

**Discover Prop. & Cas. Co. v National Football League**

2024 NY Slip Op 30170(U)

January 12, 2024

Supreme Court, New York County

Docket Number: Index No. 652933/2012

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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DISCOVER PROPERTY & CASUALTY COMPANY, ST.  
PAUL PROTECTIVE INSURANCE COMPANY,  
TRAVELERS CASUALTY & SURETY COMPANY,  
TRAVELERS INDEMNITY COMPANY, and TRAVELERS  
PROPERTY CASUALTY COMPANY,

Plaintiffs,

- v -

NATIONAL FOOTBALL LEAGUE, NFL PROPERTIES  
LLC,ALTERRA AMERICA INSURANCE COMPANY,  
FIREMAN'S FUND INSURANCE COMPANY, TIG  
INSURANCE COMPANY, CENTURY INDEMNITY  
COMPANY, FEDERAL INSURANCE COMPANY, GREAT  
NORTHERN INSURANCE COMPANY, GURANTEE  
INSURANCE COMPANY, HARTFFORD ACCIDENT &  
INDEMNITY COMPANY, NORTH RIVER INSURANCE  
COMPANY, U.S. FIRE INSURANCE COMPANY, ACE  
AMERICAN INSURANCE COMPANY, ILLINOIS UNION  
INSURANCE COMPANY, ALLSTATE INSURANCE  
COMPANY, AMERICAN GUARANTEE AND LIABILITY  
INSURANCE COMPANY, ARROWOOD INDEMNITY  
COMPANY, CHARTIS SPECIALTY INSURANCE  
COMPANY, CHARTIS PROPERTY CASUALTY  
COMPANY, CONTINENTAL CASUALTY COMPANY,  
CONTINENTAL INSURANCE COMPANY, ILLINOIS  
NATIONAL INSURANCE COMPANY, MUNICH  
REINSURANCE AMERICA INC.,NATIONAL UNION FIRE  
INSURANCE CO OF PITTSBURGH, PA, NEW ENGLAND  
REINSURANCE CORPORATION, ONEBEACON  
AMERICA INSURANCE COMPANY, VIGILANT  
INSURANCE COMPANY, WESTCHESTER FIRE  
INSURANCE COMPANY, XL INSURANCE AMERICA,  
INC.,DOE DEFENDANTS 1-100, CHARTIS SELECT  
INSURANCE COMPANY (3RD PARTY DEFT.), CHARTIS  
EXCESS LTD. (3RD PARTY DEFT.), PACIFIC  
INDEMNITY COMPANY, XL SELECT INSURANCE  
COMPANY, and WESTPORT INSURANCE COMPANY,

Defendants.

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 031) 1022, 1023, 1024,  
1025, 1026, 1027, 1034, 1035, 1036, 1037, 1049

were read on this motion to/for

SEAL

The following e-filed documents, listed by NYSCEF document number (Motion 032) 1028, 1029, 1030, 1031, 1032, 1033, 1038, 1045, 1046

were read on this motion to/for

SEAL

Upon the foregoing documents, it is

In motion sequence number 031, defendants National Football League and NFL Properties LLC (NFL Defendants or NFL) move, by order to show cause, pursuant to Section 216.1 of the Uniform Rules for the New York State Trial Courts, to file redacted versions of the exhibits at NYSCEF Doc No. (NYSCEF) Nos. 844, 849, 851, 853, 855, 857, 867, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, 892, 894, 897, 899, 901, 902, 906, 908, 910, 921, 924, 932, 990, 994, and 996; to seal NYSCEF 920, 971, and 981; and to file redacted versions of the motions, affirmations, and statements of fact that cite the above exhibits at NYSCEF 936, 945, 957, 962, 1018, and 1020. NFL Defendants also seek to remove from the docket those portions of the confidential deposition transcripts submitted in connection with the parties' summary judgment motions (NYSCEF 833-842, 969, 987, 997, 1001, 1003, 1005, 1007, 1009, 1011, and 1015) that are not cited by either party.

In motion sequence number 032, defendants TIG Insurance Company, The North River Insurance Company and United States Fire Insurance Company (TIG Defendants) move, by order to show cause, pursuant to Section 216.1 of the Uniform Rules for the New York State Trial Courts, to redact NYSCEF 1003.

### **Motion Seq. No. 031**

#### NFL Defendants request to seal/redact documents

The NFL Defendants have identified four categories of information which they seek to redact in the parties' filings: (i) confidential defense strategy information; (ii)

information regarding confidential settlements of legal claims against the NFL Defendants; (iii) personal identifying information of non-parties; and (iv) confidential business or financial information of a non-party. (NYSCEF 1027, NFL Defendants' Memo of Law at 7-8 [mot. seq. no. 031].) Each of these categories are dealt with in turn below. There is no opposition to this branch of the NFL Defendants' request to seal/redact.

#### *Confidential Defense Strategy Information*

As part of the processing of NFL's insurance claim for the underlying head injury litigation, NFL provided the Insurers documents containing information pertaining to NFL's defense or settlement of these claims including work product from NFL's defense counsel. (*Id.* at 8.) Documents containing this defense strategy information were produced during discovery in this action and have been filed on record by the parties in connection with their summary judgment motions as NYSCEF 867, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, 892, 894, 897, 899, 901, 902, 906, 908, 910, 932, 981, 990, 994, and 996. The NFL Defendants seek to redact information in all these documents other than NYSCEF 981, which the NFL Defendants seek to seal in its entirety. The NFL Defendants also seek to redact confidential defense strategy information in the parties' motions, affirmations and statements of fact, filed as NYSCEF 936, 957 and 962. The information sought to be redacted/sealed by the NFL Defendants reflects communications between counsel for NFL and its insurers about the head injury litigations, discussions about NFL's defense strategy, insurer notes pertaining to confidential briefings by NFL's defense counsel, assessments about the merits of the underlying claims, and discussions about the feasibility of including certain

settlement terms to secure reasonable settlements with plaintiffs in the head injury litigation.

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.”

“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].) Courts have held that good cause exists to seal/redact confidential communications between a policyholder and its insurers concerning claims and the defense or settlement of such claims, particularly when the underlying claims and issues are actively under litigation as the disclosure of such information could

disadvantage litigants in the underlying litigation. (See *Century Indem. Co. v. Liberty Mut. Ins. Co.*, 2011 NY Slip Op 33691[U], \*15 [Sup Ct, NY County 2011].)

The NFL Defendants have demonstrated good cause to redact confidential defense strategy information in the aforementioned documents as the information discloses confidential communications between NFL Defendants, their insurers and NFL counsel including assessments about the merits of the underlying head injury claims. The disclosure of this information could adversely affect NFL Defendants' ability to effectively defend themselves in future head injury claims where similar issues might be implicated. Further, any public interest in this information is not compelling or substantial enough to outweigh NFL Defendants' interest in protecting the confidentiality of this information.

#### *Confidential Settlement Information*

The NFL Defendants seek to redact NYSCEF 921, 936, 957, 962 and 1020 to the extent they contain details of confidential settlement information between NFL and third parties. The NFL Defendants further seek to seal NYSCEF 920 and 971 in their entirety. NYSCEF 971 is a settlement term sheet between the NFL Defendants and plaintiffs in the underlying head injury litigation, third parties to this action. NYSCEF 920 is a spreadsheet containing details of opt-out settlement including details of third parties.

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].) The information sought to be redacted by the NFL Defendants pertains to confidential settlement information between NFL Defendants and third parties, such information being NFL Defendants’ internal financial information. Good cause exists to redact details of confidential settlement information in NYSCEF 921, 936, 957, 962 and 1020. Courts have also held that good cause exists to seal settlement agreements which implicate nonparties as the disclosure of settlement information could infringe the privacy interests of such third parties. (See *Spot & Co. of Manhattan, Inc. v. Rudin*, 2022 NY Slip Op 33980[U], \*6 [Sup Ct, NY County 2022].) Therefore, NFL Defendants have shown good cause to seal NYSCEF 920 and 971 in their entirety.

#### *Personal Identifying Information*

The NFL Defendants seek to redact portions of NYSCEF 844, 849, 851, 853, 855, 857, 901, 924<sup>1</sup> which contain phone numbers and email addresses of third parties to the action including some NFL officials and executives.

There exists good cause to redact personal identifying information of third parties. (See *Natixis Real Estate Capital Trust 2007-HE2 v. Natixis Real Estate Capital, Inc.*, 2023 NY Slip Op 50027[U], \*2 [Sup Ct, NY County 2023] [“documents containing

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<sup>1</sup> NYSCEF 924 is a copy of financial statement of New York Football Giants, Inc. and the redactions sought do not include any personal identifying information. The NFL Defendants have also included NYSCEF 924 in the fourth category of information sought to be redacted, i.e. financial information of a non-party and the proposed redactions to NYSCEF 924 are addressed in the subsequent section under the fourth category.

personal identifying information of nonparty borrowers should be sealed. Nonparties, potentially unaware of the instant action, should have their private information protected”); *MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 2012 NY Slip Op 33147[U], \*10 [Sup Ct, NY County 2012] [internal quotation marks and citation omitted] [“there is a compelling interest in sealing third-party personal and financial information since disclosure could impinge on the privacy rights of third parties who clearly are not litigants herein”].) NFL Defendants’ request to redact portions of NYSCEF 849, 851, 853, 855 and 901 containing personal identifying information of third parties is granted. However, the NFL Defendants have not identified portions of NYSCEF 844 and 857 that it seeks to redact. NFL Defendants request to redact/seal NYSCEF 844 and 857 is denied without prejudice. To the extent that NFL Defendants wish to narrowly redact portions of NYSCEF 844 and 857 that contains personal identifying information, the NFL Defendants may refile an application to seal portions of NYSCEF 844 and 857 in compliance with Part 48 procedures in this regard.

#### *Financial Information of a Nonparty*

NFL Defendants seek to redact portions of NYSCEF 924 which contain confidential financial information of an NFL club, New York Football Giants, Inc., a nonparty to this action. As discussed above, good cause exists to seal/redact documents which disclose internal financial information of a party which is of minimal public interest. The information sought to be redacted consists of confidential comments to the audited financial statements of a third-party and such information is not relied upon by any party in this action. Therefore, good cause exists to redact such information and NFL Defendants request to redact portions of NYSCEF 924 is granted.

NFL Defendants' request to remove documents from the docket

NFL Defendants also seek permission from the court to remove from the docket portions of the deposition transcriptions which are not cited (or otherwise relied upon) by any party. Defendants TIG Insurance Company, The North River Insurance Company, and United States Fire Insurance Company object to this request. The deposition transcripts contain 5,986 pages of testimony and barring 240 pages of deposition testimony that have been relied upon by the parties, the NFL Defendants seek to remove from the docket the remainder of the deposition testimony on the ground that these are voluminous, were designated as confidential by the parties during discovery and do not bear on the summary judgment motions at issue. In the alternative, NFL Defendants have sought permission to file complete transcripts under permanent seal, and then file only excerpted portions containing the cited testimony on the public docket.

Judiciary Law § 4 provides that judicial proceedings shall be public. “The public needs to know that all who seek the court’s protection will be treated evenhandedly,” and “[t]here is an important societal interest in conducting any court proceeding in an open forum.” (*Baidzar Arkun v Farman-Farma*, 2006 NY Slip Op 30724[U], \*2 [Sup Ct, NY County 2006] [citation omitted].) While the public right to access is not absolute, (see *Danco Lab, Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 [1st Dept 2000]), the “party seeking to seal court records bears the burden of demonstrating compelling circumstances to justify restricting public access” to the documents. (*Mosallem v Berenson*, 76 AD3d 345, 348-349 [1st Dept 2010] [citations omitted].) The

relief sought by NFL Defendants is unduly broad and the NFL Defendants have failed to show good cause to restrict public access to the ‘uncited’ portions of the deposition testimony. Further, “[a] party’s designation of a document as confidential or restricted, without further explanation or supporting case law, is insufficient to support a finding of good cause to seal court records in whole or in part. (*See Spot & Co. of Manhattan, Inc. v. Rudin*, 2022 NY Slip Op 33980[U], \*5 [Sup Ct, NY County 2022].) NFL Defendants’ request to remove from the docket portions of the deposition transcriptions which are not cited (or otherwise relied upon) by any party is denied. The alternative relief sought by the NFL Defendants is also denied. NFL Defendants may refile an application to seal portions of the deposition testimony and should comply with Part 48 procedures in this regard.

### **Motion Seq. No. 032**

In motion sequence number 032, TIG Defendants seek to redact NYSCEF 1003, the deposition transcript of Nicholas Bentley, the President and Chief Executive Officer of TIG Insurance Company (TIG) and its affiliated claim administrator, The RiverStone Group. The TIG Defendants claim that the information sought to be redacted pertains to TIG’s corporate financial information and arrangements, internal financial practices, and the identities of and payments made by non-party reinsurers of TIG and is not relevant to the issues in dispute in this case.

As discussed above, records concerning financial information may be sealed where there has not been a showing of relevant public interest in the disclosure of that information. (*Dawson*, 184 AD2d at 247.) The TIG Defendants have demonstrated

good cause to narrowly redact portions of NYSCEF 1003 which pertain to TIG's financial information.

Accordingly, it is

ORDERED that motion sequence number 031 is granted, in part, and the County Clerk is directed to permanently seal NYSCEF 849, 851, 853, 855, 867, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, 892, 894, 897, 899, 901, 902, 906, 908, 910, 920, 921, 924, 932, 936, 945, 957, 962, 971, 981 990, 994, 996, 1018, and 1020. NFL Defendants are directed to ensure that copies of the redacted documents are publicly filed; and it is further

ORDERED that NFL Defendants shall move to redact NYSCEF 833-842, 844, 857, 969, 987, 997, 1001, 1005, 1007, 1009, 1011, and 1015 within 14 days of the date of this order or the County Clerk will be directed to unseal these documents; and it is further

ORDERED that the portion of the NFL Defendants' motion to move documents from the docket is denied; and it is further

ORDERED that motion sequence number 032 is granted and the County Clerk is directed to permanently seal NYSCEF 1003; 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

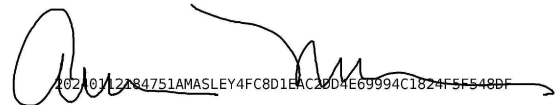
counsel of record upon presentation to the County Clerk of written authorization from counsel; and it is further

ORDERED that counsel for defendants shall serve a copy of this order upon the Clerk of the Court; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that if any party seeks to redact identical information in future filings that the court is permitting to be redacted here, that party shall submit a proposed sealing order to the court (via [SFC-Part48@nycourts.gov](mailto:SFC-Part48@nycourts.gov) and NYSCEF) instead of filing another seal motion; and it is further

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



1/12/2024  
DATE

\_\_\_\_\_  
ANDREA MASLEY, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>	REFERENCE

CHECK IF APPROPRIATE: