

National Football League v U.S. Specialty Ins. Co.

2024 NY Slip Op 30173(U)

January 12, 2024

Supreme Court, New York County

Docket Number: Index No. 654411/2022

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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NATIONAL FOOTBALL LEAGUE and NFL
ENTERPRISES LLC,

Plaintiffs,

- v -

U.S. SPECIALTY INSURANCE COMPANY, FREEDOM
SPECIALTY INSURANCE COMPANY, STARR
INDEMNITY & LIABILITY COMPANY, IRONSHORE
INDEMNITY INC., and EVEREST NATIONAL
INSURANCE COMPANY,

Defendants.

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INDEX NO. 654411/2022

MOTION DATE _____

MOTION SEQ. NO. 009 012

**DECISION + ORDER ON
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 009) 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 122, 125, 127, 166

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

The following e-filed documents, listed by NYSCEF document number (Motion 012) 149, 150, 151, 164

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

Upon the foregoing documents, it is

In motion sequence number 009, plaintiffs National Football League (NFL) and NFL Enterprises LLC (NFL Enterprises) move, by order to show cause, pursuant to Section 216.1 of the Uniform Rules for the New York State Trial Courts, to file NYSCEF Doc No. [NYSCEF] 74 and 100¹ under seal and redact portions of NYSCEF 75².

¹ Plaintiffs refiled NYSCEF 74 and 100 as exhibits to their motion to seal as NYSCEF 112 and 115 respectively. The court will refer to the documents as NYSCEF 74 and 100 in this decision.

² Plaintiffs refiled NYSCEF 75 as an exhibit to their motion to seal as NYSCEF 113. The court will refer to the document as NYSCEF 75 in this decision.

In motion sequence number 012, defendants U.S. Specialty Insurance Company, Freedom Specialty Insurance Company, Starr Indemnity & Liability Company, Ironshore Indemnity Inc., and Everest National Insurance Company (Excess Insurers 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 portions of NYSCEF 153, 157, 159 and 160. Both motions are unopposed and there is no indication of interest by the public or press.

Motion Seq. No. 009

Plaintiffs filed this action for money damages and declaratory relief alleging a breach by the Excess Insurers Defendants of their contractual obligations under excess Directors & Officers liability insurance policies issued by the Excess Insurers Defendants to NFL Ventures, L.P., which also insure plaintiffs. (NYSCEF 2, Complaint ¶ 1.) Plaintiffs and DirecTV, LLC (DirecTV), a distributor, were named as defendants in several antitrust lawsuits which alleged that plaintiffs' exclusive distributorship licensing contracts with DirecTV violate antitrust laws. (*Id.* ¶ 3.) These lawsuits were consolidated in a multi-district litigation- *In re: National Football League Sunday Ticket Antitrust Litig.*, Case No. 2:15-mj-02668 (C.D. Cal.) (*Sunday Ticket Litigation*). (*Id.* ¶ 3.) Plaintiffs claim that the Excess Insurer Defendants did not provide coverage to plaintiffs for the Sunday Ticket Litigation under the D&O Policies and seek to enforce their right to coverage under the D&O Policies in this action. (*Id.* ¶¶ 4-6.) Plaintiffs filed NYSCEF 74, 75 and 100 as exhibits to their motion for a partial summary judgment in this action.

NYSCEF 74 is a copy of a confidential distribution agreement between NFL Enterprises and DirecTV. (NYSCEF 73, Liquidation ¶ 3.) This agreement was filed under seal in the *Sunday Ticket Litigation*.

NYSCEF 75 is a copy of a California federal district court's opinion dated June 30, 2017, granting defendants' motion to dismiss in the *Sunday Ticket Litigation*. (*Id.* ¶ 4.) The June 30, 2017 decision was filed with redactions on the public docket. These redactions were applied *sua sponte* by the federal district court. (NYSCEF 120, Plaintiffs' Memo of Law at 2 [mot. seq. no. 009].) NYSCEF 100 is a copy of a Second Amended Consolidated Class Action Complaint filed in *Shaw et al. v. Dallas Cowboys Football Club, Ltd., et al.*, Civ. No. 97-cv-05184 (E.D. Pa.), a 1997 antitrust lawsuit filed against NFL and several NFL team members. (NYSCEF 77, Dibella aff ¶¶ 40-41.)

On October 10, 2023, plaintiffs withdrew their request to seal NYSCEF 100 and amended their request to seal/redact to include only NYSCEF 74 and 75. (NYSCEF 166, Plaintiffs' letter to Court dated October 10, 2023.) In their letter to the court, plaintiffs indicated that none of the defendants opposed their request to amend their request to seal/redact. (*Id.*) Since plaintiffs have withdrawn their request to seal NYSCEF 100, this court will only examine plaintiffs' request to seal NYSCEF 74 and redact NYSCEF 75.

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.”

“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].)

NYSCEF 74 is a distribution agreement between NFL Enterprises and DirecTV, a nonparty, containing sensitive and confidential information including permitted fee payments between NFL and DirecTV. Disclosure of such information could threaten NFL's competitive advantage and infringe upon the business interests of DirecTV, a third party to this action. Plaintiffs have demonstrated good cause to seal NYSCEF 74.

The court notes that the distribution agreement is in issue in the *Sunday Ticket Litigation* and was placed under seal by the U.S. District Court for the Central District of California and the U.S. Court of Appeals for the Ninth Circuit. (NYSCEF 120, Plaintiffs' Memo of Law at 4 [mot. seq. no. 009].) There exists no compelling public interest in the terms of the distribution agreement.

Plaintiffs also seek to redact NYSCEF 75, the California federal district court's opinion granting defendants' motion to dismiss in *Sunday Ticket Litigation* with such redactions being limited to the redactions applied *sua sponte* by the federal district

court. The proposed redactions pertain to confidential business and sensitive information about NFL's business and its distribution agreements. There exists good cause to redact information that discloses confidential and sensitive business information that could threaten an entity's competitive business advantage.

Motion Seq. No. 012

NYSCEF 153 is defendant Starr Indemnity and Liability Company's Supplemental Brief in Opposition to plaintiffs' Motion for Partial Summary Judgment. NYSCEF 157 is the affirmation of Ronald P. Schiller in Opposition to plaintiffs' Motion for Partial Summary Judgment. NYSCEF 159 is defendant Everest National Insurance Company's Supplemental Brief in Opposition to Plaintiffs' Motion for Partial Summary Judgment. NYSCEF 160 is defendants' opposition to plaintiffs' motion for partial summary judgment.

As part of mot. seq. no. 009 to seal NYSCEF 74 and NYSCEF 100, and redact NYSCEF 75, plaintiffs also sought redaction of portions of any memorandum of law or other papers filed in this action that disclose the contents of these documents. The Excess Insurer Defendants filed mot. seq. no. 012 to redact portions of NYSCEF 153, 157, 159 and 160 to the extent these documents disclose contents of NYSCEF 74, 75 and 100. (NYSCEF 151, Redactions Chart [mot. seq. no. 012].) Since the court has already found good cause to seal NYSCEF 74 and redact portions of NYSCEF 75, there exists good cause to redact portions of NYSCEF 153, 157, 159 and 160 that disclose the information sealed/redacted in NYSCEF 74 and 75.

Accordingly, it is

ORDERED that motion sequence number 009 is granted, and the County Clerk is direct to permanently seal NYSCEF 74, 75, 112 and 113; and it is further

ORDERED that the County Clerk is directed to unseal NYSCEF 100 and 115 as that portion of the motion was withdrawn; and it is further

ORDERED that motion sequence number 012 is granted in accordance with this decision and the County Clerk is directed to permanently seal NYSCEF 153, 157, 159 and 160; and it is further

ORDERED that the Excess Insurers Defendants shall publicly e-file redacted narrowly versions of NYSCEF 153, 157, 159 and 160 in accordance with this decision within 7 days of the date of this order; and it is further

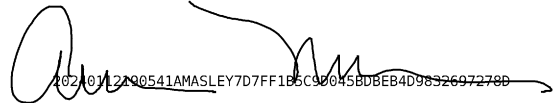
ORDERED the County Clerk shall restrict access to the sealed documents with access to be granted only to authorized court personnel and designees, the parties and counsel of record in the above-captioned action, and any representative of a party or of counsel of record upon presentation to the County Clerk of written authorization from counsel; and it is further

ORDERED that counsel for movants 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); 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 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.



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1/12/2024
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