

Travelers Prop. & Cas. Ins. Co. v 23rd Street Prop.

2008 NY Slip Op 33713(U)

January 7, 2008

Sup Ct, New York County

Docket Number: 102312/05

Judge: Debra A. James

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: DEBRA A. JAMES
Justice

PART 59

THE TRAVELERS PROPERTY & CASUALTY INSURANCE COMPANY a/s/o INTERPUBLIC GROUP COMPANIES,

Index No.: 102312/05

Motion Date: 09/25/07

Plaintiff,

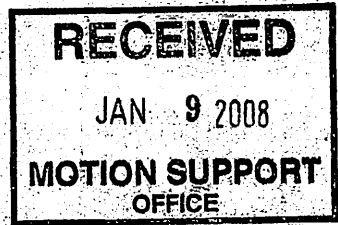
Motion Seq. No.: 06

- v -

Motion Cal. No.: 106

23RD STREET PROPERTIES, WILLIAMS REAL ESTATE CO., INC., IBEX CONSTRUCTION, L.L.C., and HOME DEPOT U.S.A., INC.,

Defendants.



The following papers, numbered 1 to 5 were read on this motion to compel discovery.

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

Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____

Answering Affidavits - Exhibits _____

Replying Affidavits - Exhibits _____

PAPERS NUMBERED

1 - 3

4

5

Cross-Motion: Yes No

FILED

JAN 10 2008

NEW YORK COUNTY CLERKS OFFICE

Upon the foregoing papers,

The court shall grant the motion and compel the plaintiff to produce the records sought by defendants including (1) copies of the "cause and origin" report, (2) copies of any and all adjuster's reports relating to the property damage claim, and (3) a written authorization to obtain the fire department call report relating to the central station monitoring call.

Governing law states that

Clearly, each of the documents prepared for defendant . . . embodying the writer's observations and findings

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

MMAF

concerning the explosion, was a "written report of an accident" (CPLR 3101 [g]). Therefore, the demand falls within the ambit of CPLR 3101 (g), which would require disclosure of the documents if prepared in the ordinary course of defendant's business operations or practices. The fact that both [defendant's employee and retained consultant] were directed to the scene on the very day of the explosion, coupled with defendant's admission that it was defendant's regular practice to dispatch a claims person immediately after the occurrence of an accident, provides more than an adequate basis for finding that the reports were prepared in the ordinary course of defendant's business. Defendant, with the burden of establishing that the documents are somehow exempt from disclosure, has offered no evidence to the contrary.

Merrick v Niagara Mohawk Power Corp., 144 AD2d 878, 879 (3d Dept 1988). Furthermore, "the mere fact that accident reports are compiled by a liability insurer does not ipso facto render the reports immune from disclosure. . . accident reports made in the regular course of business, by uninsured or self-insured entities, are generally not privileged from disclosure, so long as they are not prepared for the sole purpose of litigation. Moreover, when statements are given to a liability insurer's claims department as part of an internal investigation or for internal business purposes, as well as for defense purposes, they are not immune from discovery as material prepared solely in anticipation of litigation. The burden of proving that a statement is privileged as material prepared solely in anticipation of litigation or trial is on the party opposing discovery." Agovino v Taco Bell 5083, 225 AD2d 569, 570-571 (2d Dept 1996) (citations omitted); see Flex-O-Vit USA, Inc. v Niagara Mohawk Power Corp., 281 AD2d 980, 981 (4th Dept 2001)

(fire investigation file and cause and origin investigation report are discoverable pursuant to CPLR 3101 [a] [1]).

In opposition to the motion plaintiff merely submits the affirmation of counsel in an attempt to come within the exemption to disclosure under CPLR 3101 (d). However, such an "affirmation, without more, is insufficient to sustain the [] burden of demonstrating that the interviews and the reports were prepared exclusively for litigation." Agovino, supra, 225 AD2d at 571; see Viruet v City of New York, 97 AD2d 435, 436 (1st Dept 1983) ("conclusory assertions that the reports were prepared exclusively for litigation, not as part of its routine internal practices, are not enough" to exempt the material from disclosure).

Accordingly, it is

ORDERED that the motion is GRANTED; and it is further

ORDERED that pursuant to CPLR 3124, plaintiff is hereby compelled to respond to the January 16, 2007 Notice for Discovery and Inspection served by defendant Williams Real Estate Co., Inc., within 14 days of service of a copy of this Order upon plaintiff, by producing the records sought by defendants including (1) copies of the "cause and origin" report, (2) copies of any and all adjuster's reports relating to the property damage claim, and (3) a written authorization to obtain the fire

department call report relating to the central station monitoring calls.

ORDERED that the parties are hereby directed to attend a status conference on February 26, 2008, at 11:00 A.M., at the Courthouse, IAS Part 59, Room 1254, 111 Centre Street, New York; and it is further

ORDERED that plaintiff's time to file a note of issue is extended to March 31, 2008.

This is the decision and order of the court.

Dated: January 7, 2008

ENTER:

Debra A. James J.S.C.

DEBRA A. JAMES
J.S.C.

FILED
JAN 10 2008
NEW YORK
COUNTY CLERKS OFFICE