

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SCOTT LUELLEN,

Complainant

v.

Docket C-2016-2539599

MAROADI TRANSFER & STORAGE, INC.

1801 Lincoln Hwy, North Versailles, PA 15137

Respondent

**REVISED MOTION TO COMPEL ANSWERS
TO INTERROGATORIES & PRODUCTION OF DOCUMENTS**

NOW COMES Complainant and moves this Court compel Respondent to fully and completely answer its second set of interrogatories, and in support states:

1. On July 1, 2016, Complainant filed its second request to answer interrogatories;
2. On June 5, 2016, this Commission DENIED Respondent's preliminary objections and is ordering an evidentiary hearing at a near future date; unfortunately, the Respondent has, and here continues, to obstruct the discovery process that is the necessary prerequisite to complete the identification and collection of evidence required for such a hearing.
3. On July 8, 2016 – three days after this Commission DENIED Respondent's preliminary objections and indicated the need for an evidentiary hearing -- Respondent again refused to participate in discovery, this time by refusing to answer Complainant's second interrogatories by, incredibly, claiming that both the identity of the Respondent's Internet Service Provider or email hosting company, and identity and contact information of Respondent's officers and

shareholders of the Respondent, whom may have personal liability here, are “proprietary” and “confidential.”

4. On July 15, 2015, this Commission denied Complainant’s first motion to compel filed June 29, 2016 with 10-days leave to revise its motion to include the interrogatories or document requests made, and Respondent’s initial answers, to comply with the rules of practice – this is that revised motion; this motion also amends Complainant’s second motion to compel discovery filed on July 13, 2016 to ensure it complies with the same rules.
5. On June 9, 2016, in its first propagation of interrogatories, Complainant propagated the following interrogatories that the **Respondent refused to answer in their entirety** (e.g., no answer was provided whatsoever).

a. At ¶ 1(a):

Interrogatory:

“For any and all individuals named or referred to: Full name (maiden name, if applicable), alias(es), date of birth, marital status (name of spouse) at the time the cause of action arose and currently, residence and business addresses at time of cause of action and currently and Social Security Number.”

b. At ¶ 1(b):

Interrogatory:

“For any and all corporations named or referenced: registered corporation name, domicile of registration, principal place of business and registered address for service of process at the time the cause of action arose and currently, including the full name, title, and physical address, of every manager, officer, and owner, and if owner, the proportionality of each owner. If the owner is a corporation, provide said information for the ultimate beneficial or legal owners.”

Objections:

- “(a) The Interrogatory is vague and ambiguous, does not identify any individual, corporation, or partnership to which it has reference, does not indicate the subject matter of the interrogatory and fails to provide a time frame.

“(b) The Interrogatory seeks information which [sic] is irrelevant, not material to the subject matter involved in this proceeding, nor is it reasonably calculated to lead to the discovery of relevant information.”

“(c) Respondent objects to this Interrogatory since, even if it requests relevant information, calls for the disclosure of confidential or private information such as social security numbers, marital status, residential addresses, proportionality of ownership of entities, dates of birth, and other confidential information.”

Complainant’s Arguments Against Objections to Interrogatories 1(a)-(b):

Objection (a) is frivolous as the Respondent knows clearly from the amended complaint the allegations against Respondent including who the Respondent is, the incident, and the dates involved. Objection (b) is also frivolous as the Complainant is permitted to develop the factual record by identifying sources of information. Objection (c) is also frivolous because Complainant’s instructions for interrogatories were clear to answer as much of a question as possible, not evade discovery by objecting to one minor part of the question. It is necessary for the Complainant to know the identities of all relevant employees, managers, and owners, the pro-rata share of their liability, and their residential address to, among other things, serve them with discovery via depositions.

c. At ¶ 1(c):

Interrogatory:

For any and all partnerships named or referenced: registered partnership name, principal place of business and registered address for service of process at the time the cause of action arose and currently as well as the identities and residence addresses of each partner at the time the cause of action arose and currently.

Objections:

Respondent made no objection to interrogatory 1(c), they simply refused to answer.

d. At ¶ 2(a):

Interrogatory:

“If you (and/or your operator) were/are employed, state: (a) by whom, at the time the cause of action arose and currently.”

e. At ¶ 2(b):

Interrogatory:

“If you (and/or your operator) were/are employed, state: (b) your title or position and accompanying duties and responsibilities at the time the cause of action arose and currently.”

f. At ¶ 2(c):

Interrogatory:

“If you (and/or your operator) were/are employed, state: (c) the length of your employment as of the time the cause of action arose and currently.”

Objections:

“Respondent objects to Interrogatory #2 [sic] on the basis that the interrogatory fails to identify the name of the person about which the information is requested and is otherwise vague, ambiguous and seeks information which [sic] is irrelevant and not material to the subject matter involved in this proceeding nor is it reasonably calculated to lead to discovery of relevant information.”

Complainant’s Arguments Against Objections to Interrogatories 1(a)-(b):

Objection (a) is frivolous as the Respondent knows clearly from the amended complaint the allegations against Respondent including who the Respondent is, the incident, and the dates involved. Objection (b) is also frivolous as the Complainant is permitted to develop the factual record by identifying sources of information. Objection (c) is also frivolous because Complainant’s instructions for interrogatories were clear to answer as much of a question as possible, not evade discovery by objecting to one minor part of the question. It is necessary for the Complainant to know the identities of all relevant employees,

managers, and owners, the pro-rata share of their liability, and their residential address to, among other things, serve them with discovery via depositions.

6. Complainant's Argument to Compel Answers to Interrogatories 1-2:

Respondent has wholesale refused to identify the employees and their contact information who interacted with Complainant, including those involved in the handling of the complaints and insurance claims inhibiting Complainant's ability to target them with discovery. Nor has Respondent followed the requisite rules of this Commission to avoid or limit discovery; no motion for a protective order has even been filed, much less granted by this Court.

Information from the people and entities requested will help determine the role of the Respondent and Complainant in this action, and facts pertaining to both the jurisdiction of this Commission and veracity of the averments made in the amended complaint.

7. At ¶ 4(b):

Interrogatory:

"Identify your applicable liability insurance benefits coverage limits, and any and all conditions."

Answer:

"Since Respondent did not operate any motor vehicle involved in the incident involving Complainant's alleged injury, there is no beneficial coverage involved."

8. At ¶ 4(c):

Interrogatory:

"Identifying your applicable umbrella and/or excess liability insurance benefits coverage limits at the cause of action arose."

Answer:

"See [4](b) above."

Objections:

Respondent raised no objections to interrogatories 4(b)-(c); it simply refused to answer.

9. Complainant's Argument to Compel Answer to Interrogatories 4(b)-(c):

It is also well-settled law in Pennsylvania that whether or not a primary contract (Respondent) has liability for statutory performance, liability, and negligence is a matter reserved for a jury at trial (See *Norton v. Railway Express Agency, Inc.*, 412 F.2d 112 (3d Cir. 1969); *Mauk v. Wright*, 367 F. Supp. 961 (M.D.Pa. 1973); *Anzenberger v. Nickols*, 198 A.2d 309 (Pa. 1964); and, *Schneider v. Albert Einstein Medical Center*, 390 A.2d 1271 (Pa. Super. 1978)), as such it is always a frivolous legal argument at preliminary stages, as Respondent is doing here to evade discovery. The facts must be discovered and presented to a jury at trial to determine liability – the Respondent cannot make a conclusory determination before trial that they have no liability and therefore avoid providing details as to their carrier(s). The Complainant is entitled to use discovery as a tool to develop the record, which includes the identity of carriers that may or may not have received Complainant's claims, investigated them, how much, reasons for coverage or denial, etc., which tie directly to the alleged conduct in the amended complaint.

10. At ¶ 22:

Interrogatory:

“State the complete electronic mail address, owner, individuals with access to it, full legal name and physical address of any related Internet Service Provider or email provider, and account number such that Complainant may subpoena any and all emails in this matter without regard to those that may have been deleted or not provided by Respondent.”

Answer:

None.

Objection:

“(a) The information requested is irrelevant, not material to the subject matter involved in this proceeding nor is it reasonably calculated to elad to the discovery of relevant information.

“(b) Maroadi also objects to the extent that this interrogatory is seeking information related to confidential matters dealing with the Respondent’s internet service and is not information that Respondent would otherwise allow to be made public.”

11. Complainant’s Argument to Compel Answer to Interrogatory 22:

12. Respondent’s pleading sets a new low for frivolous motions practice before this Commission.

As a member of the Pennsylvania Bar Association, Respondent’s counsel knows, or may be reasonably expected to know, that there is no good faith basis or legal foundation to claim that the identities of a commercial vendor and how to serve them when they are prospective witnesses are proprietary or confidential. While Respondent’s former counsel may be unfamiliar with e-discovery, it is ubiquitous in modern legal conflicts. Moreover, all the terms, contents, and roles of the interactions between Complainant and Respondent were electronic, as were Complainant’s insurance claims, as was Respondent’s discussion about whether to investigate them timely, whether to deny responsibility, if so why, etc. We need not assume this because while Respondent’s production of documents was anemic, the Commission can see from their limited response, and the emails attached to the amended complaint, that virtually the whole factual record of these claims is electronic. They are arguably the crux of discovery. Therefore, the Respondent refusing to identify the custodian of the electronic records and that their Internet service and email provide is “proprietary” is baseless and irrelevant. *Black’s Law Dictionary* defines “proprietary,” the term used by Respondent to rationalize why it will not disclose its Internet Service Provider or custodian

of email records, as “one who has the exclusive title to a thing.”¹ For certain, the Respondent neither owns nor controls exclusive use of its Internet Service Provider; by definition, it is a commercial service available to the general public for anyone who pays them. Moreover, ISPs engage in aggressive marketing and sales activity trying to make their services available to anyone and everyone. They are the exact opposite of exclusive or “proprietary.”

13. Similarly, in Pennsylvania, “trade secrets” are defined by and protected through a statute known as the Pennsylvania Uniform Trade Secrets Act (“PUTSA”).² The PUTSA preempts all other law and statutorily defines what a “trade secret” is within the Commonwealth of Pennsylvania (See 12 Pa. C.S. § 5308; *Firsttrust Bank v. DiDio*, No. 200 March Term 2005, 2005 Phila. Ct. Com. Pl. LEXIS 376, 2005 WL 2001105 (C.P. Phila. July 29, 2005)).
14. The PUTSA defines “trade secrets” as information that: “derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.” For the same reasons that the identity of Respondent’s ISP and email custodian are not “proprietary,” nor is it a “trade secret.”
15. The owner of a “trade secret” must show that the information derives independent economic value from not being generally known by others. Commercial vendors are, again by their very nature, generally known to others because they offer the same services to anyone in the general public who pays them. This information is neither a “trade secret” nor “proprietary,” nor has it ever been found to be in any Court in the land (making it no surprise that Respondent offers no legal support, arguments, memorandum, or precedent supporting it).

¹ *Black’s Law Dictionary*, 2nd Ed.

² The Pennsylvania Uniform Trade Secrets Act is codified at 12 Pa.C.S. § 5301-5308.

16. Nor is the identity of Respondent’s officers and shareholders and how to physically and electronically serve them, especially Mr. Messmer and Ms. Mary Maroadi who are already fact witnesses, “confidential.” *Black’s Law Dictionary* defines “confidential” as “[e]ntrusted with the confidence of another or with his secret affairs or purposes; intended to be held in confidence or kept secret.”³ The notion that a member of the Pennsylvania Bar would, in good faith, files a motion asking to keep the contact information of fact witnesses in civil litigation “secret” – the legal definition of “confidential” – is a frivolous motions practice because it has no legal foundation. As such, it is sanctionable by this Commission (and Respondent moves this Court sanction Respondent’s counsel as it deems fair and just here).
17. The limited production of documents that Respondent has made clearly shows that counsel selectively chose only certain emails from threads (in once case providing only one of five pages), and redacted the names of senders and recipients. Therefore, the only honest way to get the production after such game-playing by Respondent and its counsel is to subpoena the records from their ISP and custodian. These very records demonstrate whether or not Respondent violated statutes as alleged, the nature of the work provided and their roles in it, what they knew about the injuries and when, what actions they took or didn’t take, etc. – factual issues this Commission is attempting to discern in the planned evidentiary hearing.
18. Finally, it is outside the bounds of acceptable behavior by an officer of the Court that three days after this Court DENIED Respondent’s objections and announced its intent by interim order to schedule an evidentiary hearing that Respondent and its counsel would be so intransigent as to continue to invent excuses to evade discovery of facts and evidence, including by frivolously moving for defenses in contravention of all legal foundation. It is

³ *Black’s Law Dictionary*, 2nd Ed.

well-established in Pennsylvania that unless and until the Respondent moves for and successfully secures a protective order that the Respondent is not shielded from discovery.

19. The Respondent is not so much objecting to the questions; it objects to the answers because they are afraid they evince their guilt and liability here, and in the forthcoming federal civil suit, and seek to avoid detection and accountability. Rules exist for a reason; to create a level playing field. Respondent must follow the rules of discovery and be held accountable by this Commission, and soon the Federal District Court, as its behavior requires.
20. Also on June 9, 2016, Complainant propagated its first request for production of documents upon Respondent. Complainant's requests, Respondent's objections and answers, and Complainant's arguments supporting a motion to compel follow:

21. At ¶ 1:

Request for Production:

“The claims and investigation file or files including but not limited to daily activity sheets, diary sheets, and status sheets of any insurance adjuster and/or risk employee/manager, internal memoranda regarding this claim created, sent, and/or received by any insurance adjuster or other adjuster or any employee or contractor, risk employee/manager and/or by the Respondent(s) or an agent/employee of the Respondent(s), communications to and from all insurance carriers, parties, Respondent(s), or potential parties, request(s) for investigation, and/or reports/findings of investigators, both in-house and/or independent and/or all insurance policies of the Respondent(s), **excluding** reference to mental impressions, conclusions, or opinions representing the value or merit of the claim or defense or respective strategy or tactics and privileged communication from counsel.” [emphasis added]

Objection:

“Respondent objects to that portion of Request No. 1 seeking work product of Respondent's attorney including privileged communications from counsel. See 52 Pa. Code Section 5.361(a)(2). Since Claimant [sic] filed no claim with the Respondent regarding his alleged injury on or about December 13, 2014, Respondent has no claim or investigation files regarding the Complainant other than the Formal Complaint and Amended Formal Complaint with the exhibits attached thereto to each of which Respondent filed Answers as well as Preliminary Objections [which have now been DENIED].”

Partial Answer to Request for Production No. 1:

“Attached hereto as Exhibit 1 is a copy of a series of e-mail exchanges between Respondent, the insurance company for Shamrock Moving & Storage, and the Complainant between January 14, 2016 and April 19, 2016. The claim number referred to in the email is believed to be that of Mayflower Transit LLC or its insurance carrier.”

22. Complainant’s Argument to Compel Answer to Production No. 1:

Respondent’s ex-counsel simply didn’t thoroughly read the production request before objecting – it expressly excludes privileged work product; however, did request in the instructions that if attorney-client work-product privilege was claimed to create a privilege log that identified the document, custodian, etc., which Respondent’s ex-counsel also ignored. The central problem with the Respondent’s document production is that it is Clintonesque in its use of redacting the names of correspondents, and literally cutting and pasting to show only bits and pieces of e-mail threads that are central to the claims here. Simply put, the amended complaint claims the Respondent was hired to pack and load household goods within the Commonwealth, did so or supervised doing so, hid the identity of its insurance carriers from December 2014 to May 2016, received and refused to process or investigate claims for injuries, failed to timely advise Complainant on why his claim was being ignored, delayed, or denied, and forced Complainant to go to Court to get relief. Therein, the exact chain of information and ownership – who received what email, what they did with it (forwarded, responded, deleted, etc.), who was to investigate, whether they actually did, what they determined, who they told about their conclusions and when, are all cruxes of the factual record of these claims. Absent a privilege log and protective order, which Respondent has never moved for much less secured, Respondent must be compelled to provide any and all emails related to these claims from December 13, 2014 to present.

VERIFICATION

I, Scott Luellen, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904.

/s/ _____
Scott Luellen
14 Marlboro Street
Belmont, MA 02478
Tel. 412-915-7468
E-mail: SEricLuellen@gmail.com

Monday, July 25, 2016
Date:

CERTIFICATE OF SERVICE

I, Scott Luellen, hereby certify that a true and correct copy of the foregoing motion was sent via pre-paid, first-class US Postal Service to John A. Pillar, Esq., Counsel for Respondent MAROADI, 150 Green Commons Drive, Pittsburgh, PA 15243 on or before Tuesday, the 25th day of July 2016.⁴

/s/ _____

Scott Luellen

14 Marlboro Street

Belmont, MA 02478

Tel. 412-915-7468

E-mail: SEricLuellen@gmail.com

Monday, July 25, 2016

Date:

⁴ A courtesy copy was also sent to Mr. Pillar via his electronic mail address found on the pleadings (pillarlaw@verizon.net) and to the General Manager (JMessmer@maroadi.com) and owner (Mary@Maroadi.com) of MAROADI MOVING & STORAGE, Inc., especially in light of the fact that Respondent appears to be proceeding without the representation of counsel because Mr. Pillar has filed a withdrawal.