

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

CNH INDUSTRIAL AMERICA LLC,)	
)	
Plaintiff,)	C.A. No. N12C-07-108 EMD CCLD
)	
v.)	
)	
THE TRAVELERS INDEMNITY)	TRIAL BY JURY OF TWELVE
COMPANY)	DEMANDED
)	
Defendant.)	
)	
)	

**ORDER DENYING MOTION OF DEFENDANT THE
TRAVELERS INDEMNITY COMPANY TO COMPEL PLAINTIFF CNH INDUSTRIAL
AMERICA LLC TO PRODUCE DOCUMENTS CONCERNING SETTLEMENTS WITH
AND PAYMENTS FROM OTHER INSURERS**

This 19th day of February, 2015, upon consideration of the Motion of Defendant The Travelers Indemnity Company to Compel Plaintiff CNH Industrial America LLC to Produce Documents Concerning Settlements with and Payments from Other Insurers (the “Motion”) filed by The Travelers Indemnity Company (“Travelers”); the Plaintiff CNH Industrial America LLC’s Response in Opposition to Travelers’ Motion to Compel Production of Documents Concerning Settlements with and Payments from Other Insurers (the “Response”) filed by CNH Industrial America, LLC (“CNH”), the Court finds as follows:

1. On October 24, 2014, Travelers filed the Motion. The Motion seeks to compel production of settlement agreements (the “Settlement Agreements”) between CNH and other insurers, including American Casualty Company of Reading, Pennsylvania (“CNA”), regarding underlying asbestos claims against CNH. In support, Travelers makes three arguments. First, Travelers contends that CNH bears the burden of proving the amount of defense and indemnity

costs, including offsets of amounts already received to prevent double recovery. Second, Travelers claims that the information contained in the Settlement Agreements is relevant at the pre-trial stage because it will allow for an evaluation of the claims, and provide guidance in settlement discussions. Third, Travelers argues that the settlement between CNH and CNA is relevant to potential cross-claims or contribution claims between Travelers and CNA.

2. On November 7, 2014, CNH filed the Response. In the Response, CNH makes two arguments as to why the Court should deny the Motion. CNH first claims that Travelers' discovery request was untimely under the Case Management Order. CNH next argues that any disclosure of the confidential CNA settlement information contained in the Settlement Agreements is "premature" because CNH has not yet obtained judgment against Travelers.

3. Rule 28 of the Superior Court Rules of Civil Procedure provides that parties may obtain discovery regarding any matter, not privileged which is relevant to the subject matter involved in the pending action.¹ A party may seek a motion to compel discovery, when, after making a request for inspection under Rule 34 of the Superior Court Rules of Civil Procedure, the opposing party fails to permit inspection as requested.² The Court has discretion to order the disclosure of information in the interests of justice based on the facts and circumstances of the case.³

4. In *S&R Associates, L.P. v. Shell Oil Co.*, this Court held that confidential settlement agreements should be protected when possible.⁴ In *S&R Associates*, the plaintiff sued a number of distributors and manufacturers after its plumbing system failed.⁵ The plaintiff

¹ Del. Super. Ct. Civ. R. 28(a)(1).

² Del. Super. Ct. Civ. R. 37(a)(2).

³ *Showell v. Mountaire Farms, Inc.*, 2002 WL 31818512, at *1 (Del. Super. Ct. Nov. 18, 2002) (citing *Williams v. Hall*, 176 A.2d 608, 617 (Del. Super. Ct. 1961)).

⁴ *S&R Associates, L.P., v. Shell Oil Co., et. al.*, 1999 WL 744422, at *1 (Del. Super. Ct. Jul. 28, 1999).

⁵ *Id.*

reached confidential settlement agreements with all defendants except Shell Oil.⁶ Shell Oil moved to compel production of settlement agreements, asserting that they were relevant to the issues of compensation and contribution among tortfeasors.⁷ The Court held that required disclosure of the settlement agreements was premature, and denied Shell Oil's motion without prejudice.⁸

5. Here, there are two major issues to be decided. First, whether Travelers is liable to CNH. Only if Travelers is liable, will it then become necessary to determine the extent of the liability. While the confidential Settlement Agreements between CNH and other insurers *may* eventually become relevant in computing Travelers' liability, it is not relevant to determining whether Travelers is in fact liable to CNH. As noted above, the Court should, to the extent possible, protect the confidentiality of settlement agreements. Travelers' arguments do not convince the Court that the discovery of the terms of Settlement Agreements at this time is necessary. Accordingly, compelling discovery of the confidential Settlement Agreements now would be "premature."

IT IS ORDERED that the Motion is **DENIED** without prejudice.

Dated: February 19, 2015
Wilmington, Delaware

/s/ Eric M. Davis
Eric M. Davis
Judge

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*