STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: May 10, 2017)

CAROL A. LEPORE, Individually and as Legal Representative for the Estate of LEONARD L. LEPORE, ***Plaintiff,***	:	
v.	:	**C.A. No. PC-2012-1469**
A.O. SMITH CORP., et al., ***Defendants.***	:	

DECISION

GIBNEY, P.J. Defendants Rhode Island Hospital and The Miriam Hospital (collectively, Defendants) bring three motions relating to the production of documents from the Plaintiff, Carol A. Lepore (Plaintiff), in the above-named matter. Specifically, the Defendants bring 1) a motion for reconsideration; 2) a motion to compel the production of certain settlement releases; and 3) a motion to compel the deposition testimony of the Plaintiff. The Plaintiff objects to all three motions—seeking the production of documents and testimony regarding settlement releases from joint tortfeasors—contending that the Defendants are not entitled to production of the documents/testimony. This Court exercises jurisdiction pursuant to G.L. 1956 § 8-2-14.

I

Facts and Travel

On February 6, 2017, the Defendants brought three motions to compel production of documents and testimony from the Plaintiff. The Defendants seek the production of 1) release documentation pertaining to settlements with co-defendants that contain joint tortfeasor language; 2) the numerical amount of settlements with said co-defendants; and 3) the release of

documents pertaining to three co-defendants that do not contain joint tortfeasor language. Further, the Defendants bring a motion to compel the deposition testimony of the Plaintiff to obtain information regarding settlement amounts with co-defendants.

By way of background, the Defendants brought their first supplemental request for production of documents on September 30, 2016, and their motion to compel was heard on October 21, 2016. Following that hearing, on December 15, 2016, the Plaintiff voluntarily provided the Defendants with a list identifying 1) all defendants still pending in the case; 2) defendants that settled and provided a release with joint tortfeasor language; 3) defendants who settled and provided a release without joint tortfeasor language; and 4) defendants that had been dismissed. The Court did not order the production of settlement releases at that time, but offered to rehear arguments at a later date, if necessary. The Defendants now bring their three motions to compel the production of those settlement releases and deposition testimony, prior to trial.

II

Standard of Review

The trial court is afforded broad discretion in handling discovery requests. Pastore v. Samson, 900 A.2d 1067, 1073–74 (R.I. 2006) (citing Cullen v. Town Council of Lincoln, 850 A.2d 900, 903 (R.I. 2004)). Rhode Island Rule of Civil Procedure 26(b)(1) states that, in general, the scope of discovery should be limited to matters "relevant to the subject matter involved in the pending action[.]" Super. R. Civ. P. 26(b)(1). Rhode Island Rule of Civil Procedure 37(a) (Rule 37(a)) allows a party—upon reasonable notice to other parties and persons affected—to apply for an order compelling discovery. See Rule 37(a). Rule 37(a) also provides that a moving party may bring a motion before the Court to compel a party to answer questions propounded or submitted under Super. R. Civ. P. 30, which relate to the questioning of witnesses

at deposition. See id.; Super. R. Civ. P. 30(c). In such a motion, a party may request that the Court either compel production of a document or that the Court compel an answer from a party via deposition. See Rule 37(a)(2).

III

Analysis

A

Motion to Reconsider

In their Motion for Reconsideration[1], the Defendants request this Court to compel the discovery of settlement releases executed between the Plaintiff and co-defendants in the pending litigation. The Defendants argue that for the settlements which contain Rhode Island's standard joint tortfeasor language, they should be allowed to inspect said documents (with the amounts unredacted) in order to evaluate any potential setoff of damages. The Plaintiff contends that such releases are irrelevant to the Defendants' liability. She explains that under Rhode Island case law, such releases are not discoverable until after trial when a guilty verdict has been returned against the present two Defendants, and the amounts are needed for the Court to apportion damages.

1

Rhode Island's Joint Tortfeasor Language

Rhode Island's Uniform Contribution Among Joint Tortfeasors Act (the Act) states that "[t]he right of contribution exists among joint tortfeasors; provided however, that when there is a disproportion of fault among joint tortfeasors, the relative degree of fault . . . shall be considered

[1] This Court did not make a prior ruling on the issue of compelling production of the settlement releases; rather, the parties exchanged information voluntarily in December of 2016, and the Court deferred its consideration of the motion to compel until the matter drew closer to trial.

in determining their pro rata shares." G.L. 1956 § 10-6-3. The Act states that a release by the injured person of one joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasors, unless the release so provides. See § 10-6-7; see also Augustine v. Langlais, 121 R.I. 802, 805, 402 A.2d 1187, 1189 (1979). However, such a release does reduce the claim against the other tortfeasors in the amount of the consideration paid for the release. See id.; see also Calise v. Hidden Valley Condo. Ass'n, Inc., 773 A.2d 834, 840-41 (R.I. 2001).

This Court previously discussed the discoverability of settlement releases and joint tortfeasor language in Alessio v. Capaldi, No. PC-06-5850, 2007 WL 3236725 (R.I. Super. Oct. 16, 2007) (Gibney, P.J.). In that case, the defendant filed a motion to compel the production of settlement releases, similarly arguing that the language contained in those releases might absolve the defendant of liability in the pending matter. See id. The defendant also argued that it was entitled to the production of such settlements since the amount of the settlement might affect the setoff of funds paid by a co-defendant against the plaintiff. See id. Therein, the Court noted a tension between the liberal discovery rules and the limiting rules of evidence with respect to the admissibility of settlement agreements. See id.

In Alessio, this Court cited to Bottaro v. Hatton Assocs., 96 F.R.D. 158, 160 (E.D.N.Y. 1982), when it held that:

> "Although Defendant is correct that it is entitled to setoff, immediate disclosure of the settlement agreement is not required . . . . [S]ettlement would not be evidence relevant to any issue in this case other than the ministerial apportionment of damages, a mathematical computation which the Court rather than the jury will perform. Hence, the amount of the settlement is not relevant to any issue in this case at this time." See Alessio, 2007 WL 3236725.

The Court further clarified that, "[w]hile it is true that a settling defendant's liability for contribution depends on whether he paid his share of any damage award," this determination

cannot be made until a final judgment has been rendered against the moving defendant. See id. (citing In re Nat'l Student Mktg. Litig., 517 F. Supp. 1345, 1347 (D.C. Cir. 1981)).

Accordingly, this Court finds that the joint tortfeasor language contained in a settlement agreement is irrelevant to a determination of liability. See Sweredoski v. Alfa Laval, Inc., No. PC-11-1544, 2013 WL 6149320, at *2-3 (R.I. Super. Nov. 18, 2013) (Gibney, P.J.) (holding that settlement release executed by a co-defendant has no relevance to proving or disproving the moving defendant's liability to the plaintiff). Only the "negligence of the parties involved in the action" is relevant to the question of whether a defendant is liable. See Roberts-Robertson v. Lombardi, 598 A.2d 1380, 1381 (R.I. 1991). Therefore, any discovery of settlement releases would only be appropriate at a later stage in the litigation. See Alessio, 2007 WL 3236725.

2

Rhode Island Rules of Evidence

Additionally, Rule 408 of the Rhode Island Rules of Evidence provides that a settlement agreement is not admissible evidence for proving or disproving liability of a claim or its amount. R.I. R. Evid. 408. However, evidence of settlement negotiations need not be excluded when the evidence is offered for another purpose, such as proving a bias or prejudice of a witness. See id. It is well settled that offers to compromise and evidence of settlement negotiations generally are inadmissible at trial in order to support an atmosphere of compromise and to encourage settlement. See Votolato v. Merandi, 747 A.2d 455, 461 (R.I. 2000).

In Votolato, the defendants argued that the settlement reached between the plaintiff and a co-defendant, which contained the joint tortfeasor language, was admissible at trial because it was relevant to the setoff of damages between the joint tortfeasors. See id. The Rhode Island Supreme Court held that "unless evidence of a settlement is relevant to some issue, other than the

quantum of damages, a trial justice is instructed to bar the admission of such evidence and subsequently to make the appropriate reduction in any jury award rendered in favor of the plaintiff." See id. at 462. Further, the trial justice appropriately barred the defendants' question to the plaintiff regarding settlement amounts, since "the evidence of the settlement was not admissible for setoff purposes under Rule 408." See id.

Therefore, in accordance with its past rulings, this Court finds that the language contained or omitted from a settlement release has no relevance to the pending litigation and whether Defendants are liable to the Plaintiff. See Sweredoski, 2013 WL 6149320, at *3. Such releases and the amounts contained therein would only be relevant to the ministerial action of apportioning damages, and an exchange of such documents is not necessary or relevant until later at trial. See Alessio, 2007 WL 3236725. Unless relevant to some issue other than the setoff of damages, evidence of the settlement releases are inadmissible at trial. See Votolato, 747 A.2d at 462.

Furthermore, Rhode Island's discovery rules state the scope of discovery should be limited to matters "relevant to the subject matter involved in the pending action[.]" Super. R. Civ. P. 26(b)(1). Rule 26(b)(1) provides that "[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Super. R. Civ. P. 26(b)(1). Since the settlements are inadmissible themselves, the Defendants herein have not demonstrated how production of the settlement agreements is reasonably calculated to lead to the discovery of admissible evidence. See Super. R. Civ. P. 26(b)(1); see also DeCurtis v. Visconti, Boren & Campbell, Ltd., 152 A.3d 413, 420 (R.I. 2017). In other words, Defendants have not provided sufficient argument that such an agreement could absolve a premises defendant of liability to a

plaintiff after a co-defendant has settled. See id.; see also R.I. R. Evid. 408. Accordingly, this Court finds that such settlement releases are not relevant to the pending matter until trial when they are needed in preparation for the apportionment of damages. See Alessio, 2007 WL 3236725.

B

Motion to Compel Production of Certain Releases

In their second motion, the Defendants request the production of three settlement releases that the Plaintiff executed with co-defendants Foster Wheeler, Industrial Holdings, and Metropolitan Life Insurance. These three releases did not contain the standard Rhode Island Joint Tortfeasor language. Accordingly, the Defendants request the production of these three releases, arguing that the releases' language may be sufficiently broad to apply to the Defendants and absolve them of liability. They request these three settlements with the amounts redacted. The Plaintiff argues that production of these three documents is irrelevant to the case at hand and that Defendants have unpersuasively argued how the omission of the joint tortfeasor language would work to absolve the Defendants from liability.

Indeed, there is a dearth of Rhode Island case law to suggest that language included (or omitted) in a settlement agreement of a co-defendant could absolve a premises defendant of any or all liability. These three releases—executed by the Plaintiff with defendants Foster Wheeler, Industrial Holdings, and Metropolitan Life Insurance—failed to include the standard joint tortfeasor language that is included in most settlement releases. Such standard language includes a disclaimer that "[a] release by the injured person of one joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasors unless the release so provides[.]" Sec. 10-6-7. Therefore, the Defendants contend that by omitting such language, these releases may, in fact,

absolve the Defendants of liability as joint tortfeasors. The Defendants state that "[f]airly interpreted (i.e. to the extent the releases contain language including as releases 'all other persons, firms corporations' or such similar language), the releases may serve to release these defendants from any liability in this matter."

Since settlement releases are irrelevant to the determination of a joint tortfeasor's liability pre-trial, discussed supra, the omission of such language in a settlement release—and Defendants' contention of said omission's possible effect on a premises defendant's liability—is similarly unpersuasive to this Court. See Alessio, 2007 WL 3236725. The Defendants have not provided any Rhode Island case law to suggest that—through omission of the standard joint tortfeasor language—a co-defendant effectively released the current premises Defendants of liability to the Plaintiff. Indeed, on a motion to compel the production of documents, the party seeking to obtain discovery of settlement information carries the burden of demonstrating the particular relevance of the information sought. See Morse/Diesel, Inc. v. Trinity Indus., Inc., 142 F.R.D 80, 84 (S.D.N.Y. 1992); Fid. Fed. Sav. and Loan Ass'n. v. Felicetti, 148 F.R.D. 532, 534 (E.D. Pa. 1993); see also Sweredoski v. Alfa Laval, Inc., No. PC-11-1544, 2013 WL 3779561 (R.I. Super. July 15, 2013) (Gibney, P.J.). It is not sufficient that the moving party asserts that the materials sought will lead to the discovery of "some" admissible evidence. See Bottaro, 96 F.R.D. at 159-60; see also Lesal Interiors, Inc. v. Resolution Trust Corp., 153 F.R.D. 552, 560-61 (D.N.J. 1994).

In the present matter, the Defendants have provided no Rhode Island case law to support their proposition that the omission of the standard joint tortfeasor language could relieve them of liability to the Plaintiff pre-trial or any other argument that these three settlements are relevant to

a viable motion for summary judgment.[2] Therefore, this Court finds that the Defendants have not met their burden for production of the releases, since they have failed to demonstrate the relevancy of such a production request.[3] See Morse/Diesel, 142 F.R.D at 84; see also Super. R. Civ. P. 26(b)(1). Accordingly, the Defendants' motion to compel the production of certain releases is denied.

C

Motion to Compel Deposition Testimony

In their third motion, the Defendants bring a motion to compel the deposition testimony of the Plaintiff. During her initial deposition on December 1, 2016, the Defendants inquired as to the settlements executed to date and the specific and aggregate amounts of such settlements. Plaintiff's counsel instructed her to refrain from answering. The Defendants contend that the settlement information is not privileged and thus should not have been withheld at deposition. They argue that according to Rhode Island case law regarding the permissible scope of deposition questions, the answer should have been provided because it is relevant, and, while it is confidential, it is not privileged. The Plaintiff contends that the Rhode Island Rules of Civil Procedure allow a witness to withhold an answer if that information is privileged or if there is a limitation on evidence directed by the Court. The Plaintiff maintains that she properly withheld

[2] The Defendants cite to State Farm Mut. Auto. Ins. Co. v. Universal Health Grp., Inc., 2016 WL 6901379 (E.D. Mich. Oct. 27, 2016) to support their motion to compel the settlement documents and to argue the pre-trial relevancy of such settlements. However, that case's holding contradicts Rhode Island jurisprudence, which holds that such settlements are merely relevant to the ministerial apportionment of damages. See Alessio, 2007 WL 3236725 (citing Bottaro, 96 F.R.D. at 160).

[3] It is well settled that "[s]imply stating an issue . . . without a meaningful discussion thereof or legal briefing of the issues, does not assist the Court . . . ." Wilkinson v. State Crime Lab. Comm'n, 788 A.2d 1129, 1131 n.1 (R.I. 2002).

her answer under exceptions provided in Super. R. Civ. P. 30(d)(1), which allows a witness to withhold answers in limited circumstances.

Rhode Island Rule of Civil Procedure 30(d)(1) (Rule 30(d)(1)) states that "[a] party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under paragraph (3)." Super. R. Civ. P. 30(d)(1). As discussed supra, this Court has previously held that settlement releases are irrelevant to a defendant's refutation of liability prior to trial. See Alessio, 2007 WL 3236725. Further, the Rhode Island Supreme Court has long favored the protection of settlement information and negotiations from evidence in order to encourage the settlement of cases prior to trial. See Votolato, 747 A.2d at 461. The Supreme Court noted that "[e]xclusion of such evidence facilitates an atmosphere of compromise among the parties and promotes alternatives to litigation . . . Further, it is well settled that such evidentiary protection extends to settlements reached between plaintiffs and third party tortfeasors." See id. (citing McInnis v. A.M.F., Inc., 765 F.2d 240, 247 (1st Cir. 1985) (interpreting Fed. R. Evid. 408)).

Therefore, under Rhode Island's Rule 30(d)(1), the Plaintiff properly withheld her answer to the Defendants' questions regarding settlement agreements and amounts according to "a limitation on evidence directed by the court" and its past jurisprudence on the matter. See Rule 30(d)(1). Having held that evidence regarding settlement amounts of a joint tortfeasor is irrelevant until trial, when it is necessary for the apportionment of damages, allowing the Defendants to reopen the deposition testimony of the Plaintiff would defeat the Court's protection of such information.[4] This Court therefore denies the Defendants' motion to compel

[4] Even in cases in which counsel has improperly instructed a witness to withhold an answer and where the opposing party has brought a motion to compel, the Court is not required to reopen

deposition testimony of the Plaintiff, finding that answers regarding settlement were properly withheld and the reopening of deposition would be improper. See Rule 30(d)(1); see also Plante, 109 A.3d at 854-55.

IV

Conclusion

This Court denies the Defendants' Motion for Reconsideration, finding that settlement agreements containing joint tortfeasor language are not relevant at this time, and an exchange of such information is not necessary until trial when they are needed for the apportionment of damages. This Court denies the Defendants' motion for the production of certain releases, which failed to contain the standard joint tortfeasor language, finding that the Defendants have not demonstrated the relevance of such documents with respect to the Defendants' liability to the Plaintiff. Finally, this Court denies the Defendants' motion to compel deposition testimony and its request to reopen deposition of the Plaintiff. Counsel shall submit the appropriate order for entry.

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deposition testimony if other factors favor the conclusion of deposition. See Plante v. Stack, 109 A.3d 846, 854-55 (R.I. 2015).

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Carol A. Lepore v. A.O. Smith Corp., et al.**
CASE NO:	**PC-2012-1469**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**May 10, 2017**
JUSTICE/MAGISTRATE:	**Gibney, P.J.**
ATTORNEYS:	
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