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

**PRESENT:** **HON. ARLENE P. BLUTH** **PART** **IAS MOTION 14**

***Justice***

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JRD UNICO, INC.,ASPEN AMERICAN INSURANCE COMPANY,

Plaintiff,

- v -

STARR INDEMNITY & LIABILITY COMPANY,

Defendant.

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**INDEX NO.** 655279/2019

**MOTION DATE** 06/03/2021

**MOTION SEQ. NO.** 004

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 116, 117, 118, 119, 120, 121, 122, 123, 125, 126, 127, 128, 129, 130, 131, 132, 133

were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

The motion by plaintiffs to quash nonparty subpoenas issued by defendant to Wholesale Trading Co-Op Insurance Services ("Wholesale") and Ohio Casualty Insurance Company ("Ohio Casualty") is granted in part and denied in part.

## Background

In this insurance coverage dispute, plaintiffs allege that Plaintiff JRD Unico, Inc. ("JRD") owns more than 100 wholesale grocery and restaurant supply stores and is the policy holder. Plaintiff Aspen American Insurance Company ("Aspen") and defendant Starr Indemnity and Liability Company both issued excess liability policies to JRD. Starr is purportedly the first layer of excess insurance while Aspen is the second.

According to the complaint, several lawsuits were commenced against JRD and the judgment amounts were likely to exceed the combined limit of JRD's primary policy and the limit that Starr claimed was applicable. The instant dispute concerns Starr's policy limit.

Plaintiffs claim that the subpoenas served on Wholesale and Ohio Casualty seek irrelevant information. They contend that the matter will be determined consistent with applicable contract law and that Wholesale (a broker who assisted JRD in procuring the insurance) and Ohio Casualty (who provided a third layer of excess insurance) has no bearing on this case. Plaintiffs argue that this Court must simply review the policies at issue. Plaintiffs question how the internal beliefs of various insurance professionals have any relevance to a case involving a dispute about defendant's policy.

In opposition, defendant observes that Wholesale has already substantially complied with the subpoena served on it and that defendant withdrew its motion to compel against Wholesale. Defendant's theory is that if the policy were subject to only a $5 million per location aggregate (and therefore a total limit of $600 million based on the 120 JRD locations), it would only make sense that Ohio Casualty would know about it. Defendant argues that the documents it seeks are material and relevant. It also claims that more than 20 days have passed since the request and that Ohio Casualty has agreed to produce certain documents.

In reply, plaintiffs contend that Ohio Casualty has objected to producing documents and that a non-party's agreement to produce documents does not render the requested materials discoverable. Plaintiffs argue that any discussions about these other excess policies would only shed light on those polices, not about defendant's policy.

**Discussion**

As an initial matter, the branch of the motion that sought to quash the subpoena with respect to Wholesale is denied as moot. Defendant claims in opposition that Wholesale has already substantially complied with the subpoena. To the extent that plaintiffs want the Court to issue an advisory ruling that those documents cannot be used, such a decision would be premature. Plaintiffs are free to argue on a subsequent motion or at trial why certain documents are irrelevant and should not be considered. But the Court sees no purpose in quashing a subpoena where the non-party has already responded.

However, the Court grants the motion with respect to Ohio Casualty. Records from a non-party who issued a third layer of excess insurance has no bearing on defendant's insurance policy. Speculating that Ohio Casualty must have known and formed an opinion on defendant's policy does not make Ohio Casualty's records relevant. Defendant's claim that Ohio Casualty's policy makes little sense if the aggregate limit was only per location does not turn on Ohio Casualty's documents. Undoubtedly, defendant will make this same argument—that plaintiff did not need multiple layers of excess insurance if the limit on defendant's policy could reach $600 million—on a subsequent motion. In other words, while the existence of other excess polices issued to JRD might be relevant, Ohio Casualty's view on these other polices is not.

Moreover, the fact that the 20-day period to timely object has passed is of no moment because the instant subpoena seeks information that is palpably improper (*Valuecare Pharm. Inc. v MVAIC*, 71 Misc 3d 136(A) [App Term, 1st Dept 2021]).

Accordingly, it is hereby

ORDERED that the motion by plaintiffs to quash the subpoenas issued by defendant to Wholesale Trading Co-Op Insurance Services and Ohio Casualty Insurance Company is granted only with respect to the subpoena issued to Ohio Casualty Insurance Company.

Remote Conference: September 13, 2021 at 9:30 a.m.

6/4/2021
DATE

ARLENE P. BLUTH, J.S.C.

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| CHECK ONE: | | CASE DISPOSED | | | X | NON-FINAL DISPOSITION | |
| | | GRANTED | | DENIED | X | GRANTED IN PART | OTHER |
| APPLICATION: | | SETTLE ORDER | | | | SUBMIT ORDER | |
| CHECK IF APPROPRIATE: | | INCLUDES TRANSFER/REASSIGN | | | | FIDUCIARY APPOINTMENT | REFERENCE |