

**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 PLAINTIFF CNH INDUSTRIAL AMERICA, LLC’S MOTION
TO COMPEL TRAVELERS TO RESPOND TO RULE 30(B)(6) NOTICE**

This is an action for declaratory relief and breach of contract filed by Plaintiff CNH Industrial America LLC (“CNH”) against a number of insurance companies, including Travelers Indemnity Company (“Travelers”). The complaint alleges that the defendant insurance companies have failed to honor defense and coverage obligations arising from asbestos-related lawsuits filed against CNH.

CNH filed three summary judgment motions (the “Summary Judgment Motions”) in this matter from October 6, 2014 through October 10, 2014. The Summary Judgment Motions rely, in part, on a series of exhibits. According to Travelers, the Summary Judgment Motions’ exhibits total approximately 56,000 pages. On October 27, 2014, Travelers filed the Motion for Extension of Time to Respond to Plaintiff CNH’s Summary Judgment Motions (the “Motion to Extend”). In the Motion to Extend, Travelers contends that “CNH’s three pending summary judgment motions ... rely upon extensive documents that were never produced in discovery.” In its Reply in Support of its Motion for Extension of Time to

Respond to Plaintiff CNH's Summary Judgment Motions, Travelers again states that it "must have an adequate opportunity to analyze the massive documentation submitted with CNH's motions, most of which was not previously produced." Finally, in its October 31, 2014 Status Report, Travelers again contends that CNH's summary judgment motions "rely upon extensive documents that were never produced in discovery."

On December 22, 2014, CNH filed Plaintiff CNH Industrial America, LLC's Motion to Compel Travelers to Respond to Rule 30(b)(6) Notice (the "Motion"). CNH moves to compel Travelers to produce corporate designee witnesses which can testify as to the various representations made by Travelers as to the alleged insufficiency of CNH's document production. CNH states that it is not aware that any of the Summary Judgment Motions' exhibits contain any documents not already provided to Travelers. In addition, CNH contends that it has made a good-faith effort to resolve the discovery dispute, but was unable to reach an accord with Travelers.

On January 12, 2015, Travelers filed the Opposition of Defendants the Travelers Indemnity Company to Plaintiff CNH Industrial America LLC's Motion to Compel Travelers to Respond to Rule 30(B)(6) Notice (the "Opposition"). In the Opposition, Travelers contends that the Motion seeks to compel the deposition of Travelers' outside counsel regarding the contents of CNH's production of documents.

A party is entitled to discover relevant information from a party opponent.¹ The purpose of a Civil Rule 30(b)(6) corporate designee witnesses is to provide relevant information. The fact that some or all of this information may also be available from another

¹ *E.I. DuPont de Nemours & Co. v. Medtronic Vascular, Inc.*, No. N10C-09058 CCLD, 2012 WL 1415533, at *1 (Del. Super. Ct. Apr. 13, 2012)

party does not diminish a party's right to obtain this discovery from its party opponent.² Nothing in our law requires a party to chase down information from third parties, especially when the party opponent is the logical source of the information.³ However, in this case, CNH is the source of the documents attached to the Summary Judgment Motions. Moreover, it is Travelers' counsel, and not the client, that is making the allegation (true or false) about the adequacy of CNH's production of documents. CNH cannot obtain a corporate designee witness from Travelers to testify about CNH's own production of documents. Under the circumstances present here, the Court holds that such an examination is outside the scope of Civil Rule 30(b)(6).

The Court has reviewed the exhibits attached to the Summary Judgment Motions, and notes that each exhibit page is identifiable by a bates stamp. Neither the Motion nor the Opposition contains a document comparing the bates numbers of the exhibits attached to the Summary Judgment Motions, with the bates stamps of the documents which were produced by CNH or, as Travelers contends, not produced by CNH. As such, the Court has not been presented with sufficient information to make a determination on whether or not CNH produced the documents attached to the Summary Judgment Motions in discovery or otherwise.

The Court is disappointed that sophisticated counsel was unable to sit down and determine, without formal motions to the Court, which documents had and had not been produced by CNH prior to the filing of the Summary Judgment Motions. Likely, the cost of drafting and litigating the Motion and the Opposition exceed what it would have cost to meet, in good faith, and resolve this particular dispute.

² *Id.* at *1.

³ *Id.* at *1; *Cede & Co. v. Penn Eng'g & Mfg. Corp.*, 2007 WL 7076659, at *1 (Del. Ch. July 17, 2007)

Based on the foregoing, **IT IS HEREBY ORDERED** that Plaintiff CNH Industrial America, LLC's Motion to Compel Travelers to Respond to Rule 30(b)(6) Notice is **DENIED**; and

IT IS HEREBY FURTHER ORDERED that within 10 business days of the date of this Order, CNH and Travelers will conduct a discovery conference and determine, which documents, if any, attached to the Summary Judgment Motions were not produced by CNH in discovery, and provide this information to the Court.

Dated: March 4, 2015
Wilmington, Delaware

/s/ *Eric M. Davis*
Eric M. Davis, Judge