

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: February 5, 2010

Decided: February 15, 2010

Bruce E. Jameson
Paul A. Fioravanti, Jr.
Tanya E. Pino
Prickett, Jones & Elliott, P.A.
1310 King Street
Wilmington, DE 19801

Seth J. Reidenberg
The Chartwell Law Offices, LLP
300 Delaware Avenue, Suite 800A
Wilmington, DE 19801

Re: *Dawson, et al. v. Pittco Capital Partners, L.P., et al.*
Civil Action No. 3148-CC

Dear Counsel:

As you should know at this point, this matter has been reassigned to me for all purposes. Accordingly, I have reviewed your submissions regarding plaintiffs' motion to compel. For the reasons stated below I grant plaintiffs' motion in part and deny it in part.

Plaintiffs request both a fuller response to plaintiffs' interrogatories, and a complete document production. Plaintiffs initially cited numerous bases for these requests, but subsequently most were dropped. Thus, I will only address what I understand to be the two outstanding issues, which are whether: (1) defendants fully answered plaintiffs' interrogatories; and (2) plaintiffs are entitled to discover arbitration documents from a non-party wholly-owned subsidiary. I deem abandoned plaintiffs' initial document production requests on the basis of privilege, confidentiality, and public availability, since plaintiffs dropped all three arguments from their reply brief.

Plaintiffs are entitled to full interrogatory responses, including the factual and legal bases of defendants’ affirmative defenses. Specifically, defendants must provide the facts that furnish the basis for each of their four defenses: failure to state a claim, laches, waiver, and unclean hands. Defendants must also address each element of each defense.¹ Additionally, defendants must identify the particular provisions of the LLC Agreement that furnish the basis for any responses. Thus, defendants must file supplemental responses to Interrogatory Nos. 3 and 4. Defendants are not, however, required to provide case law and legal authorities.²

Pursuant to Court of Chancery Rule 26(b)(1), plaintiffs are also entitled to the names and addresses of the specific individuals who possess knowledge of defendants’ affirmative defenses. Thus, defendants must file supplemental responses providing names of such individuals to Interrogatory No. 5.

Additionally, plaintiffs are entitled to the arbitration documents. Court of Chancery Rule 34 requires defendants to produce all documents within their possession, custody, or control. Here, documents of the wholly-owned subsidiary, Vehicle IP (VIP)—even though not a party to this action—are deemed controlled by its defendant parent, Vehicle Safety & Compliance, LLC (VSAC).³ Moreover, because plaintiffs are entitled to the arbitration documents they are not required to obtain the documents through a Rule 45 subpoena. Thus, defendants must produce the arbitration documents.

Though some of defendants’ responses may have been prolonged or questionably sparse, no basis exists for further judicial relief at this juncture. Thus, plaintiffs’ request for other relief “as the Court deems just” is denied.

¹ I note that defendants address some elements, such as the unreasonable delay element of laches, but those responses are incomplete. *See, e.g.*, Defs.’ Responses to Pl.s’ First Set of Interrog., Interrog. No. 3 (plaintiffs “waited sixteen months”).

² Such discovery is clearly impermissible because it seeks attorney work-product.

³ *See E.I. DuPont de Nemours & Co. v. Phillips Petroleum Co.*, 621 F. Supp. 310, 312 (D. Del. 1985) (holding that parent must produce a wholly-owned subsidiary’s documents under Fed. R. Civ. P. 34 because the documents are deemed “within the possession, custody or control of the parent corporation”). Federal Court decisions are “of great persuasive weight in the construction of parallel Delaware rules” due to the analogous nature of the Court of Chancery Rules and the Federal Rules of Civil Procedure. *Cede & Co. v. Technicolor, Inc.*, 542 A.2d 1182, 1191 n.11 (Del. 1988).

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in black ink that reads "William B. Chandler III". The signature is written in a cursive style with a horizontal line underlining the name.

William B. Chandler III

WBCIII:dmq