

Certain Underwriters at Lloyd's v NL Indus., Inc.

2023 NY Slip Op 30939(U)

March 26, 2023

Supreme Court, New York County

Docket Number: Index No. 650103/2014

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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CERTAIN UNDERWRITERS AT LLOYD'S, et al.,	INDEX NO.	<u>650103/2014</u>
Plaintiffs,	MOTION DATE	_____
- v -	MOTION SEQ. NO.	<u>032</u>
NL INDUSTRIES, INC., et al.,		
Defendants.	DECISION + ORDER ON MOTION	

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 032) 1002, 1003, 1004, 1009, 1010, 1011
were read on this motion to/for _____ SEAL _____.

Upon the foregoing documents, it is

In motion sequence number 032, plaintiffs Certain Underwriters at Lloyd's, London, Commercial Union Insurance Company PLC, Indemnity Marine Assurance Company Ltd., Northern Assurance Company Ltd., Ocean Marine Insurance Company Ltd., Winterthur Swiss Ins. Co. Ltd., World Auxiliary Insurance Corporation Ltd., Yasuda Fire & Marine Ins. Co. (UK) Ltd., Yasuda, UK, Yorkshire Insurance Company Ltd., Atlanta International Insurance Company, Government Employees Insurance Company; Republic Insurance Company, and Stonewall Insurance Company move, by order to show cause, to seal NYSCEF Doc. No. (NYSCEF) 985 and redact NYSCEF 984 and 986¹ pursuant to Section 216.1 of the Uniform Rules for New York State Trial Courts.

¹ Publicly redacted copies of NYSCEF 984 and 986 are filed at NYSCEF 990 and 992.
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Motion No. 032

The motion is unopposed. There is no indication that the press or public have any interest in this matter.

NYSCEF 985 is an email dated April 26, 2013 from Paul Bass, Esq. who was associate general counsel for NL Industries, Inc. (NL), attaching a litigation summary of the underlying Santa Clara action. NYSCEF 985 is attached as an exhibit to the reply affirmation on motion sequence number 028, seeking an issuance of open commissions for out-of-state depositions. NYSCEF 985 was produced in this action by plaintiffs and marked "CONFIDENTIAL." (NYSCEF 1003, Kravitz aff ¶15.)

NYSCEF 984 is plaintiffs' reply affirmation in support of motion sequence number 028 and NYSCEF 986 is plaintiffs' reply memorandum of law in support of motion sequence number 028. Plaintiffs seek to redact portions of these documents citing to NYSCEF 985.

Plaintiffs state that "despite NL's current position that there is no common interest privilege with the [insurers in this action], at the time NL provided the litigation summary attached to Mr. Bass's email to the plaintiffs, NL marked the summary as 'Privileged and Confidential: Attorney Work Product.'" (NYSCEF 1004, Memorandum of Law at 2.) Plaintiffs also state that they were unable to timely file this motion in accordance with the Confidentiality Order in this matter (NYSCEF 769) because of "the briefing schedule, drafting process for the reply, and Thanksgiving holiday." (*Id.* at 2-3.) Plaintiffs also state that they informed NL's counsel of their intent to submit this motion, and "NL's counsel advised that NL 'does not consent to the filing of the document on the public record,' and 'would not object to the document being filed under seal, but would need to see the Motion to file under seal before making any

formal determination.” (NYSCEF 1003, Kravitz aff ¶10.) NL did not join in this motion or file opposition.

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) Except 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 of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard.”

“Under New York law, 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] [citations omitted].) The “party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access” to the documents. (*Id.* at 349 [citations omitted].) Good cause must “rest on a sound basis or legitimate need to take judicial action.” (*Danco Lab, Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 8 [1st Dept 2000] [internal quotations omitted].)

In the business context, courts have sealed records where the disclosure of documents “could threaten a business's competitive advantage.” (*Mosallem*, 76 AD3d at 350 [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.”

(*D'Amour v Ohrenstein & Brown*, 17 Misc.3d 1130[A], 2007 NY Slip Op 52207[U], *20 [Sup Ct, NY County 2007] [citations omitted].)

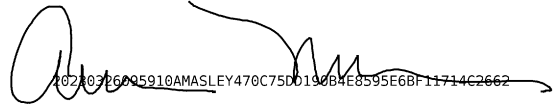
Plaintiffs's motion is denied. The fact that plaintiffs have designated NYSCEF 985 as "Confidential" pursuant to the parties' confidentiality stipulation in this action or that NL designated the document "Privileged and Confidential: Attorney Work Product," despite producing it, are not a basis for sealing or redacting the documents. (*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.'"].) Likewise, the parties cannot seal documents on consent; good cause must be shown. (*See Benkert v Smithers (In re Will of Benkert)*, 288 AD2d 147 [1st Dept 2001] ["The Surrogate correctly held that the stipulation of the parties to a terminated probate proceeding consenting to the sealing or expunging of certain records in that proceeding does not obviate the need to show good cause for such relief, as required by 22 NYCRR 216.1(a)."].)

Plaintiffs provide no other basis for sealing the information in NYSCEF 985 or redacting information contained therein in other documents. Therefore, their motion is denied.

Accordingly, it is

ORDERED that motion sequence number 032 is denied without prejudice; and it is further

ORDERED that, within fourteen days of this order, this court will direct the County Clerk to unseal NYSCEF 984, 985, and 986 unless a new OSC is filed in accordance with this decision.



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3/26/2023

DATE

ANDREA MASLEY, 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