

**Commissioners of the State Ins. Fund v Alba Servs.
Inc.**

2022 NY Slip Op 33384(U)

October 6, 2022

Supreme Court, New York County

Docket Number: Index No. 451055/2021

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

COMMISSIONERS OF THE STATE INSURANCE FUND

Plaintiff,

- v -

ALBA SERVICES INC.,

Defendant.

-----X

INDEX NO. 451055/2021

MOTION DATE 09/30/2022

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 61, 62, 63, 64, 65, 66, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85 were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

Defendant's motion for an order limiting the timeframe set forth in the subpoena served on Signature Bank, to compel discovery and for summary judgment as the policy term years 2014 and 2015 is denied.

Background

The instant action arises out of a workers' compensation insurance policy issued by plaintiff to defendant. Plaintiff contends that defendant owes it over \$1 million in unpaid premiums.

Defendant seeks to limit the timeframe for the records sought from Signature Bank to those years in which plaintiff supplied workers' compensation coverage to defendant. It wants the timeframe for documents to be produced to range from January 2014 through December 19, 2016. Defendant insists that plaintiff submitted a final bill for premiums for 2014 and 2015 and that defendant paid it, meaning that plaintiff may not now seek to modify the amount defendant owes for those years.

In opposition, plaintiff explains that the policy was first issued to CSC Service Corp. (“CSC”) on November 14, 2013 and defendant Alba was added as an additional entity in January 2014. CSC requested to be removed from the policy in April 2015. Plaintiff contends that the policy has not been audited and it merely seeks payroll and business records so that it can complete the audits. It explains that it also wants records from November 14, 2013 to April 8, 2015 because that is the time that CSC was insured by plaintiff and Alba agreed to be jointly and severally liable for any premiums due under the policy.

Plaintiff observes that defendant Alba did not request the removal of CSC from the policy until March 2015 (and it became effective in April 2015) and so the records from this time period are relevant and material. Plaintiff claims that summary judgment should not be granted because defendant did not meet its burden to show that it made all the outstanding payments. In fact, plaintiff argues that defendant only made three payments before the policy was cancelled and points to the account statement to show there is an outstanding balance.

In reply, defendant emphasizes that payments were accepted for 2014 and 2015 and so there is no longer a dispute about those years. Defendant insists that it wants a deposition of the person that did the “accountings” for all of the years in question for plaintiff so that it can explore how the calculations were completed.

Discussion

The Court denies the motion in its entirety. Plaintiff contends it merely wants documents from Signature Bank to cover the period for which insurance coverage was extended to CSC, an entity that defendant must pay premiums for on a joint and several basis. Defendant’s assertion that it paid what is owed for 2014 and 2015 is not supported with any documentation; defendant merely submits an affidavit from Mr. Looney (an employee of defendant) who insists, in

conclusory fashion, that payments were made. But that misses the point. This case is about plaintiff's attempt to audit the coverage provided to CSC and defendant and whether there are outstanding premiums owed to plaintiff. Defendant cannot simply argue it paid and that's the end of the matter.

As Ms. Serri (an employee of plaintiff) explains in her affidavit, the premiums are charged based on an anticipated payroll for the next year and billed as provisional bills (NYSCEF Doc. No. 71 at 2). Then, audits are performed to determine the actual payroll and whether the projected premium is greater than the amount provisionally charged or whether a refund/credit should be provided to the insured (*id.*). That is what plaintiff is attempting to do here.

With respect to the outstanding discovery, the Court finds that defendant must submit a *Jackson* affidavit detailing the search performed by defendant for records relating to the 1103 and 1109 categories in the general ledger on or before October 17, 2022. Because defendant insists it has no more records with respect to this request, this affidavit is appropriate.

The Court expects that the parties will include a deposition schedule in the next discovery stipulation (which is due October 13, 2022). The Court will then decide whether the conference scheduled for October 20, 2022 is necessary.

Summary

To be clear, the Court denies defendant's motion in its entirety. Defendant failed to establish that the items plaintiff seeks are neither material nor relevant to plaintiff's case. In fact, the items are directly relevant to plaintiff's claimed damages. As stated above, the invoices billed to defendant are provisional and subject to change after plaintiff performs an audit—that audit is necessarily based upon defendant's records. Defendant claims it doesn't have them, so


plaintiff has the right to get them from the bank. For that reason, the Court declines to limit the discovery request or grant defendant partial summary judgment.

Accordingly, it is hereby

ORDERED that defendant’s motion is denied; and it is further

ORDERED that defendant must submit a *Jackson* affidavit detailing the efforts to locate discovery with respect to the 1103 and 1109 categories in the general ledger on or before October 17, 2022.

Next Conference: Already Scheduled for October 20, 2022 at 10:30 a.m. [NYSCEF Doc. No. 68][setting a deadline of October 13, 2022 to update the Court about the status of discovery]).

10/6/2022		
DATE		ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE