

XL Specialty Ins. Co. v AR Capital, LLC

2020 NY Slip Op 34099(U)

December 11, 2020

Supreme Court, New York County

Docket Number: 650018/2019

Judge: Joel M. Cohen

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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 IAS MOTION 3EFM

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XL SPECIALTY INSURANCE COMPANY, CONTINENTAL
CASUALTY COMPANY, ARGONAUT INSURANCE
COMPANY, FREEDOM SPECIALTY INSURANCE
SUPPLEMENTAL COMPANY, QBE INSURANCE
COMPANY,

INDEX NO. 650018/2019

MOTION DATE 09/23/2020

MOTION SEQ. NO. 015

Plaintiffs,

- v -

**DECISION + ORDER ON
MOTION**

AR CAPITAL, LLC, BELLEVUE CAPITAL PARTNERS,
LLC, NICHOLAS SCHORSCH, EDWARD WEIL, WILLIAM
KAHANE, PETER BUDKO

Defendants.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 015) 258, 259, 260
were read on this motion to SEAL.

Plaintiffs move to seal or redact certain documents filed in connection with their motion
for summary judgment (Mot. Seq. No. 16). For the following reasons, Plaintiffs’ motion is
granted in part and denied in part.

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 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] [internal citations omitted]).

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]). The fact that the parties have stipulated to sealing documents, or that they have designated the documents during discovery as confidential, does not, by itself, move the needle toward granting the motion (*see, e.g., Maxim*, 145 AD3d at 518; *Gryphon*, 28 AD3d at 324). In addition, while the Court will take into consideration the Delaware court’s decision to seal certain documents in a related case, this Court must make an independent judgment as to whether sealing is permissible under New York law.

The Court finds that Plaintiffs have satisfied their burden of showing that portions of documents revealing confidential communications that took place during the prosecution and settlement of a non-public SEC Investigation may be sealed (NYSCEF 262 [¶¶ 53-58]; NYSCEF 273 [pp. 2, 12-14]; NYSCEF 296; NYSCEF 297; NYSCEF 298; NYSCEF 303; NYSCEF 304).

However, Plaintiffs’ broad and categorical assertions of good cause do not establish a compelling justification to seal the remaining documents at issue in this motion. While portions of those documents may include confidential business information, or proprietary information of parties or non-parties, the record on this motion does not establish that is the case. In view of the admonition that sealing of court records must be “narrowly tailored to serve compelling objectives,” (*Danco*, 274 AD2d at 6), Plaintiffs will need to propose and justify targeted

redactions for the remaining documents that satisfy the requirements of 22 NYCRR § 216 (a) and applicable case law.

Accordingly, it is:

ORDERED that Motion Sequence 015 is **granted in part** with respect to the proposed redactions in NYSCEF 262 [¶¶ 53-58 only]; NYSCEF 273 [pp. 2, 12-14]; NYSCEF 296; NYSCEF 297; NYSCEF 298; NYSCEF 303; and NYSCEF 304:

- (a) Within seven days of this Order, Plaintiffs shall refile two versions of NYSCEF 262: one public version with lines 53 – 58 redacted, and one unredacted version under seal;
- (b) Within seven days of this Order, Plaintiffs shall refile two versions of NYSCEF 273: one public version with the approved redactions on pages 2 and 12-14, and one unredacted version under seal;
- (c) Within seven days of this Order, Plaintiffs shall file unredacted versions of NYSCEF 296, 297, 298, 303, and 304 under seal; it is further

ORDERED that Motion Sequence 015 is **denied without prejudice** with respect to NYSCEF 263, NYSCEF 264, NYSCEF 269, and NYSCEF 299:

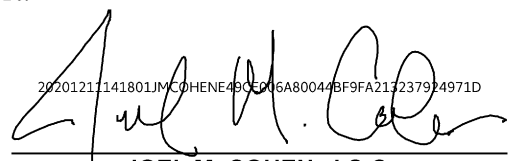
- (a) The documents filed as NYSCEF 263, 264, 269, and 299 shall remain provisionally under seal for 21 days from the date of the Court's entry of this Decision and Order on NYSCEF. If Plaintiffs file a new motion to seal or redact confidential portions of the documents consistent with this Decision and Order within that 21-day period, the documents shall remain provisionally sealed pending resolution of that motion. If no such motion is filed within 21 days from the entry of this Decision and Order, Plaintiffs shall within three

business days thereafter file unredacted/unsealed copies of the documents on
NYSCEF; it is further

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

This constitutes the decision and order of the Court.

12/11/2020
DATE


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JOEL M. COHEN, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
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"/>	REFERENCE