

Securities Indus. & Fin. Mkts. Assn., Inc. v Certain Underwriters at Lloyd's of London

2022 NY Slip Op 31079(U)

April 4, 2022

Supreme Court, New York County

Docket Number: Index No. 656239/2020

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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SECURITIES INDUSTRY AND FINANCIAL MARKETS
ASSOCIATION, INC.,

INDEX NO. 656239/2020

Plaintiff,

MOTION DATE _____

- v -

MOTION SEQ. NO. 007

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 007) 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155

were read on this motion to/for _____ SEAL _____.

Upon the foregoing documents, it is

In motion sequence number 007, plaintiff Securities Industry and Financial Markets Association, Inc. moves under Section 216.1(a) of the Uniform Rules for Trial Courts, by Order to Show Cause, to redact NYSCEF Docs. Nos. (NYSCEF) 130, 132, 143, 145, 147, 150, 159, 160, and 162 on the ground that disclosure of plaintiff's sensitive and proprietary business information and competitively sensitive information of nonparty policyholders containing identifiable information would harm plaintiff's competitive business advantage. Plaintiff moves to seal NYSCEF 119, 129, and 157 for the same reasons. Defendant Certain Underwriters of Lloyd's of London does not formally take a position or oppose. There is no indication that the press or public have an interest in this action.

NYSCEF 129 is a copy of the Binding Authority Agreement (or “coverholder agreement”) entered into between Lloyd’s and its coverholder, Risk Strategies Company. The document was also filed under NYSCEF 119 and 157.

NYSCEF 130 is a spreadsheet containing information about plaintiff’s claim for coverage as well as information concerning the claims of other insureds, with identifying information of the non-parties redacted by Lloyd’s prior to production. This document was also filed under NYSCEF 162.

NYSCEF 132 is a copy of an internal Lloyd’s email discussing event cancellation claims and claims exposure with portions redacted by Lloyd’s prior to production. This document was also filed under NYSCEF 159.

NYSCEF 143 is a coverage denial letter sent on behalf of Lloyd’s to another insured with identifying information of the non-party redacted by Lloyd’s prior to production. This document was also filed under NYSCEF 160.

NYSCEF 145 is a coverage denial letter sent on behalf of Lloyd’s to another insured with identifying information of the non-party redacted by Lloyd’s prior to production. This document was also filed under NYSCEF 173.

NYSCEF 147 is a coverage denial letter sent on behalf of Lloyd’s to another insured with identifying information of the non-party redacted by Lloyd’s prior to production. This document was also filed under NYSCEF 174.

NYSCEF 150 is an attorney affirmation submitted in support of Lloyd’s motion which quotes from NYSCEF 119, 129, and 157.

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.” (*Mosallem 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], 2007 NY Slip Op 52207[U], *20 [Sup Ct, NY County 2007] [citations omitted].)

NYSCEF 130 and 162 contain proprietary business strategy, confidential financial information and nonparty identifying information. To the extent that plaintiff seeks to keep private its confidential business and financial information, the disclosure of which would cause competitive harm, plaintiff has demonstrated that good cause exists to redact those portions these documents that contain event dates, limits on insured, and Market share. (*Mosallem*, 76 AD3d at 350-351 [citations omitted].)

NYSCEF 132 and 159 contain internal business discussions with clients and nonparties which includes proprietary business strategy and information. Plaintiff has demonstrated that good cause exists to redact those portions these documents that contain names and the meeting overview. (*Mosallem*, 76 AD3d at 350-351 [citations omitted].)

NYSCEF 143, 145, 147, 160, 173, and 174 contain proprietary business strategy, confidential financial information and non-party identifying information. To the extent that plaintiff seeks to keep private its confidential business and financial information, the disclosure of which would cause competitive harm, plaintiff has demonstrated that good cause exists to redact those portions these documents that contain event dates, locations, and identifying information. (*Mosallem*, 76 AD3d at 350-351 [citations omitted].)

Good cause does not exist to seal NYSCEF 119, 129, and 157, the Binding Authority Agreement. Plaintiff fails to explain, with applicable law, why the entire 82-page document should be sealed, rather than redacting certain portions. For example, it is unclear how the boilerplate sections of the agreement harm plaintiff's business advantage or expose nonparties. (See *e.g.* NYSCEF 119, 129, and 157.) Therefore, good cause does not yet exist to redact portions of NYSCEF 150 that reference NYSCEF 119, 129, and 157.

However, good cause may exist to redact portions of the agreement, and in turn, NYSCEF 150. Plaintiff may submit tailored redactions, insofar as they discuss confidential and proprietary information, effectively balances the interests of the public with the interest of the parties in keeping private their nonpublic and sensitive business

and financial information. (See *Danco Lab, Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 9 [1st Dept 2010].)

Plaintiff shall file a copy of the proposed redacted NYSCEF 119, 129, 150, and 157 in connection with motion seq. no. 007 within 7 days of this decision and explain the redactions.

Accordingly, it is

ORDERED that motion sequence 007 is granted, in part and denied in part, in accordance with the court's reasoning stated above; and it is further

ORDERED that plaintiff is directed to file publicly redacted versions of NYSCEF 130, 132, 143, 145, 147, 159, 160, 162, 173, and 174 in accordance with this decision; and it is further

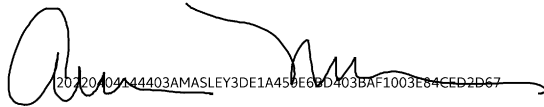
ORDERED that the County Clerk, upon service to him of this order, shall seal NYSCEF 130, 132, 143, 145, 147, 159, 160, 162, 173, and 174; and it is further

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 sealing/redaction of court documents, in accordance with and pursuant to a prior court order permitting redaction/sealing of future court documents, shall be done by electronically filing and emailing (SFC-Part48@nycourts.gov): (i) an affidavit or affirmation that shall include a spreadsheet or chart that clearly and specifically identifies each document it seeks to seal and states the basis for

sealing/redacting those documents pursuant to the prior order, and (ii) a proposed order directing the court to grant such relief.

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



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4/4/2022
DATE

ANDREA MASLEY, J.S.C.

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