

IN THE SUPERIOR COURT OF THE STATE DELAWARE

IN AND FOR NEW CASTLE COUNTY

CNH AMERICA, LLC, a Delaware limited)
liability company f/k/a Case Corporation) C.A. No. N12C-07-108 JTV
)
Plaintiff,)
)
v.)
)
AMERICAN CASUALTY COMPANY OF)
READING, PENNSYLVANIA, a)
Pennsylvania corporation, et al)
)
Defendants.)
_____)
)
AMERICAN CASUALTY COMPANY OF)
READING, PENNSYLVANIA, a)
Pennsylvania corporation; and The)
CONTINENTAL INSURANCE)
COMPANY, a Pennsylvania corporation,)
)
Third-Party Plaintiffs,)
)
v.)
)
EPEC EQUIPMENT CORPORATION, a)
Delaware corporation,)
)
Third-Party Defendant.)

Submitted: December 17, 2013

Decided: March 24, 2014

Brain R. Rostocki, Esq., and John C. Cordrey, Esq., Reed Smith, LLP,
Wilmington, Delaware. Attorneys for Plaintiff.

Carmella P. Keener, Esq., Rosenthal, Monhait & Goddess, Wilmington, Delaware.
Attorney for American Casualty.

*Upon Consideration of Plaintiff's
Motion for Commission*
DENIED

VAUGHN, President Judge

ORDER

Upon consideration of plaintiff CNH America, LLC's ("CNH") motion for an order directing that a commission be issued empowering a person in Illinois to issue a subpoena *ad testificandum* to Clinton E. Cameron, the CNA Defendant,¹ opposition thereto, and the record of this case, it appears that:

1. This Court has previously discussed the facts concerning this case.² Therefore, only a brief summary will be provided here. In 2008, CNH began receiving numerous lawsuits naming it as a defendant. The suits alleged that CNH was liable for damages caused by asbestos exposure. CNH submitted the suits to the

¹ The "CNA Defendants" include the following: American Casualty Company of Reading, PA; The Continental Insurance Company; Arrowood Indemnity Company; and Centre Insurance Company.

² *CNH America LLC v. American Casualty Co. of Reading, PA, et al.*, C.A. No. N12C-07-108 JTV CCLD (Del. Super. Jan. 6, 2014).

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CNA Defendants for coverage under various insurance policies. The CNA Defendants retained Mr. Cameron as lead counsel in connection with coverage issues.

2. CNH now asks this Court to issue a commission so that CNH may depose Mr. Cameron in Illinois on the following subjects:

(1) Any communications the CNA Defendants sent to or received from Clinton E. Cameron, Esq. of Troutman Sanders LLP between July 18, 2011 and July 11, 2012 regarding the Underlying Asbestos Claims; (2) Any communications CNH sent to or received from Clinton E. Cameron, Esq. of Troutman Sanders LLP between July 18, 2011 and July 11, 2012 regarding the Underlying Asbestos Claims; (3) Any investigation of CNH's claims for insurance coverage related to the Underlying Asbestos Claims conducted and/or supervised by Clinton E. Cameron, Esq. of Troutman Sanders LLP between July 18, 2011 and July 11, 2012; (4) Any coverage determination made by Clinton E. Cameron, Esq. of Troutman Sanders LLP between July 18, 2011 and July 11, 2012 for the CNA Defendants regarding CNH's claims for insurance coverage related to the Underlying Asbestos Claims.³

3. CNH contends that the commission should be issued because from July 18, 2011 through July 11, 2012, Cameron was involved in the adjustment, handling, and determination of coverage for the asbestos claims; that in his role as claims handler Mr. Cameron communicated with CNH's in-house counsel regarding the CNA companies' investigation of CNH's request for insurance coverage; that Mr.

³ *Pl.'s Motion for Commission to Issue a Subpoena Ad Testificandum to Clinton E. Cameron.*

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Cameron's testimony is necessary and relevant to the litigation in this case; that Mr. Cameron's communications made and actions taken in his capacity as a claims handler for the CNA Defendants are discoverable and not protected by any legal privilege; and that the reasonableness and propriety of the CNA Defendants' investigation and handling of CNH's asbestos claims is directly at issue in this case, and is directly relevant to CNH's claim against the CNA Defendants for bad faith claims handling conduct.

4. The CNA Defendants contend that the commission should not be issued because it is disruptive, harassing, and unnecessary; that CNH has not met the *Shelton* standard—a standard that this Court adopted in *Cole v. Mousavi*,⁴ that CNH seeks privileged attorney-client communications and attorney work product; and that the topics on which CNH seeks discovery from Cameron do not warrant breaching these protections.

5. In *Cole v. Mousavi*, this Court ruled that a party seeking to depose an opposing party's attorney must make the following showing:

- (1) No other means exists to obtain the information than to depose opposing counsel;
- (2) The information sought is relevant and non-privileged; and
- (3) The information is crucial to the preparation of the case.⁵

⁴ *Cole v. Mousavi*, 1990 WL 63945, at *2 (Del. Super. Jan. 18, 1990) (citing *Shelton v. American Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986)).

⁵ *Cole*, 1990 WL 63945, at *2 (citing *Shelton*, 805 F.2d at 1327) (in-text citation omitted).

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I adopt this standard here, and I find that CNH has failed to establish the first factor.

Therefore, no further analysis is necessary, and CNH's motion is ***denied***.

IT IS SO ORDERED.

 /s/ James T. Vaughn, Jr.

oc: Prothonotary
cc: Order Distribution
File