

**TC Ravenswood, LLC v National Union Fire Ins. Co.  
of Pittsburgh PA.**

2015 NY Slip Op 31033(U)

June 12, 2015

Supreme Court, New York County

Docket Number: 400759/2011

Judge: Barbara Jaffe

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : IAS PART 12

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TC RAVENSWOOD, LLC,

Index No. 400759/2011

Plaintiff,

Motion seq. no. 32

-against-

**DECISION AND ORDER**

NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH PENNSYLVANIA  
(a/k/a AIG, n/k/a Chartis), ASSOCIATED  
ELECTRIC & GAS INSURANCE SERVICES  
LIMITED, ACE INA INSURANCE, AND ARCH  
INSURANCE COMPANY, and FACTORY  
MUTUAL INSURANCE COMPANY,

Defendants.

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NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH,  
PENNSYLVANIA, ASSOCIATED ELECTRIC  
& GAS INSURANCE SERVICES LIMITED,  
ACE INA INSURANCE COMPANY, and ARCH  
INSURANCE COMPANY,

Index No. 650515/2010

Motion seq. no. 18

Plaintiffs,

-against-

TRANSCANADA ENERGY USA, INC. and TC  
RAVENSWOOD SERVICES CORP.,

Defendants.

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BARBARA JAFFE, J.S.C.:

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By notice of motion (sequence number 18 under Index No. 650515/10, and sequence  
number 32 under Index No. 400759/2011), Transcanada Energy USA, Inc., TC Ravenswood

Services Corp., and TC Ravenswood, LLC (collectively, Transcanada) move for an order compelling National Union Fire Insurance Company of Pittsburgh, Pennsylvania, ACE INA Insurance, and Arch Insurance Company (collectively, the Market) to respond to interrogatories served on December 9, 2014. The Market opposes.

During the discovery process in these actions, Transcanada received from the Market several email messages between an attorney representing the Market and Market representatives, along with a letter from the attorney. Transcanada sought further information about this correspondence and served the attorney with a deposition subpoena. In an attempt to avoid deposing the attorney, counsel for Transcanada asked counsel for the Market to confirm whether the attorney had authored certain emails, and by email dated November 18, 2014, counsel confirmed it. (NYSCEF 828).

By conference order dated November 7, 2014, Transcanada was given until December 17, 2014 to conduct discovery related to the Market's pre-denial documents. (*Id.*).

Transcanada then drafted requests to admit and sent them to the Market's counsel to review before serving them on the Market, again in an attempt to avoid deposing the attorney. Rather than respond to the requests, the Market filed a motion to quash the deposition subpoena, which Transcanada opposed. (*Id.*).

On December 8, 2014, Transcanada served the Market with requests to admit. On December 9, 2014, it served interrogatories on the Market. On December 29, 2014, the Market served a response to the requests to admit. By email dated December 30, 2014, counsel for the Market advised that it would not respond to the interrogatories as they are "duplicative of previous discovery, burdensome, oppressive, improper and only intended to harass the Market

Insurers and their counsel.” At a court conference on January 7, 2015, Transcanada withdrew its subpoena for the attorney’s deposition in order to file its note of issue; it was agreed by the parties that Transcanada could interpose the instant motion notwithstanding the filing of the note of issue. (*Id.*).

Transcanada argues that by failing to object timely to the interrogatories, the Market has waived its objections, and that as the interrogatories request limited information about the attorney’s documents, the Market’s objections are baseless. It also withdraws its request for answers to interrogatory numbers two and three. (*Id.*).

The Market contends that the interrogatories are untimely as the deadline to respond to them post-dated the December 17, 2014 discovery deadline, and that the interrogatories are duplicative of both the requests to admit and questions asked by Transcanada during depositions, and are burdensome as the information sought related to the emails is evident from the emails themselves. (NYSCEF 842).

In reply, Transcanada maintains that its interrogatories were timely served, that the information sought is not duplicative as the Market objected to most of the requests to admit and did not answer them, thus necessitating Transcanada’s service of the interrogatories. Moreover, that witnesses may have testified to certain information does not prevent Transcanada from seeking the information from the Market itself. (NYSCEF 857).

I find that Transcanada’s service of the interrogatories was timely, given the conference order permitting it to conduct discovery until December 27, 2014, and absent any indication that all discovery was required to be completed by that date.

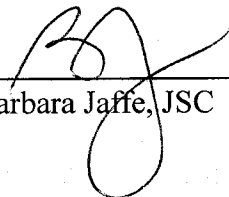
As the Market failed to object timely to the interrogatories, it is precluded from doing so

now. (See *Accent Collections, Inc. v Cappelli Enter., Inc.*, 84 AD3d 1283 [2d Dept 2011] [failure of party to challenge propriety of discovery demand within CPLR time limits forecloses inquiry into propriety of information sought]). And, absent any dispute that it did not answer many of Transcanada's requests to admit, the interrogatories are not duplicative. Moreover, Transcanada is not precluded from seeking written verification from the Market as to facts to which others testified.

Accordingly, it is hereby

ORDERED, that the motion is granted, and the Market is directed to serve its response to Transcanada's interrogatories numbers one and four through eight within 20 days of service on it of a copy of this order with notice of entry.

ENTER:

  
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Barbara Jaffe, JSC

DATED: June 12, 2015  
New York, New York