

Cadwalader, Wickersham & Taft LLP v. Certain Underwriters at Lloyd's of London, Beazley Syndicates 623 and 2623, Subscribing to Policy No. PSLN2200651, 2024 NCBC Order 53.

STATE OF NORTH CAROLINA  
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
24CV030110-590

CADWALADER, WICKERSHAM &  
TAFT LLP,

Plaintiff,

v.

CERTAIN UNDERWRITERS AT  
LLOYD'S OF LONDON, BEAZLEY  
SYNDICATES 623 AND 2623,  
SUBSCRIBING TO POLICY NO.  
PSLNS2200651,

Defendants.

**ORDER ON DEFENDANTS' MOTION  
TO RECONSIDER *EX PARTE* ORDER  
ON PLAINTIFF'S MOTION TO SEAL**

1. **THIS MATTER** is before the Court on Defendants' Motion to Reconsider *Ex Parte* Order on Plaintiff's Motion to Seal ("Reconsideration Motion," ECF No. 11). Defendants request that this Court reconsider an order entered by a Mecklenburg County Superior Court judge prior to the designation of this case to the North Carolina Business Court, which allowed Plaintiff's Complaint and Exhibit 1 thereto to remain under seal in their entirety.

2. On 1 July 2024, Plaintiff Cadwalader, Wickersham, & Taft LLP ("Cadwalader") initiated this action by filing a Complaint in Mecklenburg County Superior Court naming Certain Underwriters at Lloyd's of London, Beazley Syndicates 623 and 2623, Subscribing to Policy No. PSLNS2200651 as Defendants ("Defendants"). (See Compl. [sealed], ECF No. 3.) Cadwalader filed the Complaint and Exhibit 1 thereto provisionally under seal, accompanied by a Motion to Seal (ECF No. 5), a Memorandum in Support of Motion to Seal (ECF No. 6), and the Affidavit of Gillian Groarke Burns in Support of Plaintiff's Motion to Seal ("Burns Affidavit," ECF

No. 7). Cadwalader attempted service on Defendants through multiple channels, including by email to counsel for Defendants. (See Pl.'s Suppl. Conditional Notice Designation ¶ 3, ECF No. 9.)

3. On 8 July 2024, a Mecklenburg County Superior Court judge entered an Order on Plaintiff's Motion to Seal ("8 July Sealing Order," ECF No. 10), which directed that "[t]he Complaint and Exhibit 1 to the Complaint shall be sealed in their entirety; and [e]xcept upon further order of the Court, the sealed versions of the Complaint and Exhibit 1 to the Complaint shall remain available only to the Court, the parties, and their counsel." (8 July Sealing Order, at 1.)

4. On 11 July 2024, Cadwalader filed a public version of the Complaint (Compl. [redacted], ECF No. 14), which contained extensive redactions, as well as a Notice of Filing of Sealed Exhibit ("Notice," ECF No. 15), which contained a nonconfidential description of Exhibit 1 to the Complaint, stating that "Exhibit 1 is the insurance policy at issue." (Notice, at 1.) That same day, counsel for Defendants accepted service on Defendants' behalf. (Pl.'s Suppl. Conditional Notice Designation ¶ 3.)

5. This case was designated as a mandatory complex business case on 25 July 2024 and assigned to the undersigned the same day. (See Designation Order, ECF No. 1; Assignment Order, ECF No. 2.)

6. Defendants filed the Reconsideration Motion along with a supporting brief (ECF No. 12) on 29 July 2024. In response, on 5 August 2024, Cadwalader filed a memorandum in opposition to the Reconsideration Motion (ECF No. 23).

7. The Reconsideration Motion is now ripe for resolution.

8. Defendants argue that the 8 July Sealing Order “was entered without legal authority” for the following reasons: Defendants were not given the opportunity to respond to the Motion to Seal through the submission of an opposition brief within twenty days after service of the Motion to Seal as provided by Rule 27(b)(3) of the North Carolina Rules of Civil Procedure (and pursuant to Rule 5.2(c) of the Business Court Rules (“BCR”)); the 8 July Sealing Order does not contain specific findings of fact as required by North Carolina law; and the 8 July Sealing Order is “overbroad and unjustifiable, particularly in light of this state’s strong preference to keep the courts open[, because] [t]he motion and accompanying affidavit fail to provide a sufficient basis for sealing beyond pure speculation and conjecture[.]” (Reconsideration Mot., at 2–3.)

9. Defendants request that this Court reconsider the 8 July Sealing Order and “supersede it with an order containing specific findings of fact and which unseals the complaint in its entirety (with the exception of appropriate, limited redactions regarding specific security measures undertaken by Cadwalader in the wake of the data incident) and further unsealing the insurance policy in its entirety (with the exception of appropriate, limited redactions for commercially sensitive premium information).” (Reconsideration Mot., at 3–4.)

10. In response, Cadwalader argues that Defendants’ Reconsideration Motion should be denied for the following three reasons: (1) Defendants violated BCR 7.3’s consultation requirement by failing to (i) consult with Cadwalader’s counsel

prior to filing the Reconsideration Motion to determine their position, and (ii) state opposing counsel's position in the Reconsideration Motion; (2) "the information that Cadwalader filed under seal clearly meets the test for sealing" and Defendants cannot "meet the high standard of establishing 'clear error,' as required to warrant reconsideration"; and (3) "Defendants' procedural arguments hold no merit" because (i) Defendants did not inform the Court of their intention to file an opposition brief during the week-long interim between the filing of the Motion to Seal and the entry of the 8 July Sealing Order, and (ii) Defendants have not "identif[ied] any rule or case law requiring the court to have waited to see if Defendants would do so." (Pl.'s Mem. Opp. Reconsideration Mot., at 2–3.) Finally, Cadwalader contends that "to the extent that a sealing order must contain factual findings, the remedy is not to 'reconsider' the holding of the order, but simply to add the findings." (Pl.'s Mem. Opp. Reconsideration Mot., at 3.)

11. With regard to BCR 7.3, Cadwalader is correct that the Court could summarily deny Defendants' Reconsideration Motion on the basis that Defendants violated that Rule's requirement that "[a]ll motions . . . must reflect consultation with and the position of opposing counsel." Nevertheless, in its discretion and in the interest of judicial economy, the Court declines to summarily deny the Reconsideration Motion on this basis.<sup>1</sup>

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<sup>1</sup> The Court admonishes Defendants for this violation of BCR 7.3.

12. As an initial matter, the Court notes that the 8 July Sealing Order contemplated the possibility of broader public access to the sealed documents, or portions thereof, being granted “upon further order of the Court[.]”

13. Although Rule 27(b)(6) of the North Carolina General Rules of Practice for the Superior and District Courts (“General Rules”) permits a court to rule on a motion to seal with or without a hearing, Rule 27(b)(3) of the General Rules provides that “[a] person may file a brief in support of or in opposition to the motion no later than twenty days after having been served with the motion.” N.C. Super. Ct. & Dist. Ct. R. 27(b)(3). Here, the 8 July Sealing Order was entered prior to the expiration of the twenty-day briefing period.<sup>2</sup>

14. It is well established that documents filed in the courts of this State are “open to the inspection of the public[.]” except as prohibited by law. N.C.G.S. § 7A-109(a); see *Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 463 (1999). However, “a trial court may, in the proper circumstances, shield portions of court proceedings and records from the public[.]” *France v. France*, 209 N.C. App. 406, 413 (2011) (emphasis omitted) (quoting *Virmani*, 350 N.C. at 463). Courts should conceal records sparingly and only “in the interest of the proper and fair administration of justice[.]” *Virmani*, 350 N.C. at 463. Furthermore, this Court disfavors filing entire documents under seal and sealing an entire document is a rare circumstance. See *Beroz v. Nuvotronics, Inc.*, 2018 NCBC LEXIS 249, at \*4 (N.C. Super. Ct. Apr. 3, 2018). “The extent of sealing must be narrowly tailored to protect [a] party’s interest

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<sup>2</sup> Moreover, BCR 5.2(c) likewise states that “[a] person may file a brief in support of or in opposition to the motion no later than twenty days after having been served with the motion.”

in secrecy while preserving, as much as possible, the public's interest in open courts.”  
*Harris v. Ten Oaks Mgmt., LLC*, 2023 NCBC LEXIS 91, at \*5.

15. Based on the Court's interpretation of Rule 27(b)(3) of the General Rules, BCR 5.2(c), and the above-referenced case law, the Court concludes, in its discretion, that before it issues any further order on the question of which portions of the Complaint and Exhibit 1, if any, warrant sealing based on the legal principles set forth above, both parties should have the opportunity to submit memoranda setting out their respective arguments. In addition, Cadwalader shall have the opportunity to offer proposed redactions to the Complaint and Exhibit 1 that are limited to the fullest extent practicable.

16. Therefore, the Court **DEFERS** ruling on the Reconsideration Motion and **ORDERS** Cadwalader to submit proposed redacted versions of the Complaint and Exhibit 1 thereto for *in camera* review by the Court via email to the law clerk assigned to this matter and to copy all counsel of record on the email. Additionally, Cadwalader is **DIRECTED** to file an accompanying supplemental brief explaining why the proposed redactions are necessary and are limited to the fullest extent practicable. Defendants shall then have ten days in which to file a supplemental brief in response to Cadwalader's arguments and proposed redactions. The parties' supplemental briefs shall not exceed 5,000 words and shall comply in all respects with the BCR.

## CONCLUSION

**THEREFORE, IT IS ORDERED** as follows:

1. The Court **DEFERS** ruling on the Reconsideration Motion pending the parties' submission of supplemental briefing as provided for herein;
2. Cadwalader shall have ten (10) days from the date of this Order in which to submit proposed redacted versions of the Complaint and Exhibit 1 thereto for *in camera* review by the Court by emailing such versions to the law clerk assigned to this matter and copying all counsel of record;
3. Cadwalader is **DIRECTED** to file an accompanying supplemental brief within ten (10) days from the date of this Order explaining why such redactions are necessary and limited to the fullest extent practicable;
4. Defendants shall file a supplemental memorandum within ten days of the filing of Cadwalader's supplemental brief responding to the arguments made by Cadwalader and its proposed redactions; and
5. The Court will decide at that time whether a hearing on the matters addressed herein is necessary.

**SO ORDERED**, this the 12th day of August, 2024.

/s/ Mark A. Davis

Mark A. Davis  
Special Superior Court Judge for  
Complex Business Cases