STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: November 18, 2013)

ROSIE K. SWEREDOSKI, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DOUGLAS A. SWEREDOSKI, AND INDIVIDUALLY RECOGNIZED AS SURVIVING SPOUSE	:	
	:	**C.A. No. PC-2011-1544**
v.	:	
ALFA LAVAL, INC., et al.	:	

DECISION

GIBNEY, P.J. Before the Court is Defendant Crane Co.'s (Crane) Motion for Reconsideration of its earlier Motion to Compel, which this Court denied on July 15, 2013. With the instant motion, Crane renews its discovery request for information relating to claims submitted by Plaintiff Rosie K. Sweredoski (Plaintiff) to asbestos bankruptcy trusts on behalf of her late husband, Douglas A. Sweredoski (Sweredoski). Plaintiff objects to this motion. After reconsidering the parties' arguments, and in light of a new argument advanced by Crane on the instant motion, this Court concludes that an in camera review of the requested documents is necessary to determine if they are properly discoverable.

I

Facts & Travel

A detailed recitation of the facts and travel has already been provided by the Court in its July 15, 2013 Decision. See Sweredoski v. Alfa Laval, Inc., No. PC-11-1544, July 15, 2013, Gibney, P.J. Therefore, the Court will detail below only the facts relevant to the instant Motion for Reconsideration.

Plaintiff alleges that Sweredoski, who died of asbestos-related lung disease in January 2013, was exposed to asbestos fibers from several companies' products, including Crane's, during his service in the Navy from 1964 to 1968. Consequently, Plaintiff has asserted several tort- and implied warranty-based claims against Crane. In addition to seeking recovery from Crane, Plaintiff has also submitted claims to asbestos bankruptcy trusts—entities formed pursuant to federal law to pay out damages to claimants injured by now-bankrupt asbestos companies. See 11 U.S.C. § 524(g) (2004). These bankruptcy trusts are not parties to Plaintiff's suit against Crane.

In its original Motion to Compel, Crane argued that these bankruptcy trust claim forms are discoverable because information regarding Sweredoski's exposure to the bankrupt entities' asbestos products is relevant to show that the bankrupt entities—as opposed to Crane—are responsible for Sweredoski's illness. This Court denied that motion, holding that, under Super. R. Civ. P. 26(b)(1), the claim forms were not discoverable for that purpose. In requesting this Court to reconsider its prior ruling, Crane reiterates its original argument. In addition, however, Crane now also suggests that the claim forms are relevant regarding the question of whether Sweredoski's exposure to Crane's products meets the causation standard necessary to hold Crane liable for his illness. Plaintiff reasserts that the claim forms constitute inadmissible settlement documents that will not lead to admissible evidence and are, therefore, not discoverable.

II

Standards of Review

A

Motion to Reconsider

The Superior Court Rules of Civil Procedure do not provide for a motion to reconsider. However, in looking "'to substance, not labels,'" this Court will treat such a motion as one to vacate under Super. R. Civ. P. 60(b) (Rule 60(b)). Sch. Comm. of City of Cranston v. Bergin-Andrews, 984 A.2d 629, 649 (R.I. 2009) (quoting Sarni v. Meloccaro, 113 R.I. 630, 636, 324 A.2d 648, 651 (1974)). Rule 60(b) provides that a judgment may be vacated when, inter alia, it is "no longer equitable" or some "other reason justif[ies] relief from the operation of the judgment." Thus, when necessary "to accomplish justice" in extraordinary circumstances, the courts may use Rule 60(b) as an equitable remedy to vacate a prior ruling. Bendix Corp. v. Norberg, 122 R.I. 155, 158, 404 A.2d 505, 506 (1979); Greco v. Safeco Ins. Co. of Am., 107 R.I. 195, 198, 266 A.2d 50, 51-52 (1970).

B

Discovery

This Court has broad discretion to grant or deny discovery requests. Corvese v. Medco Containment Servs., 687 A.2d 880, 881 (R.I. 1997). A party may obtain discovery on "any matter, not privileged, which is relevant to the subject matter involved in the pending action . . . [or] reasonably calculated to lead to the discovery of admissible evidence." Super. R. Civ. P. 26(b)(1). Relevance includes information relating "to the claim or defense of the party seeking discovery." Id. The materials sought need not be admissible at trial so long as they are "reasonably calculated to lead to admissible evidence." Id. The burden of showing that

information sought is discoverable rests with the requesting party. See Borland v. Dunn, 113 R.I. 337, 341, 321 A.2d 96, 99 (1974); DeCarvalho v. Gonsalves, 106 R.I. 620, 626, 262 A.2d 630, 634 (1970).

III

Discussion

A

The Relevance Standard of Discoverability

Crane asserts that Plaintiff's asbestos bankruptcy trust claim forms are discoverable because they are relevant to their defenses against Plaintiff's allegations. Indeed, the discoverability of the claim forms depends entirely on their relevance "to the subject matter involved in the pending action." Super. R. Civ. P. 26(b)(1). Although the relevance standard of the discovery rules has been "construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case," the scope of discovery is properly limited to information that "presently appear[s] germane" to the litigation. Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 350 (1978); In re Surety Ass'n of America, 388 F.2d 412, 414 (2d Cir. 1967); see also Smith v. Johns-Manville Corp., 489 A.2d 336, 339 (R.I. 1985) (holding that Rhode Island courts may properly look to federal court decisions for guidance in interpreting Super. R. Civ. P. 26(b)). Consequently, the claim forms are only discoverable if they bear on, or might lead to other information that could bear on, a defense that Crane may properly raise. Thus, in determining whether the claim forms may be relevant to the subject matter of the case—and, therefore, discoverable—it is necessary to also establish the appropriate parameters of Crane's defenses.

1

Use of Claim Forms to Show Liability of Non-Parties

In support of both its original Motion to Compel and the instant Motion for Reconsideration, Crane maintains that the information in the claim forms will support its defense by showing that Plaintiff "has failed . . . to establish that any exposures for which Crane Co. might be responsible rise to the level of a substantial contributing cause" of Sweredoski's injuries. Def.'s Mem. Supp. Mot. Compel 1. Crane, however, has misconstrued Plaintiff's burden of proof on the question of causation. As this Court has made clear in an earlier ruling in this case, in order to establish the causation element of her tort claims, Plaintiff must satisfy the "frequency, regularity, proximity" test. Sweredoski v. Alfa Laval, Inc., No. PC-2011-1544, 2013 WL 3010419, at *2, 5 (Super. Ct. June 13, 2013) (adopting the "frequency, regularity, proximity" test used by several other jurisdictions, as our Supreme Court has not ruled on a causation standard in asbestos liability cases). Therefore, contrary to Crane's assertion, Plaintiff need not show that Crane's products were a substantial contributing factor, in comparison with other products, to Sweredoski's ultimate illness. Id. Rather, the "frequency, regularity, proximity" test requires Plaintiff to demonstrate that Sweredoski worked in proximity to Crane's products on a regular basis and, as a result, was exposed to asbestos from Crane's products over an extended period of time. Id. (citing Lohrmann v. Pittsburgh Corning Corp., 782 F.2d 1156, 1162-63 (4th Cir. 1986)).

In suggesting that Plaintiff must show causation by proving that exposure to Crane's products was a substantial factor, in relation to all other factors, of Sweredoski's illness, Crane has mistakenly argued that it may properly use the claim forms to rebut Plaintiff's prima facie case by showing that the non-party bankrupt entities—instead of Crane—are responsible for

Sweredoski's illness. Under Rhode Island law, however, "only the negligence of the parties involved in the action" is relevant to the question of whether a defendant is liable. Roberts-Robertson v. Lombardi, 598 A.2d 1380, 1380 (R.I. 1991). The negligence of the non-party bankrupt entities, therefore, has no bearing on whether Crane is liable to Plaintiff. See id. Moreover, whether Sweredoski was exposed to asbestos from other sources is irrelevant because the "frequency, regularity, proximity" test asks only whether Sweredoski was frequently and regularly in proximity to asbestos in Crane's products. See Lohrmann, 782 F.2d at 1163 (concluding that evidence meeting the "frequency, regularity, proximity" test is sufficient "to connect a defendant's product to the plaintiff's disease"). Consequently, Crane's contention that Sweredoski's illness was caused by some other company's products is not a defense to Plaintiff's claims, and evidence supporting such a defense is not relevant to the subject matter of this case.

Therefore, upon reconsideration, the Court reaffirms its earlier determination that the claim forms are not discoverable for the purpose of showing that Sweredoski's illness was caused by a non-party to this suit. See Super. R. Civ. P. 26(b)(1). Insofar as the claim forms may be reasonably calculated to lead to evidence supporting this irrelevant defense, they are, likewise, not discoverable. Id.

2

Use of Claim Forms to Show Lack of Sufficient Exposure to Crane's Products

In moving for reconsideration, Crane brings forth a new argument to establish that the claim forms are relevant to the subject matter of this case and are, therefore, discoverable. Specifically, Crane argues that the claim forms might contain additional information about Sweredoski's history of exposure to Crane's products, which Sweredoski was unable to recall at the time Crane deposed him, as well as contradictory information that might serve to undercut

the reliability of Sweredoski's allegations against Crane. Inasmuch as such information would show that Sweredoski did not frequently and regularly work in proximity to asbestos contained in Crane products, such information would be relevant to the subject matter of this case because it would directly rebut Plaintiff's prima facie case for causation. See Super. R. Civ. P. 26(b)(1); Lohrmann, 782 F.2d at 1162-63. Therefore, the claim forms would be discoverable if they contained, or were reasonably likely to lead to information pertaining to, Sweredoski's history of exposure to Crane's products. See Cabral v. Arruda, 556 A.2d 47, 48 (R.I. 1989) (noting that "[t]he philosophy underlying modern discovery is that prior to trial, all data relevant to the pending controversy should be disclosed unless the data is privileged").

B

In Camera Review

In response to Crane's arguments, Plaintiff maintains that the claim forms are not discoverable because they do not contain any information relevant to the litigation, nor are they reasonably likely to lead to admissible evidence. However, because this Court has not had the opportunity to review the claim forms and learn what information they contain, it is impossible for the Court at this time to accurately adjudicate whether the claim forms do, in fact, contain relevant information relating to Plaintiff's burden of proof on causation. See United States v. Strahl, 590 F.2d 10, 14-15 (1st Cir. 1978) (cautioning courts against relying solely on one party's assurances as to whether disclosure of evidence is proper). In addition, Plaintiff resists disclosure of the claim forms on the grounds that granting Crane's request would lead to unreasonably duplicative and cumulative discovery, violate the work product doctrine, and raise confidentiality concerns. Once again, however, without knowing the contents of the claim forms, this Court cannot rule on the validity of these objections. As a result, an in camera review

of the requested documents is necessary in this case. See Pastore v. Samson, 900 A.2d 1067, 1086 (R.I. 2006) (holding that in camera review "is an appropriate procedure to decide whether [] documents should be produced [in discovery]"); Mallette v. Children's Friend & Serv., 661 A.2d 74, 77 (R.I. 1995) (noting that the relevance of information requested during discovery is "a determination that must be made by the trial justice" and approving of an in camera review to determine relevance).

IV

Conclusion

In light of Crane's new theory of the relevance of Plaintiff's bankruptcy trust claim forms, the Court will conduct an in camera review of the requested documents to determine if they are properly discoverable. Accordingly, Plaintiff's counsel shall promptly schedule with this Court an in camera review of all information and documents regarding Plaintiff's claim submissions to asbestos bankruptcy trusts. Counsel shall submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Rosie K. Sweredoski v. Alfa Laval, Inc., et al.**
CASE NO:	**PC-2011-1544**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**November 18, 2013**
JUSTICE/MAGISTRATE:	**Gibney, P.J.**
ATTORNEYS:	
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