

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

IN RE: CATALYST LITIGATION

Master Docket No.

SX-05-CV-799

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

JOHN BULLY,

Plaintiff

v.

HESS OIL VIRGIN ISLANDS CORP., et al.,

Defendants

Individual Docket No.

SX-05-CV-812

ALEXANDER EMILE,

Plaintiff

v.

HESS OIL VIRGIN ISLANDS CORP., et al.,

Defendants

Individual Docket No.

SX-05-CV-806

JULIEN McSWEEN,

Plaintiff

v.

HESS OIL VIRGIN ISLANDS CORP., et al.,

Defendants

Individual Docket No.

SX-05-CV-847

RICHARD MAXWELL,

Plaintiff

v.

HESS OIL VIRGIN ISLANDS CORP., et al.,

Defendants

Individual Docket No.

SX-05-CV-846

MEMORANDUM OPINION

THIS MATTER came before the Court on Plaintiffs' Motion to Quash Subpoena Duces Tecum, filed on June 2, 2010.¹ On June 16, 2010, Defendant Hess Corporation (hereinafter "Hess") and Hess Oil Virgin Islands Corp.'s (hereinafter "HOVIC") filed an Opposition to Plaintiffs' Motion to Quash Subpoena Duces Tecum.² On June 29, 2010, Plaintiffs filed a Reply to Defendants' Opposition.

FACTS

Plaintiffs filed this action against Defendant HOVIC and Defendant Hess, alleging that they developed mixed dust pneumoconiosis as a result of occupational exposure to catalyst at Defendant HOVIC's refinery on St. Croix, U.S. Virgin Islands. Plaintiffs also filed this action against other defendants but Plaintiffs have reached a settlement with these defendants out of court. Plaintiffs allege that Defendants possessed and/or exercised control over the work site and assert claims for negligence/premises liability and supplying chattel dangerous for intended use.

DISCUSSION

Defendants' Subpoena Duces Tecum demands Plaintiffs to produce all the confidential settlement contracts Plaintiffs have entered into with other former co-defendants and proofs of payments called for in such settlement contracts. Defendants seek only the amount of the settlements and are willing to agree to the production of the amount pursuant to a protective order.

¹ Although the Motion to Quash Subpoena Duces Tecum only mentioned Plaintiff Richard Maxwell, Plaintiffs' counsels request the Court to address the Motion to Quash to all four Plaintiffs.

² Although the Motion to Quash Subpoena Duces Tecum only mentioned Defendant HOVIC's Subpoena Duces Tecum, Defendants' counsels request the Court to address the Motion to Quash to both Defendant HOVIC and Defendant Hess's Subpoena Duces Tecum.

Fed. R. Civ. Pro. 26. Duty to Disclose; General Provisions Governing Discovery

Plaintiffs argue that a confidential settlement agreement entered into with a settling tortfeasor should not be divulged to a co-defendant, non-settling tortfeasor. *See* Plaintiffs' Motion to Quash Subpoena Duces Tecum. Plaintiffs cite to *Young v. Verson Allsteel Press Co.*, where the court stated,

“[T]he jury finds the total amount of damages and the degree of comparative fault among the parties [including settling defendants], without knowledge of the fact of settlement... [E]vidence of settlement is superfluous. Its sole use is to obtain possible tactical advantage at trial.”³ 539 F.Supp. 193, 197 (E.D.Pa., 1982).

Accordingly, Plaintiffs contends that Defendants “simply want an unwarranted tactical advantage at trial” and thereby, requests the Court to quash the Defendants' Subpoena Duces Tecum.

Defendants argue that they are entitled to a reduction in the verdict based upon the comparative fault of any other parties to this litigation, and thus the amount of the settlements is relevant here. Defendants assert that Fed. R. Civ. P. 26(b)(1) sets forth the standard regarding whether settlement documents are discoverable. *Morse/Diesel, Inc. v. Trinity Industries, Inc.*, 142 F.R.D. 80 (S.D.N.Y., 1992).⁴

Fed. R. Civ. P. 26(b)(1) provides that,

“Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense—including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and the location of persons who know of any discoverable matter... Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence...”

³ While the Court finds *Young* helpful, the Court does not find the case controlling here.

⁴ While the Court finds *Morse/Diesel, Inc.* helpful, the Court does not find the case controlling here.

Defendants cite to *Key Pharmaceuticals, Inc. v. ESI-Lederle, Inc.*, where the court held that, after the confidential settlement documents were examined in camera, the discoverable portions of the settlement agreements to be produced subject to a previously entered protective order to preserve the rights of the parties. 1997 WL 560131 (E.D.Pa., 1997). Furthermore, Defendants assert that they are entitled to a reduction of any verdict that may be obtained against them at trial based upon any liability of the settling former co-defendants. Pursuant to 5 V.I.C. § 1451, “liability shall be joint and several but, for contribution between defendants, each defendant shall be liable for that proportion of the verdict as the trier of fact has apportioned against such defendant.”⁵ Accordingly, Defendants request the Court to deny Plaintiffs’ Motion to Quash Subpoena Duces Tecum and order Plaintiffs to produce the requested information pursuant to a protective order.

The Court finds that Plaintiffs do not have to produce the confidential settlement contracts Plaintiffs have entered into with other former co-defendants and proof of payment called for in such settlement contracts. In their Opposition, Defendants request the Court to “compel Plaintiffs to produce the portions of the settlement documents reflecting the amount of their settlements with all other co-Defendants and non-parties pursuant to a protective order for purposes of determining the amount of the reduction in verdict, if any, that they may be entitled to at trial.” *See* Defendants’ Opposition at 6. At this juncture, the Court does not find the settlement documents relevant. If a verdict is entered against Defendants at trial, Defendants could then request the Court to offset the amount that Plaintiffs received from their settlements with the former co-defendants.

⁵ 5 V.I.C. § 1451. **Damages where contributory negligence has been proven**

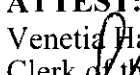
(d) Where recovery is allowed against more than one defendant, the trier of fact shall apportion, in dollars and cents, the amount awarded against each defendant. Liability of defendants to plaintiff shall be joint and several but, for contribution between defendants, each defendant shall be liable for that proportion of the verdict as the trier of fact has apportioned against such defendant...

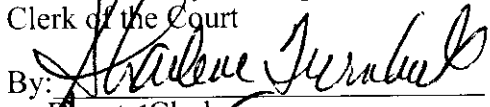
CONCLUSION

The Court finds that the confidential settlement documents Plaintiffs have entered into with other former co-defendants are not relevant at this time. Accordingly, the Court will grant Plaintiffs' Motion to Quash Subpoena Duces Tecum.

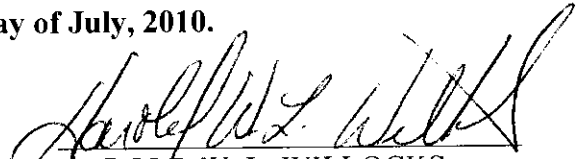
DONE and so ORDERED this 9th day of July, 2010.

ATTEST:


Venetia Harvey-Velazquez
Clerk of the Court

By: 
Deputy Clerk

Dated: 7/9/10


HAROLD W. L. WILLOCKS
Judge of the Superior Court