

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Diocese of Duluth,

Court File No. 17-cv-3254 (DWF/LIB)

Plaintiff,

v.

ORDER

Liberty Mutual Group, et al.,

Defendants.

This matter comes before the undersigned United States Magistrate Judge pursuant to a general assignment made in accordance with the provisions of 28 U.S.C. § 636, and upon Defendant Liberty Mutual Insurance Company's (hereinafter "Defendant") Motion for Further Consideration of Sealing. [Docket No. 164]. The Court held a Motions Hearing on September 10, 2018, at the end of which the Court took Defendant's Motion under advisement.

For the reasons discussed below, Defendant's Motion for Further Consideration of Sealing, [Docket No. 164], is **GRANTED in part and DENIED in part**.

I. Background

From prior to 2004 through at least 2005, John Doe 65 v. Diocese of Duluth, St. Rose Catholic Church in Proctor Minnesota, a Minnesota state court action against Plaintiff based upon claims of alleged sexual misconduct in the 1960s was proceeding through the Minnesota state courts. (See, Murray Dec., Ex. 1, [Docket No. 153], at 2). Great American Insurance Company ("Great American") defended the Diocese of Duluth (Plaintiff in the present case) in

that Minnesota state court case “under a reservation of rights in accordance with the terms of [a] contract of insurance between Great American and the Diocese.” (Id.).¹

“On December 7, 2015, [Plaintiff] filed a petition in the United States Bankruptcy Court for the District of Minnesota (‘the Bankruptcy Court’) under Chapter 11 because of liabilities Plaintiff faces from negligence claims asserted by individuals who allege they were sexually abused by priests within the Diocese of Duluth.” (Advisory Docket Sheet, [Docket No. 1-81], at 1).

Then:

[o]n June 24, 2016, Plaintiff initiated an adversary proceeding seeking declaratory relief determining its rights under various insurance policies issued by Liberty Mutual Insurance Company (“Liberty Mutual”), Catholic Mutual Relief Society of America (“Catholic Mutual”), Fireman’s Fund Insurance Company (“Fireman’s Fund”), Church Mutual Insurance Company (“Church Mutual”), and The Continental Insurance Company (“Continental”). . . .

The parties to the adversary proceeding stipulated to a stay of those proceedings while they participated in mediation of the insurance coverage issues.

(Advisory Docket Sheet, [Docket No. 1-81], at 2)).

“After mediation was unsuccessful, Plaintiff filed an amended complaint in the adversary proceeding on December 2, 2016.” (Bankruptcy R&R, [Docket No. 1-81], at 1–4). “[O]n December 19, 2016, Liberty Mutual, Fireman’s Fund and Continental filed a motion in the adversary proceeding to transfer the matter to the District Court.” (Id.). However, “[o]n January 12, 2017, the Bankruptcy Court held a hearing on the motion to transfer and denied the motion. . . .” (Id.). On February 6, 2017, Liberty Mutual, Fireman’s Fund, and Continental filed in the adversary proceeding a motion to withdraw reference and on February 22, 2017, the Bankruptcy

¹ It appears that the policy was originally issued to Plaintiff by Agricultural Insurance Company, but Great American took responsibility for the policy at some point prior to the Minnesota state court claims. (See, Galley Aff., [Docket No. 105-1], at 2–4). At a later date, “[a]s a result of a corporate transaction between Great American . . . and The Ohio Casualty Insurance Company (“Ohio Casualty”), Liberty Mutual . . . accepted responsibility for four policies issued to the Diocese between 1964 and 1973.” (Mem. in Opp., [Docket No. 141], at 3). Those policies were Policy No. CLA 770553, Policy No. 3GA 26 24 22, Policy No. 3GA 29 96 59, and Policy No. 4GA 12 60 70. (Id.).

Court forwarded to this Court the Motion to Withdraw Reference and Plaintiff's Objection thereto. (Id.). On July 24, 2017, the adversary proceeding was transferred to this Court and was assigned case number 17-cv-3254 (DWF/LIB). [Docket No. 1].

On May 29, 2018, Plaintiff filed a Motion to Compel. [Docket No. 95]. Therein, Plaintiff alleged that Liberty Mutual had produced copies of claims handling notes which Liberty Mutual had redacted based on its own determination of the relevancy of the information within; essentially, Liberty Mutual had redacted information that it has unilaterally deemed irrelevant. (Id.). Plaintiff sought an Order compelling Liberty Mutual to produce claims handling notes wherein the purportedly irrelevant information has not been redacted. (Id.).

Also on May 29, 2018, Liberty Mutual filed a motion for protective order. [Docket No. 101]. Liberty Mutual sought to prevent Plaintiff from deposing Ms. Erin Dickie, former Senior Litigation Specialist at Great American, for a second time. (Id.).

On June 12, 2018, the Court held a Hearing on the Motion to Compel and the Motion for a Protective Order. On July 26, 2018, the undersigned issued an Order denying Plaintiff's Motion to Compel, as well as, denying Defendant's Motion for Protective Order. (Order [Docket No. 169]).

On June 20, 2018, the parties filed their Joint Motion Regarding Continued Sealing, [Docket No. 160], in which they sought the continued sealing of Docket Nos. 93, 94, 116, 118, 120, 122, 137, 143, 145, 147, and 149, which they had filed in relation to Plaintiff's Motion to Compel and Defendant's Motion for Protective Order.

On June 27, 2018, the undersigned issued an Order, pursuant to Local Rule 5.6, finding that upon preliminary review Docket Nos. 93, 94, 116, 118, 120, 122, 137, 143, 145, 147, and 149 did not warrant continued sealing. (Text Order [Docket No. 162]).

On July 25, 2016, Defendant Liberty Mutual filed the present Motion for Further Consideration of Sealing, [Docket No. 164], in which Defendant Liberty Mutual seeks this Court's further consideration of the decision to unseal Docket Nos. 93, 94, 116, 118, 120, 122, 137, 143, 145, 147, and 149.

II. Defendant's Motion for Further Consideration of Sealing. [Docket No. 164].

Defendant's Motion for Further Consideration of Sealing, [Docket No.164], seeks an Order of this Court maintaining Docket Nos. 93, 94, 116, 118, 120, 122, 137, 143, 145, 147, and 149 under continued seal.

Motions for further consideration of sealing are governed by Local Rule 5.6(d)(3). Although Local Rule 5.6 does not explicitly set forth a standard of proof which parties must meet in order for the Court to change the prior sealing determinations made in the context of a joint motion regarding continued sealing under Local Rule 5.6(d)(2), the 2017 Advisory Committee Note to Rule 5.6 provides guidance regarding what must be shown in order for a document to be sealed under Local Rule 5.6. It states, in relevant part:

[P]arties have been filing too much information under seal in civil cases As a general matter, the public does not have a right of access to information exchanged in discovery; thus, protective orders are often quite broad, covering entire documents or sets of documents produced during discovery, even when most or all of the contents are not particularly sensitive. But the public does have a qualified right of access to information that is filed with the court. Even if such information is covered by a protective order, that information should not be kept under seal unless a judge determines that a party or nonparty's need for confidentiality outweighs the public's right of access.

Although Local Rule 5.6 is relatively new, in addition to the undersigned at least three other United States Magistrate Judge for the District of Minnesota, and one District Court Judge for the District of Minnesota, has applied to a motion for further consideration of sealing certain well-established legal standards regarding sealing documents that have been filed with the Court.

See, Ir re Bair Hugger Forced Air Warming Devices Prod. Liab. Litig., No. 15-mdl-2666 (JNE/FLN), 2018 WL 3019901 (D. Minn. June 18, 2018); Blu Dot Design & Manufacturing, Inc. v. Stitch Industries, Inc., 17-cv-3208 (PJS/KMM), 2018 WL 1370533 (D. Minn. March 16, 2018); Feinwachs v. Minn. Hosp. Ass'n, No. 11-cv-8 (JRT/SER), 2018 WL 882808, at *3 (D. Minn. Feb. 13, 2018). As the Eighth Circuit Court of Appeals has held:

There is a common-law right of access to judicial records This right of access bolsters public confidence in the judicial system by allowing citizens to evaluate the reasonableness and fairness of judicial proceedings, and “to keep a watchful eye on the workings of public agencies.” It also provides a measure of accountability to the public at large, which pays for the courts.

IDT Corp. v. eBay, 709 F.3d 1220, 1222 (8th Cir. 2013). “This right of access is not absolute, but requires a weighing of competing interests.” Feinwachs, 2018 WL 882808, at *3 (quoting Webster Groves Sch. Dist. v. Pulitzer Pub. Co., 898 F.2d 1371, 1376 (8th Cir. 1990)). Even more specifically:

Where the common-law right of access is implicated, the court must consider the degree to which sealing a judicial record would interfere with the interests served by the common-law right of access and balance that interference against the salutary interests served by maintaining confidentiality of the information sought to be sealed. . . . “[T]he decision as to access is one best left to the sound discretion of the trial court . . . in light of the relevant facts and circumstances of the particular case.”

IDT Corp., 709 F.3d at 1223 (citations omitted); see also, Feinwachs, 2018 WL 882808, at *3 (partially quoting the same). “[T]he weight to be given the presumption of access must be governed by the role of the material at issue in the exercise of Article III judicial power and resultant value of such information to those monitoring the federal courts.” IDT Corp., 709 F.3d at 1224 (citations omitted).

Determining whether a document should remain sealed under Local Rule 5.6 “requires a weighing of competing interests.” Feinwachs, 2018 WL 882808, at *3 (quoting Webster Groves

Sch. Dist. v. Pulitzer Pub. Co., 898 F.2d 1371, 1376 (8th Cir. 1990)). The more relevant information is to resolution by the Court of the dispute then at issue the greater weight to be assigned to the public's right to access that information. See, IDT Corp., 709 F.3d at 1224.

As noted above, Defendant seeks an Order of this Court maintaining Docket Nos. 93, 94, 116, 118, 120, 122, 137, 143, 145, 147, and 149 under continued seal.

Docket Nos. 93, 94, 116, 118, 120, 122, 143, 145, 147, and 149 were filed in connection with Plaintiff's Motion to Compel. Docket No. 137 was filed in opposition to Defendant's Motion for Protective Order.

A. Docket No. 94

Docket No. 94 is the declaration of James Murray attached to which there are eight exhibits as part of the same docket entry. (Murray Decl. [Docket No. 94]). However, when Plaintiff filed Docket No. 94, the Clerk's office directed Plaintiff's counsel to file the exhibits separately from the declaration itself because each entry was required to have its own docket entry number. Accordingly, Plaintiff designated Docket No. 94 as filed in error, and it refiled each document that was originally contained within Docket No. 94 as separate docket entries. Thus, Docket No. 94 has never been considered by this Court.

As observed above, determining whether a document should remain sealed under Local Rule 5.6 "requires a weighing of competing interests." Feinwachs, 2018 WL 882808, at *3 (quoting Webster Groves Sch. Dist., 898 F.2d at 1376). The more relevant information is to resolution by the Court of the dispute then at issue the greater weight to be assigned to the public's right to access that information. See, IDT Corp., 709 F.3d at 1224.

Docket No. 94 is in no way relevant to the resolution by this Court of the parties' issues or the exercise of this Court's judicial power because Plaintiff struck Docket No. 94 before the

Court considered the issues before it. To the extent the Court needed to consider any of the materials originally contained in Docket No. 94, the materials were refiled elsewhere.

Because it was not considered by the Court, and because it is a repetitive filing, Docket No. 94 will be stricken from CM/ECF.

Therefore, to the extent it seeks the continued sealing of Docket No. 94, Defendant's Motion for Further Consideration of Sealing, [Docket No. 164], is denied as moot.²

B. Docket Nos. 120, 143, 145, 147 and 149

Docket Nos. 120, 143, 145, 147, and 149 were filed in connection with Plaintiff's Motion to Compel. Defendant now seeks an Order of this Court maintaining Docket Nos. 120, 143, 145, 147, and 149 under seal.

Docket Nos. 120, 143, 145, 147, and 149 are internal communications regarding, or a communication between counsel for parties involved in underlying sexual assault litigation in state court.³ These documents discuss the handling of those cases, and they identify some of the anonymous plaintiffs in those underlying sexual assault litigations which took place in state court. Accordingly, Defendant has articulated at least some appreciable privacy interest in Docket Nos. 120, 143, 145, 147, and 149.

On the other hand, Docket Nos. 120, 143, 145, 147, and 149 have little, if any, relevant value to this Court's exercise of its judicial power in resolving the issues before the Court in

² Defendant's Motion is moot on this point as the striking of Docket No. 94 will also give Docket No. 94 restricted status.

³ Docket No. 120 is a Liberty Mutual's Produced and Redacted Fax to Paul Robbins, dated September 27, 1993, regarding files for an underlying Doe case. Docket No. 143 is a letter to Tom McGilly at Agricultural Insurance Co from Meier, Kennedy, & Quinn law firm, dated June 16, 1993, regarding the John CCC Doe matter. Docket No. 145 is a letter to Great American Insurance Company from Hanft, Fride, O'Brien, Harries, Swelbar & Burns law firm dated August 18, 1993, regarding the John LL Doe matter. Docket No. 147 is a letter to Tom McGilly at Agricultural Insurance Co from Meier, Kennedy, & Quinn law firm, dated August 26, 1993, regarding the John GG Doe and John MM Doe matters. Docket No. 149 is a letter to Timothy Schupp and John O'Leary at Great American Insurance Company from Meier, Kennedy, & Quinn law firm, dated January 6, 1995, regarding the John LL Doe matter.

Plaintiff's Motion to Compel. The documents were not considered by the Court and they played no significant or material role in this Court's exercise of its judicial power in resolving the issues before the Court in Plaintiff's Motion to Compel. The documents are not cited by the Court in its Order, [Docket No. 169], and they are not relevant to the Court's discussion in that Order.

Determining whether a document should remain sealed under Local Rule 5.6 "requires a weighing of competing interests." Feinwachs, 2018 WL 882808, at *3 (quoting Webster Groves Sch. Dist., 898 F.2d at 1376). The more relevant information is to resolution by the Court of the dispute then at issue the greater weight to be assigned to the public's right to access that information. See, IDT Corp., 709 F.3d at 1224.

Docket Nos. 120, 143, 145, 147, and 149 were largely irrelevant to resolution by this Court of the dispute in Plaintiff's Motion to Compel, and therefore the weight to be assigned to the public's right to access Docket Nos. 120, 143, 145, 147, and 149 is de minimis. The privacy interests of non-parties as identified and embodied in Docket Nos. 120, 143, 145, 147, and 149, however, is of an appreciable nature. Thus, in weighing the competing interest, the Court finds that the privacy interest in Docket Nos. 120, 143, 145, 147, and 149 outweighs the public's right to access the information contained in those same docket entries.

Therefore, to the extent it seeks the continued sealing of Docket Nos. 120, 143, 145, 147, and 149, Defendant's Motion for Further Consideration of Sealing, [Docket No. 164], is granted.

C. Docket No. 93

Docket No. 93 is Plaintiff's Memorandum of Law in support of its Motion to Compel. Although the discussion therein is at times general in nature, Docket No. 93 does contain quotations and descriptions of communications between the Diocese, its defense counsel, and its insurer; deposition testimony regarding the manner in which Defendant internally handled

certain claims; and internal communications between Defendant's employees. In light of all the combined references in Docket No. 93, the continued nondisclosure of the information contained therein constitutes an articulable privacy interest for Defendant Liberty Mutual.

Unlike the other Docket entries discussed above, Docket No. 93 was discussed by this Court in its Order regarding Plaintiff's Motion to Compel. (See, Order, [Docket No. 169], at 8–10, 12). For the reasons discussed herein, however, Docket No. 93 was not material to this Court's disposition of the issues then before the Court.

For example, in its July 26, 2018, Order the Court cited to Plaintiff's Memorandum to illustrate that the production of claims handling notes consisted of nearly 2,000 pages. (Order, [Docket No. 169], at 8). In that same citation, the Court also cited to a May 11, 2018, email which produced the nearly 2,000 page production; and it ought to be noted that the May 11, 2018, email is not currently under seal. It is readily apparent from the May 11, 2018, email that the document production was almost 2,000 pages long as the Bates number range provided spans almost 2,000 identifiers. (Exhibit 3, [Docket No. 115-3], at 2). However, neither the subject email, its content, nor the citation to Plaintiff's Memorandum in this Court's Order provides any additional detailed information of a personal or proprietary nature which is not already provided by the existing, unsealed May 11, 2018, email. Moreover, the assertion that there are nearly 2,000 pages in the production was in the nature of background information which was not materially relevant to this Court's disposition of the issues resolved in the Court's July 26, 2018, Order. [Docket No. 169].

The Court also cited to Plaintiff Memorandum to note that Scott McElroy was “a former claims employee who was responsible for handling claims against the Diocese (and who was represented at the deposition by Liberty Mutual's counsel).” (Order, [Docket No. 169], at 9). The

Court also cited to Exhibit 8 to support this assertion. (Id.). Exhibit 8 is an excerpt from the transcript of Mr. McElroy's deposition in which he discusses the handling of claims against the Diocese, and the transcript provides that Mr. McElroy was represented at the deposition by Defendant's counsel. (Exhibit 8 [Docket No. 124]). Plaintiff's Memorandum does not provide any information which is not provided in the deposition transcript. In addition, the assertions about Mr. McElroy are in the nature of background information. Although in its July 26, 2018, Order, the Court further discusses Mr. McElroy's deposition testimony, it does so through citations to the deposition transcript not with citations to Plaintiff's Memorandum.

Similarly, the Court referenced Plaintiff's Memorandum, [Docket No. 93], to describe the issues raised by Plaintiff's original Motion to Compel before supplemental meet-and-confers that were directed by the Court, as well as, to note that the parties had not briefed certain issues. (Order, [Docket No. 169], at 10, 12). The Court's reference to Plaintiff's Memorandum to articulate the issues no longer in dispute is not, and cannot have been, materially relevant to this Court's disposition of the issue actually before the Court. The only issue that remained was the issue set forth in the parties' Joint Letter, [Docket No. 161], detailing the outcome of the supplemental meet-and-confers as directed by the Court and not the issues in Plaintiff's Memorandum. Moreover, the Court's reference to Plaintiff's Memorandum to illustrate that the parties had not briefed an issue in their memorandums further demonstrates that Plaintiff's Memorandum was not material to this Court's consideration of the issue disposed of in its July 26, 2018, Order. [Docket No. 169].

Therefore, although the Court does reference Docket No. 93 in its July 26, 2018, Order, [Docket No. 169], on Plaintiff's Motion to Compel, those references are largely in the nature of background information which can be found in other, unsealed places on this Court's public

docket, and which were not material to the Court's disposition of the issue in that July 26, 2018, Order.

As noted above, determining whether a document should remain sealed under Local Rule 5.6 "requires a weighing of competing interests." Feinwachs, 2018 WL 882808, at *3 (quoting Webster Groves Sch. Dist., 898 F.2d at 1376). The more relevant information is to resolution by the Court of the dispute then at issue the greater weight to be assigned to the public's right to access that information. See, IDT Corp., 709 F.3d at 1224.

Here, for the reasons discussed above, Docket No. 93 was largely irrelevant to this Court's disposition of the issue resolved by the Court's July 26, 2018, Order on Plaintiff's Motion to Compel, and therefore, the weight assigned to the public's right to access that information is diminished. On the other hand, as discussed above, Defendant has at least an articulable privacy interest in the information contained in Plaintiff's Memorandum. Accordingly, the public's right to access Plaintiff's Memorandum is outweighed by Defendant's privacy interest in the information set forth in Plaintiff's Memorandum.

Therefore, to the extent it seeks the continued sealing of Docket No. 93, Defendant's Motion for Further Consideration of Sealing, [Docket No. 164], is granted.

D. Docket Nos. 116, 118, and 122

Docket No. 116 is "Great American Insurance Company's Produced and Redacted 2005 Claim Notes for the Doe 65 case." Docket No. 118 is "Ohio Casualty's Produced and Redacted Claim Notes, dated December 2005 to November 2006 regarding the Doe 65 case." Docket No. 122 is "Great American Insurance Company's Produced and Redacted 1993-1995 Claim Notes."

As noted above, at the time of this Court's July 26, 2018, Order, [Docket No. 169], the only issue remaining in dispute pursuant to Plaintiff's Motion to Compel were four claim notes

entries which contained reserve amounts regarding the Doe 65 claim. In making this determination, the Court made specific reference to Docket No. 116 as an example that the reserve amounts are specific to the claim by Doe 65. In resolving that issue, the Court noted that its “review of the record as it [then stood], in addition to the parties’ characterizations in the Joint Letter, reveals that the documents containing the (redacted) reserve amounts concern reserve amounts specific to the claim by Doe 65[,]” and they were therefore “privileged and not discoverable.” (Order, [Docket No. 169], at 13).

Determining whether a document should remain sealed under Local Rule 5.6 “requires a weighing of competing interests.” Feinwachs, 2018 WL 882808, at *3 (quoting Webster Groves Sch. Dist., 898 F.2d at 1376). The more relevant information is to resolution by the Court of the dispute then at issue the greater weight to be assigned to the public’s right to access that information. See, IDT Corp., 709 F.3d at 1224.

Docket Nos. 116, 118, and 122 are directly relevant to this Court’s resolution of the issue in Plaintiff’s Motion to Compel. Docket Nos. 116, 118, and 122 are the documents which contain the information most relevant to the Court’s disposition of the issue. Without access to the information in Docket Nos. 116, 118, and 122 upon which the Court based its decision, the public has no way to monitor this Court’s exercise of its judicial power. Accordingly, great weight is assigned to the public’s right to access the information upon which the Court relied in Docket Nos. 116, 118, and 122.

Nevertheless, Docket Nos. 116, 118, and 122 do reveal identifying information about non-party victims in underlying sexual assault cases, as well as, identifying information about their alleged abusers. Those non-parties who are identified therein have an articulable privacy interest in their identities remaining undisclosed.

Although these persons have a privacy interest in keeping their identities from being disclosed to the public that privacy interest does not outweigh the public's right to access the information in Docket Nos. 116, 118, and 122. As noted above, without access to the information contained in Docket Nos. 116, 118, and 122, the public is wholly without any manner in which to monitor this Court's exercise of its judicial power regarding the disposition of Plaintiff's Motion to Compel. The Court, however, is equally cognizant of the privacy interest the victims and alleged abusers have in maintaining anonymity.

Therefore, Defendant Liberty Mutual will be permitted to file new, partially redacted copies of Docket Nos. 116, 118, and 122. Defendant may redact only the identities of the victims, the alleged abusers, and the dollar amounts of the reserves. The specific identities of victims and alleged abusers played no role in this Court's decision on the issue remaining in Plaintiff's Motion to Compel, and therefore, the relevant value of those specific identities is negligible. And having held that the reserve information is not discoverable, including the dollar amount of those reserves would eviscerate the impact of the Court's July 26, 2018, Order.

Therefore, to the extent it seeks the continued sealing of Docket Nos. 116, 118, and 122, Defendant's Motion for Further Consideration of Sealing, [Docket No. 164], is granted. However, the continued sealing of Docket Nos. 116, 118, and 122 is contingent upon Defendant Liberty Mutual, on or before October 31, 2018, filing amended, redacted versions of Docket Nos. 116, 118, and 122 as independent, discrete docket entries that comport with the Court's instructions herein. If Defendant fails to timely do so, Docket Nos. 116, 118, and 122, will be unsealed.

E. Docket No. 137

Docket No. 137 was filed in opposition to Defendant's Motion for a Protective Order. [Docket No. 101]. Defendant Liberty Mutual now seeks an Order of this Court maintaining Docket No. 137 under seal.

Docket No. 137 is "Great American Insurance Company's Produced and Redacted 2005 Claim Notes for the Doe 65 case." Docket No. 137 is identical to Docket No. 116 which the Court has now determined will remain under seal contingent upon Defendant's filing of an amended, redacted version of Docket No. 116 consistent with the Court's instructions above.

Docket No. 137 had little, if any, relevant value to this Court's exercise of its judicial power in resolving the issues before the Court in Defendant's Motion for a Protective Order. It was not considered by the Court, and it played no significant or material role in this Court's exercise of its judicial power in resolving the issues then before the Court in Defendant's Motion for Protective Order. It is not cited by the Court in its July 26, 2018, Order, [Docket No. 169], and it was not relevant to the Court's discussion of the motion for a protective order in that Order.

Determining whether a document should remain sealed under Local Rule 5.6 "requires a weighing of competing interests." Feinwachs, 2018 WL 882808, at *3 (quoting Webster Groves Sch. Dist., 898 F.2d at 1376). The more relevant information is to resolution by the Court of the dispute then at issue the greater weight to be assigned to the public's right to access that information. See, IDT Corp., 709 F.3d at 1224.

Docket No. 137 is not in any significant way relevant to the resolution by this Court of the parties' issues or the exercise of this Court's judicial power in resolving Defendant's Motion for a Protective Order. It was neither considered nor discussed by the Court.

Because it was not considered by the Court, and because it is a repetitive filing, Docket No. 137 will be stricken.

Therefore, to the extent it seeks the continued sealing of Docket No. 137, Defendant's Motion for Further Consideration of Sealing, [Docket No. 164], is denied as moot.⁴

III. CONCLUSION

For the foregoing reasons, and based on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The Clerk of Court's Office is directed to **STRIKE** Docket No. 94, as well as, designate it as restricted;
2. The Clerk of Court's Office is directed to **STRIKE** Docket No. 137, as well as, designate it as restricted; and
3. Defendant's Motion for Further Consideration of Sealing, [Docket No. 164], is **GRANTED in part and DENIED in part**, as set forth above.⁵

Dated: October 15, 2018

s/ Leo I. Brisbois
Leo I. Brisbois
U.S. MAGISTRATE JUDGE

⁴ Defendant's Motion is moot on this point as the striking of Docket No. 137 will also give Docket No. 137 restricted status.

⁵ Docket Nos. 93, 120, 143, 145, 147, and 149 shall remain sealed. Docket Nos. 116, 118, and 122 shall remain sealed, but only if Defendant Liberty Mutual files new redacted versions of Docket Nos. 116, 118, and 122 as instructed in this Order no later than October 31, 2018.