

**Avenue Capital Mgt. II, L.P. v Chubb European  
Group S.E.**

2024 NY Slip Op 34296(U)

December 4, 2024

Supreme Court, New York County

Docket Number: Index No. 654855/2022

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 03M

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AVENUE CAPITAL MANAGEMENT II, L.P., STORM  
PETREL LEASING 979 LIMITED, STORM PETREL  
LEASING 1002 LIMITED, SHEARWATER AIRCRAFT  
LEASING II 28520 LIMITED, SHEARWATER AIRCRAFT  
LEASING 28533 LIMITED,

Plaintiff,

- v -

CHUBB EUROPEAN GROUP S.E., BERKSHIRE  
HATHAWAY INTERNATIONAL INSURANCE LTD.,  
HOUSTON CASUALTY COMPANY, LONDON BRANCH,  
MAPFRE ESPANA COMPANIA DE SEGUROS Y  
REASEGUROS S.A., MITSUI SUMITOMO INSURANCE  
COMPANY (EUROPE) LIMITED, LLOYD'S SYNDICATE  
0510 KLN, LLOYD'S SYNDICATE 1880 TMK, SWISS RE  
INTERNATIONAL SE, LLOYD'S SYNDICATE 2623 AFB,  
LLOYD'S SYNDICATE 0623 AFB, FIDELIS  
UNDERWRITING LIMITED, LLOYD'S SYNDICATE 0435  
FDY, LLOYD'S SYNDICATE 1919 CVS, LLOYD'S  
SYNDICATE 1084 CSL, HDI GLOBAL SPECIALTY SE,  
GREAT LAKES INSURANCE SE, CONVEX INSURANCE  
UK LIMITED, AXIS SPECIALTY EUROPE SE, LLOYD'S  
SYNDICATE 0609 AUW, LLOYD'S SYNDICATE 3010  
LRE, LLOYD'S SYNDICATE 2010 MMX, LLOYD'S  
SYNDICATE 4472 LIB, LLOYD'S SYNDICATE 2012 AAL,  
LLOYD'S SYNDICATE 1729 DUW, ARCH MANAGING  
AGENCY LIMITED FOR AND ON BEHALF OF THE 2021  
UNDERWRITING MEMBERS OF SYNDICATE 2012 AT  
LLOYD'S, ATRIUM UNDERWRITERS LIMITED FOR AND  
ON BEHALF OF THE 2021 UNDERWRITING MEMBERS  
OF SYNDICATE 609 AT LLOYD'S, LIBERTY  
CORPORATE CAPITAL LIMITED AS SOLE CORPORATE  
MEMBER OF SYNDICATE 4472 AT LLOYD'S FOR THE  
2021 YEAR OF ACCOUNT, BEAZLEY FURLONGE  
LIMITED FOR AND ON BEHALF OF THE 2021  
UNDERWRITING MEMBERS OF SYNDICATE 623 AND  
SYNDICATE 2623 AT LLOYD'S, CHAUCER  
CORPORATE CAPITAL (NO. 3) LTD. (UK) AS THE SOLE  
CORPORATE MEMBER OF SYNDICATE 1084 AT  
LLOYD'S FOR THE 2021 YEAR OF ACCOUNT, DALE  
MANAGING AGENCY LIMITED FOR AND ON BEHALF  
OF THE 2021 UNDERWRITING MEMBERS OF  
SYNDICATE 1729 AT LLOYD'S, LANCASHIRE  
SYNDICATES LIMITED FOR AND ON BEHALF OF THE  
PARTICIPATING 2021 UNDERWRITING MEMBERS OF  
SYNDICATE 3010 AND SYNDICATE 2010 AT LLOYD'S,  
TOKIO MARINE KILN SYNDICATES LIMITED ON  
BEHALF OF ALL UNDERWRITING MEMBERS OF

**INDEX NO.** 654855/2022  
**MOTION DATE** 10/15/2024,  
10/22/2024  
**MOTION SEQ. NO.** 017 018

**DECISION + ORDER ON  
MOTION**

LLOYD'S SYNDICATE 510 AND LLOYD'S SYNDICATE  
1880, FARADAY CAPITAL LIMITED, THE SOLE  
MEMBER OF AND CAPITAL PROVIDER TO LLOYD'S  
SYNDICATE 435, STARR SYNDICATE LIMITED AS  
SOLE UNDERWRITING MEMBER OF LLOYD'S  
SYNDICATE 1919, STARR MANAGING AGENTS  
LIMITED ON BEHALF OF LLOYD'S SYNDICATE CVS  
1919, DOES 1-10,

Defendant.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 017) 219, 220, 221, 222, 223, 224, 225, 226

were read on this motion to \_\_\_\_\_ SEAL \_\_\_\_\_.

The following e-filed documents, listed by NYSCEF document number (Motion 018) 232, 233, 234, 235

were read on this motion to \_\_\_\_\_ SEAL \_\_\_\_\_.

Defendants Swiss Re International SE (“Swiss Re”) and Chubb European Group S.E.

(“Chubb”) move for an order sealing and/or redacting the documents filed as NYSCEF

Document Numbers 198, 209, 211, and 213, which were submitted in connection with Plaintiffs’

Motion for Leave to Amend and File a Third Amended Complaint. Plaintiffs move for an order

sealing the document filed as NYSCEF Document Number 206, which was submitted in

connection with the same motion. For the following reasons, Swiss Re and Chubb’s motion is

**denied without prejudice**, and Plaintiffs’ motion is **granted**.

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]).

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” or “Highly Confidential,” does not, by itself, require granting of the motion (*see e.g. Maxim*, 145 AD3d at 518; *Gryphon*, 28 AD3d at 324).

Swiss Re and Chubb advance no basis to seal the documents other than that the documents were provisionally designated as “Confidential” under the stipulation and order filed as NYSCEF Document Number 97. This does not establish a compelling justification to seal the documents at issue. Accordingly, Swiss Re and Chubb’s motion is denied.

Plaintiffs, on the other hand, have demonstrated that the document they seek to seal contains sensitive information relating to internal business strategy and investment valuations. Sealing this document comports with the applicable standards laid out in *Mosallem*, 76 AD3d at 348-50, and its progeny, in that the document contains sensitive, proprietary, and/or confidential business and financial information. Therefore, Plaintiffs’ unopposed motion to seal is granted.

Accordingly, it is

**ORDERED** that Defendants Swiss Re and Chubb’s Motion to Seal (Motion 17) is **denied without prejudice** to filing a new motion within 14 days of the date of this Decision and Order to seal and/or redact confidential portions of documents consistent with this Decision and Order and applicable law; it is further

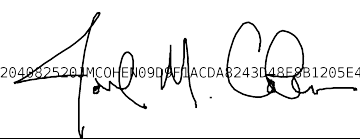
**ORDERED** that the documents filed as NYSCEF Document Numbers 198, 209, 211, and 213 shall remain provisionally sealed for 14 days from the date of this Decision and Order. If the parties file a new motion to seal or redact confidential portions of the documents within that 14 day period, the documents shall remain provisionally sealed pending the resolution of that motion. If no such motion is filed within 14 days from the date of this Decision and Order, the parties shall within 3 business days thereafter file unredacted or unsealed copies of the documents on NYSCEF; it is further

**ORDERED** that Plaintiffs’ Motion to Seal (Motion 18) is **granted**; it is further

**ORDERED** that the County Clerk shall maintain NYSCEF Document Number 206 under seal, so that the document may only be accessible by the parties, their counsel, and authorized court personnel; and 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.

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**JOEL M. COHEN, J.S.C.**

12/4/2024  
DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: