

**Those Certain Underwriters at Lloyds, London v
Occidental Gems, Inc.**

2007 NY Slip Op 32877(U)

August 30, 2007

Supreme Court, New York County

Docket Number: 0602948/2001

Judge: Leland G. DeGrasse

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

LELAND DeGRASSE

PRESENT: _____
Justice

PART 25

Index Number : 602948/2001

CERTAIN UNDERWRITERS

vs

OCCIDENTAL GEMS

Sequence Number : 010

CONFIRM/REJECT REFEREE REPORT

INDEX NO. _____

MOTION DATE JUN 18 2007

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

n this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

ORDER IS GRANTED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION

FILED

SEP 14 2007

NEW YORK
COUNTY CLERK'S OFFICE

AUG 30 2007

Dated: _____

J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
THOSE CERTAIN UNDERWRITERS AT
LLOYDS, LONDON, et ano,

Plaintiffs,

-against-

Index No. 602948/01

OCCIDENTAL GEMS, INC., INTERINGS, INC.,
AMERICAST, INC., PRAVIN MEHTA and
PRAKASH MEHTA,

Defendants.

-----X

FILED
SEP 14 2007
NEW YORK
COUNTY CLERK'S OFFICE

DeGrasse, J.:

Plaintiffs move pursuant to CPLR 3104 (d) for an order vacating an order issued by Special Referee Sue Ann Hoahng. Defendant Occidental Gems, Inc. cross-moves for an order confirming same. Occidental, a New York corporation, was in the business of distributing diamonds. Defendant Pravin Mehta was Occidental's president until 1996. Occidental is owned by Gembel Israel 1982, an Israeli company owned by Prabodh Mehta, Rashmi Mehta, Kishore Mehta and Vijay Mehta.¹ Defendant Interings, Inc., another New York corporation, was formed by Pravin and operated by Prakash. Plaintiffs have issued multinational diamond insurance policies to members of the Gembel Group of companies which includes Occidental. The subject of this action is a fidelity loss claim submitted to plaintiffs by Occidental. Under the claim it is alleged that Occidental's gems were stolen and delivered to Interings and other entities through the fraudulent acts of Pravin and Prakash. The relief prayed for in the complaint includes a

¹The Gembel owners are siblings but unrelated to Pravin or his brother, defendant Prakash Mehta.

judgment declaring that the alleged losses were not fortuitous and, therefore, not covered by plaintiffs' policies.

On February 13, 1998, Occidental's insurance broker notified plaintiffs of a "suspected fidelity loss" under the policies. Plaintiffs immediately retained Michael Tocicki, an independent loss adjuster and certified public accountant, to conduct an investigation. By a report dated March 3, 1998, Tocicki informed plaintiffs that he did not "have sufficient information to provide an evaluation of Policy liability." On March 5, 1998, plaintiffs retained the law firm of Abrams & Martin, P. C. n/k/a Abrams, Gorelick, Friedman & Jacobson, P. C. "to provide legal advice and counsel [plaintiffs] with respect to their litigation options." By letter dated May 22, 1998, the Abrams firm informed Occidental that it had been retained by plaintiffs and asked to assist in the investigation of Occidental's claim. The Abrams firm requested that Occidental provide it with certain documents as well as a statement in question and answer format. On October 16, 1998, Occidental's attorneys, Vedder, Price, Kaufman, Kammholz & Day, forwarded a written statement of claim to the Abrams firm. By letter to Vedder, Price dated June 29, 2000, the Abrams firm denied coverage on behalf of plaintiffs. This action was commenced on June 11, 2001.

Discovery has been supervised by the Special Referee pursuant to CPLR 3104. The instant discovery dispute concerns plaintiffs' assertion that certain documents are not discoverable because they were generated in the course of their attorney-client relationship with the Abrams firm. The attorney-client privilege and the attorney's work product are the grounds for nondisclosure cited in plaintiffs' revised privilege log. The party asserting a privilege under CPLR 3101 (d) bears the burden of demonstrating that the material it seeks to withhold is

immune from discovery (*Bombard v Amica Mut. Ins. Co.*, 11 AD3d 647, 648 [2004]). “Reports that are prepared in the regular course of business to aid an insurance carrier’s decision in evaluation of a claim are discoverable” (*Cuker, Inc. v New York Prop. Ins. Underwriting Assn.*, 98 AD2d 621 [1983]). “Reports prepared by insurance investigators, adjusters or attorneys before the decision is made to pay or reject a claim are thus not privileged and are discoverable (citations omitted) even when those reports are ‘mixed/multi-purpose’ reports, motivated in part by the potential for litigation with the insured” (*Bombard*, 11 AD3d at 648). Here, plaintiffs contend that they decided to deny the claim as early as April 9, 1999. This contention is belied by the documents before the court. The first paragraph of the denial letter recites plaintiffs’ investigation, research and review of various documents including a May 31, 2000 supplement to Occidental’s statement of claim. In the next paragraph it is stated that “[b]ased upon all of the foregoing, Insurers have been unable to find the existence of coverage under their policies for the claims submitted by the assureds.” To be sure, the supplement to the statement of claim was sent in response to an April 26, 2000 letter to Vedder, Price from Michael E. Gorelick, Esq. of the Abrams firm (Bates stamp numbers 00342 and 00343). By that letter, Mr. Gorelick requested that Occidental provide plaintiffs with answers to written questions propounded by the Abrams firm. Mr. Gorelick’s letter reads, in part, as follows:

“I cannot understand the lack of urgency with which the written questions are being treated, especially in view of our prior advice to that we would not be in a position to make a recommendation to our clients concerning the claim until those answers had been received.”

Plaintiffs, therefore, have not established that they decided to deny Occidental’s claim at any time before May 31, 2000. Accordingly, plaintiffs’ motion is granted only to the extent that the

Special Referee's order is vacated insofar as it directs plaintiffs to produce the documents submitted for in camera review, generated after May 31, 2000 and bearing Bates stamp numbers 00347 through 00483. Plaintiffs' motion is denied with respect to the documents submitted for in camera review, generated on or before May 31, 2000 and bearing Bates stamp numbers 00001 through 00346. Occidental's cross motion is denied as superfluous inasmuch as CPLR 3104 makes no provision for the confirmation of a referee's order. Plaintiffs shall furnish the required documents within ten days after service of a copy of this order with notice of entry thereof. The documents submitted for in camera review will be returned to plaintiffs' counsel at the time of the September 17, 2007 calendar appearance.

Dated: August 30, 2007



J. S. C.

HON. LELAND DeGRASSE

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