

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

2022 NY Slip Op 33340(U)

October 1, 2022

Supreme Court, New York County

Docket Number: Index No. 653090/2013

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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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), ANGLO 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 OFUMA POOL), TRENT INSURANCE COMPANY LIMITED (AS PART OF UMA POOL), UNIONAMERICAN INSURANCE COMPANY LIMITED(FOR ITSELF AND AS SUCCESSOR IN

INDEX NO. 653090/2013

MOTION DATE 08/19/2021

MOTION SEQ. NO. 042

**DECISION + ORDER ON
 MOTION**

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 INSURANCE CO AND PACIFIC INSURANCE COMPANY), GRANITE STATE INSURANCE COMPANY, ILLINOIS NATIONAL INSURANCE COMAPNY, 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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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 042) 1358, 1359, 1360, 1361, 1362, 1363, 1364

were read on this motion to

SEAL

Defendants Nokia of America Corporation (“Nokia”) and AT&T Corp. (“AT&T”) (“Defendants”) move for an order sealing the Supplemental Affirmation of Jourdan I. Dozier (NYSCEF 1201) and Exhibit 1 to the Supplemental Affirmation of Jourdan I. Dozier (NYSCEF 1202), or in the Alternative, Modify the Court’s August 4, 2021 Order.¹ No parties oppose this motion. For the following reasons, Defendants’ motion is granted.

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]).

¹ The Dozier Affirmation and exhibit were previously the subject of a motion to seal, filed by the Plaintiff Insurers in this action (Mot. Seq. No. 033). Plaintiffs’ motion to seal stated that the purpose of the motion was “to provide Nokia and AT&T an opportunity to inform the Court if they wish to protect [the subject documents] from public disclosure” (NYSCEF 1215 at 2). On August 4, 2021, the Court denied Plaintiffs’ motion to seal and ordered the documents to be unsealed as AT&T and Nokia never submitted a response to Plaintiffs’ motion (NYSCEF 1350). Although not a formal response, Defendants advise that they did submit a letter explaining their position (NYSCEF 1213).

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, e.g. 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] [citations omitted]).

The Court has reviewed NYSCEF 1201 and 1202 and finds that they comport with the applicable sealing standards as laid out in *Mosallem*, 76 AD3d at 348-50, and its progeny, in that they contain sensitive and protected information, including a variety of asbestos-related bodily injury suits involving AT&T and Nokia, including references to the amount incurred by Defendants in the defense and settlement of these asbestos-related suits.

Accordingly, it is:

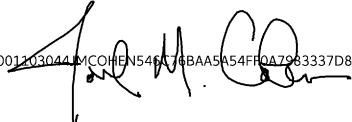
ORDERED that Defendants’ Motion is **Granted**; it is further

ORDERED that the County Clerk shall maintain NYSCEF Document Numbers 1201 and 1202 under seal, so that the documents may only be accessible by the parties, their counsel, and authorized court personnel; and it is further

ORDERED that nothing in this Order shall be construed as authorizing the sealing or redactions of any documents or evidence to be offered at trial.

This constitutes the Decision and Order of the Court.

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10/1/2022
DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: