SCANNED ON 8/21/2009

[* 1]

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

PRESENT: Tolub, Justice — PART 15

Travelers Casualty and Surety Company

v.

Honeywell International, Inc., et al.

INDEX NO. 107138/06

MOTION DATE

MOTION SEQ. NO. 31

MOTION CAL. NO.

The following papers, numbered 1 to ___ were read on 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

IS DECIDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

FILED
AUG 21 2009
COUNTY CLERK'S OFFICE
NEW YORK

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

Dated: 8/20/09

WALTER B. TOLUB, J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

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TRAVELERS CASUALTY AND SURETY COMPANY,

Plaintiff,

-against-

HONEYWELL INTERNATIONAL INC., et. al.

Defendants.

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Index No. 107138/06
Mtn Seq. 31

WALTER B. TOLUB, J.:

This is non-party Weitz and Luxenberg's (hereinafter Weitz) motion to quash a third party subpoena *Duces Tecum* (the subpoena). The subpoena was issued by defendants Hartford Accident and Indemnity Company, First State Insurance Company, New England Reinsurance Corporation, and Twin City Fire Insurance Company (collectively, defendant Hartford) and seeks discovery pertaining to millions of dollars worth of personal injury claims settled in agreements between defendant Honeywell and the Weitz law firm [who represented the claimants].

Facts and Background

The personal injury settlements at the heart of this litigation were entered into to resolve numerous claims of damage resulting from exposure to asbestos-containing products alleged to have been sold and/or distributed by North American Refractories Company (NARCO).

Over the last two decades, Honeywell has been sued by claimants alleging, inter alia, bodily injury, personal injury, and/or other damage resulting from exposure to asbestos-containing products allegedly sold or distributed by NARCO and related predecessors of Honeywell. This action concerns a series of liability insurance contracts issued not directly to Honeywell, but to two predecessor corporations of Honeywell, Allied Corporation (Allied) and Eltra Corporation (Eltra). This asbestos coverage dispute arises from the operations of NARCO, which was primarily in the business of designing, manufacturing and distributing refractory products, including products containing asbestos. NARCO was acquired by and eventually merged into Eltra in 1968. From that time forward, Eltra was insured under various policies, including a number of policies issued by the Settled Insurers, until 1979, when Eltra was acquired by Allied, and integrated into Allied's insurance program. Thereafter, Allied was insured under policies delivered to its headquarters in New Jersey. All of the policies in this case that remain unsettled were issued to Allied, with the exception of the four policies sold by Travelers to Eltra.

Other than four Travelers policies, all of the Eltra policies in this case are either the subject of settlement

agreements between Honeywell and the settling insurers, or the full limits of those policies have been paid. As a result, the settled insurers have all paid or agreed to pay the full limits of coverage available for NARCO Claims under their settled policies. Thus, there are no remaining disputes between Honeywell and the settled insurers with respect to coverage for NARCO Claims under their settled policies.

Honeywell moved to dismiss the complaint as to the insurers it settled with. This Court granted the motion and dismissed the claims asserted against the settled insurers arising from their settled policies.

Since that time, the parties have been conducting voluminous discovery.

The instant dispute arises in connection with plaintiff's claim that the largest class of claimants, represented by the Weitz law firm, entered into settlement agreements with Honeywell without Hartford's knowledge or consent. Hartford therefore claims that it should not be liable for coverage of hundreds of millions of dollars' worth of personal injury settlements which may have been unreasonable, and which were certainly not authorized. Hartford claims that the discovery it seeks from non-party Weitz will enable it to determine the reasonableness of the payouts NARCO made to Weitz's clients under the settlement

agreements.

The settlements paid to claimants were funded by a settlement trust. This trust was established in 2002 following an agreement entered into as between Honewell and NARCO by which Honeywell was shielded from any future lawsuits concerning NARCO products.

In order to establish the settlement trust, three quarters of the NARCO asbestos plaintiffs had to consent to the formation of the trust. Hartford claims the settlement agreements required the claimants to provide little or no proof of injury or exposure. Hartford also claims that Defendant Honeywell chose to disregard an audit by non-parties McDermott, Will, & Emery which found that up to 75% of the personal injury claims by Weitz's clients may have been fraudulent or beyond the scope of coverage under the policies. According to Hartford, the reason Weitz allowed allegedly frivolous claims to be included in the settlement agreement was to induce the class of plaintiffs to approve the settlement plan. Hartford also claims that the agreement was made without its knowledge or consent. Weitz maintains that Hartford's accusations are false, and that no evidence of fraud exists.

Hartford served Weitz with a third-party subpoena *duces tecum* pursuant to CPLR §§3601, 3607, and 3620 demanding that

Weitz (1) "designate a representative with knowledge of the asbestos-related claims of the Honeywell claimants," (2) to produce, "all documents referring or relating to any Honeywell claimant's asbestos-related claim," and (3), produce "all documents constituting, referring or relating to," Weitz' communications with either Honeywell, NARCO, or the bankruptcy trust concerning its clients' claims or the settlement thereof.

Weitz claims that the subpoena is facially defective under CPLR 3101(a)(4) for its failure to enumerate reasons for the demanded discovery and under CPLR 3120 for its lack of specificity in designating the documents to be produced. Weitz further contends that the subpoena should be quashed because Hartford failed to show "special circumstances" warranting third part discovery, because the subpoena is unduly burdensome, and because discovery may compromise confidential or privileged material.

Discussion

CPLR 3101(a)(4) provides that discovery may be obtained from a third party "upon notice stating the circumstances or reasons such disclosure is sought or required" (CPLR 3101). Hartford failed to include reasons for requesting discovery on the face of the subpoena; however, that defect alone does not automatically render it invalid. In Velez v. Hunt's Point Multi-Service

Center, Inc., 2006 NY Slip Op 1105 [1st Dep't 2006], the Court explained that, although the reasons for the discovery demand should be included in the subpoena, third party discovery can still be allowed if those reasons appear in the papers of the party seeking discovery.

"The purpose of such requirement is presumably to afford a nonparty who has no idea of the parties' dispute or a party affected by such request an opportunity to decide how to respond." (Velez, 2006 NY Slip Op 1105 at 5). The third party's familiarity with the case is not a concern here because Weitz played an instrumental role in the formation of the settlement agreement that lies at the heart of Hartford's suit against Honeywell. It is therefore sufficient that Hartford explained in its papers that the discovery from Weitz is necessary to determine its liability for Honeywell's payments to Weitz's clients under the settlement agreements. Weitz's argument that the Hartford subpoena was facially invalid due to a failure to comply with CPLR 3101(a)(4) is therefore insufficient to invalidate the subpoena.

Weitz further argues that the subpoena is invalid because Hartford never showed "special circumstances" requiring third party discovery. The Appellate Division, First Department, definitively stated in Schroeder v. Consolidated Edison Co. of

New York, Inc., 249 A.D.2d 69 [1998], that "special circumstances" are no longer necessary to obtain third party discovery. A party needs only to meet the standard of CPLR 3101 (a)(4) as interpreted by the court in Velez (Id.).

Although Hartford had no obligation to show "special circumstances", it did need to designate the documents it sought with sufficient specificity to meet the standard set forth in CPLR 3120. CPLR 3120 states that a subpoena must describe items or categories of items sought from the third party "with reasonable particularity." Hartford subpoena offers no such particularity. Instead, it broadly calls for all documents pertaining to Weitz's clients' claims and all of Weitz's communications with Honeywell concerning the settlement agreements. Asking for "all documents" pertaining to a certain topic is not necessarily fatal to a third party discovery demand (Engel v. Hagedorn, 170 A.D.2d 301 [1st Dep't 1991]); however, "everything sought must meet the relevancy standard and the subpoena must set forth what is sought with some degree of clarity." (Reuters Ltd. V. Dow Jones Telerate, Inc., 231 A.D.2d 337 [1st Dep't 1997]). Because Hartford lacked the requisite specificity, it is overly-broad and invalid under CPLR 3120.

The court recognizes that Hartford's case necessitates some measure of discovery from Weitz, and will thus afford Hartford

the opportunity to amend its subpoena to conform with the particularity requirement of CPLR 3120.

The Court has considered Weitz's argument that the subpoena is unduly burdensome and that disclosure of this information would somehow jeopardizes confidential documents and find it unavailing considering the number and aggregate value of the claims involved.

Accordingly, it is

ORDERED that within forty-five days from service of a copy of this order with Notice of Entry defendant Hartford shall serve its amended subpoena upon Weitz who shall provide responses within ninety days from receipt of said subpoena.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 8/20/09

HON. WALTER B. TOLUB, J.S.C.