from the deposition of H. Jason Mullins, which discuss Newell's business strategies and internal financial data. NYSCEF 411 contains excerpts from the deposition of Joy Ragsdale, which describe Newell's marketing strategy, business strategies, customer names, and promotional offers to customers. NYSCEF 412 contains excerpts from the deposition of Andrea Lombardi, which describe Newell's marketing and pricing strategy, and promotional offers to customers. NYSCEF 413 contains excerpts from the deposition of Brad Turner, which describe Newell's business strategies, including competitiveness, past and future investments, and internal communications regarding management and acquisitions. NYSCEF 414 contains excerpts from the deposition of Mark Tarchetti, which include communications concerning internal decision-making, management, and acquisitions. NYSCEF 416 contains excerpts from the deposition of Andrea Lombardi, which describe Newell's promotional offers to customers and pricing strategies. NYSCEF 418 contains excerpts from the deposition of Edouard Metrailler, which describe Newell's internal financial information and business strategy. NYSCEF 421 contains excerpts from the deposition

of John Wurzburger, which describe Newell's internal financial information and business strategies, including budgeting and projections. NYSCEF 423 contains excerpts from the deposition of Arthur Zambelli discussing Newell's customer relation and business strategies. NYSCEF 424 contains excerpts from the deposition of Michelle Antrim, which describe Newell's marketing and promotional offers to customers and its internal business strategies. NYSCEF 426 contains excerpts from the deposition of Nick Morrisroe, which described internal business and other company strategy.

NYSCEF 415 contains information regarding business strategies, including divestitures from the Minutes of the Special Board Meeting of Newell's Board of Directors. NYSCEF 417 contains a presentation describing Newell's internal financial information, business strategies, reflecting discussions between Newell and its financial advisor. NYSCEF 419 is an attachment to an email communication between Arthur Zambelli and Dennis Bruce, which discusses internal decision-making information with regard to one of Newell's shareholders. NYSCEF 422 is a management presentation produced by J.P. Morgan for its client, TWG, which contains financial data, customer data, and business strategies. NYSCEF 425 is a final draft of the Equity Purchase Agreement (EPA), included as an attachment to an email communication.²

NYSCEF 420 and 427-438 are email communications containing confidential marketing information, promotional offers, pricing information to customers, and/or employee contact information (email addresses and phone numbers).

IUIC's Documents

² The court previously granted an order to redact the prices per stock keeping unit (SKU) from the Equity Purchase Agreement after a finding of good cause. (NYSCEF 98, Feb. 26, 2020 Order.)

NYSCEF 349 contains excerpts from the deposition of Colin James Addy. NYSCEF 350 contains excerpts from the deposition of Edward Markovich. IUIIC, as explained above, requests that portions of the deposition testimony that are not cited to or used by Novolex be redacted.

Discussion

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.”

In the business context, courts have sealed records where the disclosure of documents “could threaten a business’s competitive advantage.” (*Mosalleem v Berenson*, 76 AD3d 345, 350-351 [1st Dept 2010] [citations omitted].) Records concerning financial information may be sealed where there has not been a showing of relevant public interest in the disclosure of that information. (See *Dawson v White & Case*, 184 AD2d 246, 247 [1st Dept 1992].) A party “ought not to be required to make their private financial information public ... where no substantial public interest would be furthered by public access to that information” and that “sealing a court file may be appropriate to preserve the confidentiality of materials which involve the internal finances of a party and are of minimal public interest.” (*D’Amour v. Ohrenstein & Brown*, 17 Misc.3d 1130[A], 1130[A], 2007 NY Slip Op 52207[U], *20 [Sup Ct, NY County 2007] [citations omitted].)

Here, Novolex seeks to redact confidential and competitively sensitive information from NYSCEF 265, 283, 326, 334, 336, 338, 345, 505, and 507 because public disclosure of the information contained in these records would damage its competitive standing and business opportunities. (NYSCEF 372, Sealing Chart, Exhibit 103 to the Affirmation of John Del Monaco, Esq. in Support of Novolex's Order to Show Cause at 1-4.) These exhibits contain business, sales, and marketing strategy, references to current and potential customers, current and past employee contact information, customer sales information, financial forecasts, and other confidential commercial information of both Novolex and third-parties. (*Id.*) Novolex opines that the disclosure of such confidential information, some of it being several years old, would harm its competitive standing in the industry because the figures can be manipulated to reflect any given year. (NYSCEF 504 at 5:12-18.) Thus, Novolex has shown good cause to redact the proprietary business information as the information could arm its competitors with unearned insight and advantages. (*Mosallem*, 76 AD3d at 350-351.) Moreover, good cause exist to redact the internal finances contained in these records because information of that nature are not a matter of public interest. (*See Feffer v Goodkind, Wechsler, Labaton & Rudoff*, 152 Misc 2d 812, 815-816 [Sup Ct, NY County 1991].)

However, good cause does not exist to seal NYSCEF 349 and 350, settlement agreements with Novolex's other insurers, in its entirety. "[C]onclusory claims of the need for confidentiality of settlement agreements are insufficient to seal a record." (*In re Will of Hofmann*, 284 AD2d 92, 94 [1st Dept 2001]; *contra Matter of Twentieth Century Fox Film Corp.*, 190 AD2d 483, 486 [1st Dept 1993] [finding good cause to seal as record involved the privacy interests of an infant].) Sealing records on the basis that

they were designated confidential is an insufficient basis to seal the document. (*Mosallem*, 76 AD3d at 350, quoting *Eusini v Pioneer Elecs. (USA), Inc.*, 29 AD3d 623, 626 [2d Dept 2006] [“Merely because some of the documents were marked ‘confidential’ or ‘private’ is not controlling on the court's determination whether there is good cause to seal the record.”].) Although the settlement agreements involve sensitive claim information and amounts, without a showing of any implicated privacy interests of Novolex or third-parties, the records will not be sealed. (*Norddeutsche Landesbank Girozentrale v Tilton*, 165 AD3d 447, 449 [1st Dept 2018].) And, without more, there is no basis for these settlement agreements to be sealed as these records contain many non-confidential items. Good cause may exist, however, to redact NYSCEF 349 and 350 to the extent the records reference identifiable personal information, claim amounts, and any proprietary information.

Newell, a nonparty to this action, seeks to redact confidential and competitively sensitive information from NYSCEF 410-421, 423-424, 426-438. Its confidential information was primarily obtained pursuant to subpoenas issued in this action. Newell asserts that the disclosure of such confidential and sensitive information would cause substantial and irreparable harm. For example, Newell argues that public disclosure of its proprietary information regarding its business strategies could hurt its bargaining positions or business opportunities. Here, Newell has shown good cause to redact the business strategy and personal contact information from these documents. (*Mosallem*, 76 AD3d at 350-351 [citations omitted].) Additionally, Newell seeks to redact almost in its entirety NYSCEF 415, Minutes of Special Board Meeting, and NYSCEF 422, which is an internal management presentation that contains sensitive financial and customer data, and business strategies. The court notes that the proposed redactions in

NYSCEF 415 and 422 pertain to internal business strategy and financial information, such as budget projections and models, and acquisition strategy.

However, the same cannot be said of NYSCEF 425, the draft of the EPA. While the court previously found good cause to redact the SKU numbers from the EPA, the remainder of the EPA was not filed under seal. (*Novolex Holdings, LLC v Illinois Union Ins. Co.*, 2020 NY Slip Op. 30552[U] [NY Sup, NY County 2020].) Without a showing of good cause, sealing the document, as opposed to narrowly tailored redactions of the SKU figures, will not lie.

As to IUIIC's request to narrowly redact certain settlement amounts contained in NYSCEF 297 and 298, good cause exists to redact the few lines that reference those amounts.

Accordingly, it is

ORDERED that motion sequence 011 is granted in part and denied with respect to NYSCEF 349, 350, and 425. Moving parties shall file 349, 350, and 425 publicly by December 23, 2021 unless they file a new OSC giving reasons for their requests to redact prior to December 23, 2021; and it is further

ORDERED that as redacted versions of NYSCEF 265, 283, 334, 336, 338, 345, 505, and 507 have already been filed publicly and unredacted copies under seal, plaintiff need not re-file duplicates; and it is further

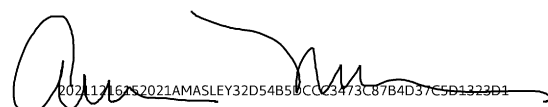
ORDERED that as redacted versions of NYSCEF 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, and 438 have already been filed publicly and unredacted copies under seal, non-party Newell need not re-file duplicates; and it is further

ORDERED that IUIK is directed to file publicly redacted versions of NYSCEF 297 and 298 in accordance with this decision; and it is further

ORDERED that the County Clerk, upon service to him of this order, shall seal NYSCEF 263, 264, 268, 271, 272, 273, 274, 275, 276, 278, 281, 282, 285, 294, 295, 296, 313, 314, 315, 316, 317, 318, 328, 330, 332, 359, 362, 364, and 416; and it is further

ORDERED the New York 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 this order does not authorize sealing or redacting for purposes of trial.



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12/16/2021
DATE

ANDREA MASLEY, J.S.C.

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