

SUPERIOR COURT
OF THE
STATE OF DELAWARE

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 North King Street, Suite 10400
Wilmington, DE 19801-3733
Telephone (302) 255-0669

September 30, 2011

(VIA E-FILED)

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RE: *Eugene W. McGrane, Jr. v. Hubbell Lenoir City, Inc.*
C.A. No. 10C-11-154 FSS

Upon Plaintiff's Motion to Compel

Dear Counsel:

This case is a dispute over indemnification stemming from McGrane's sale of CDR Systems to Defendant. Plaintiff wants Defendant to produce business, sales and accounting reports for its parent, Hubbell Power Systems, and for HPS's subsidiaries in industries similar to CDR, from September 2008 until the present.

Defendant wants Plaintiff's personal financial information from the time of the sale, a representation as to whether Plaintiff is withholding documents based

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on objections, and more specific answers to certain interrogatories. The court heard your cross-motions to compel and resolved Defendant's from the bench. Basically, Plaintiff must produce a basic accounting of his personal debts and assets at the time of the sale, as well as a representation as to what documents, if any, he is withholding.

As to Plaintiff's motion, under Super. Ct. Civ. R. 34(a)(1), parties can request items in the responding party's "possession, custody, or control." Generally, parent companies control their subsidiaries and are regularly required to produce their documents.¹ A subsidiary, by definition, does not control its parent.²

In rare, fact-specific situations, courts have required document production by a party's corporate parent where the party exercised sufficient control over it. Some factors considered include the corporate structures and the entities' financial relationship, the overlap of directors and officers, the non-party's connection to the transaction at issue, whether the non-party will receive the benefit of a favorable outcome, and the answering party's ability to obtain documents upon demand.³

It follows that, absent special circumstances not alleged here, a party litigating against a subsidiary has little right to documents or other materials held by the parent, and even less right to those held by its sibling subsidiaries. Plaintiff's only asserted interest in the materials in HPS's and the other sibling subsidiaries' possession is convenience.

The court will not, under the circumstances presented, order Defendant to produce materials not in its control. Defendant must produce the discoverable materials in its possession and any relevant materials it is entitled to demand, on its

¹ *Pennwalt Corp. v. Plough Inc.*, 85 F.R.D. 257, 263 (D. Del. 1979).

² *Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc.*, 233 F.R.D. 143, 145 (D. Del. 2005).

³ *Playboy Entertainment Group v. United States*, 1997 WL 873550, at *3 (D. Del. 1997).

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own, from its parent and sibling subsidiaries. So, for example, if Defendant uses a corporate server for its HR purposes, Plaintiff is entitled to that information. On the other hand, Plaintiff is not entitled to financial information about HPS that is not held or used by Defendant.

Plaintiff has leave to submit an order consistent herewith, after approval as to its form.

IT IS SO ORDERED.

Very truly yours,

/s/ Fred S. Silverman

FSS:mes
oc: Prothonotary (Civil)