

TAB 9



LEXSEE 2008 U.S. DIST. LEXIS 79172

DONG AH TIRE & RUBBER CO., LTD., Plaintiff, v. GLASFORMS, INC., Defendant/Third-Party Plaintiff, v. CTG INTERNATIONAL (NORTH AMERICA) INC., et al., Third-Party Defendants.

NO. C 06-3359 JF (RS)

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

2008 U.S. Dist. LEXIS 79172

**September 3, 2008, Decided
September 3, 2008, Filed**

SUBSEQUENT HISTORY: Later proceeding at *Dong Ah Tire & Rubber Co., Ltd. v. Glasforms, Inc., 2008 U.S. Dist. LEXIS 111150 (N.D. Cal., Sept. 19, 2008)*

PRIOR HISTORY: *Dong Ah Tire & Rubber Co. v. Glasforms, Inc., 2008 U.S. Dist. LEXIS 116991 (N.D. Cal., Aug. 25, 2008)*

COUNSEL: [*1] For Dong Ah Tire & Rubber Co., Ltd, a Korean Corporation, Plaintiff: Sophie N. Froelich, LEAD ATTORNEY, Nossaman, Guthner, Knox & Elliott, LLP, San Francisco, CA.

For Glasforms Inc., a California corporation, Defendant: Robert A. Christopher, LEAD ATTORNEY, Hopkins & Carley, A Law Corporation, San Jose, CA; Noelle Dunn, Hopkins & Carley, San Jose, CA.

For Glasforms Inc., a California corporation, 3rd party plaintiff: Eugene Ashley, Noelle Dunn, Tod C. Gurney, Hopkins & Carley, San Jose, CA; Robert A. Christopher, Hopkins & Carley, A Law Corporation, San Jose, CA.

For CTG International (North America) Inc., an Indiana Corporation, 3rd party defendant, Counter-claimant: Lisa J. Cummins, LEAD ATTORNEY, Campbell Warburton Fitzsimmons et al, San Jose, CA; April E. Sellers, Indianapolis, IN; David K. Herzog, Baker & Daniels LLP, Indianapolis, IN; Jennifer M. Phelps, Bingham McCutchen LLP, Los Angeles, CA.

For Taishan Fiberglass, Inc., a corporation organized under the laws of the People's Republic of China, CTG International (North America) Inc., an Indiana Corporation, 3rd party defendants: April E. Sellers, Indianapolis, IN; David K. Herzog, Baker & Daniels LLP, Indianapolis, IN; Jennifer [*2] M. Phelps, Bingham McCutchen LLP, Los Angeles, CA.

Glasforms Inc., a California corporation, 3rd party plaintiff, Pro se.

For Taishan Fiberglass, Inc., a corporation organized under the laws of the People's Republic of China, 3rd party defendant: April E. Sellers, Indianapolis, IN; David K. Herzog, Baker & Daniels, Indianapolis, IN; Jennifer M. Phelps, Bingham McCutchen LLP, Los Angeles, CA.

JUDGES: RICHARD SEEBORG, United States Magistrate Judge.

OPINION BY: RICHARD SEEBORG

OPINION

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO COMPEL

I. INTRODUCTION

Pursuant to *Rules 30, 34, and 37 of the Federal Rules of Civil Procedure*, third-party defendants CTG International (North America), Inc. ("CTG") and Taishan Fiberglass, Inc. ("Taishan") (collectively "defendants")

move to compel defendant/third-party plaintiff Glasforms, Inc. ("Glasforms") to: (1) provide information concerning failures of its products from January 1, 2000, until the present in response to production request number fifteen; and (2) answer interrogatory numbers six and nine either with complete substantive responses or by referring to specific pages of documents. For the reasons stated below, the motion will be granted in part and denied in part.

II. [*3] BACKGROUND

Glasforms manufactures fiberglass reinforced high voltage insulator rods. Taishan makes fiberglass. CTG, which is Taishan's United States distributor, supplied Glasforms with fiberglass in 2004. Glasforms asserts in this third party action that the fiberglass Taishan manufactured and supplied was contaminated with graphite. Graphite contamination causes fiberglass to conduct electricity, a dangerous latent defect. Glasforms used the graphite contaminated fiberglass to manufacture its insulation products. In October 2004, Glasforms alleges that it began to suffer mysterious smoking, arcing, and fires in its rod manufacturing process, which coincided with the use of Taishan's fiberglass. On December 8, 2005, one of Glasforms' customers reported fifteen instances where the insulator rods caused damage. Glasforms filed a third party complaint alleging six claims against these defendants on January 12, 2006.

Defendants contend that Glasforms' own production process caused the problems of which it complains, as evidenced by the fact that Glasforms experienced electrical failures both before and after it used Taishan's fiberglass to manufacture insulator cores. Defendants served [*4] discovery requests seeking information about failures of Glasforms' products back to 2000. On July 28, 2006, defendants served Glasforms with document request number fifteen, seeking: "[a]ll documents that constitute, evidence, reflect, record, describe, discuss, refer to or relate to Glasforms's notice, discovery, and/or investigation, at any time, of customer complaints and claims relating to alleged failures of Glasforms's insulator core products." Sellers Decl., Ex. B. Glasforms produced a number of documents in 2006 and 2007, but produced almost none describing customer complaints about its products.

On January 17, 2008, five days before scheduled depositions of Glasforms' representatives, Glasforms sent defendants 2,000 pages of documents, which included "customer complaint forms" and related files concerning customers who had complained about problems with Glasforms' products. After the depositions, Glasforms produced another 1,800 pages including: (1) emails that the deposed representatives wrote; (2) Glasforms' technical director and vice president's files; (3) email corre-

spondence from two Glasforms consultants; and (4) emails from other Glasforms customer representatives, [*5] including those who had experienced failures with Glasforms' products not produced with Taishan fiberglass. Defendants contend that these 3,800 produced pages are the most relevant documents to their defense of the claims brought against them.

Defendants also served interrogatory requests to understand the precise nature of the customer complaints and failures of Glasforms' products disclosed in the 3,800 produced pages. In particular, interrogatory number six seeks specific details regarding each instance of insulating rod failure. Sellers Decl., Ex. Q. Interrogatory number nine asks: "[w]ith respect to each rod failure that you contend is attributable to an act or omission of CTG and/or Taishan, specify by Bates number each document that you contend demonstrates, supports, or relates to your contention that the rod contained glass manufactured by Taishan." *Id.*

In its responses to interrogatory numbers six and nine, Glasforms refused to provide any information about its product failures before 2003 or after 2007. Yet, according to defendants, the documents Glasforms produced and the testimony of its witnesses show that Glasforms experienced failures over many years when their products [*6] were made without Taishan fiberglass. For example, Glasforms' corporate witness, Barry White, testified that there was at least one customer complaint regarding Glasforms' insulator rods in 2008. *Id.*, Ex. M at 453.

To the extent Glasforms did respond to interrogatory numbers six and nine, it referenced *Fed. R. Civ. P. 33(d)* and relied upon "the documents produced by all parties, and the parties' prior interrogatory answers, and the testimony given by each witness in this matter," as well as certain documents identified by Bates number. *Id.*, Ex. R. Defendants argue that it is Glasforms' duty, not theirs, to specify the location of the responsive documents; and consequently filed the instant motion to compel.

In its opposition, Glasforms claims that: (1) the instant motion was filed prematurely in violation of the Civil Local Rules and good faith, as the parties were in the midst of the meet and confer process, as reflected by Glasforms' agreement to supplement its response to interrogatory number six, and its subsequent filing of that response; (2) it properly and reasonably relied on *Fed. R. Civ. P. 33(d)* for much of its response to interrogatory number six because the product failures before [*7] 2003 and after 2007 are irrelevant; and (3) the response to interrogatory number nine is complete in that it only seeks the identification of documents by Bates number, which Glasforms provided.

III. DISCUSSION

A. Document Request Number Fifteen

Defendants seek an answer to production request number fifteen concerning failures of its products from January 1, 2000, until the present. Glasforms states that it has provided information on failures beginning two years before any of the insulating core rods were sold and two years after the majority of failures occurred and were reported in 2005. Glasforms suggests that those five years provide an adequate time-frame within which to explore the nature of the failures relevant to the defenses asserted. Glasforms argues that the additional discovery sought is therefore completely unnecessary and unreasonable. Glasforms also maintains that because the original discovery cut-off date was December 15, 2007, it is reasonable to limit its production to that date.

Limiting Glasforms' production obligation to the original discovery cut-off date is appropriate. At the same time, defendants are entitled to discover information about Glasforms' product [*8] failures covering the period before Glasforms began using Taishan's fiberglass in order to develop their defense. As defendants raise in their reply, the period prior to 2004 -- the time period before Glasforms began manufacturing products with Taishan fiberglass -- may be relevant as reflecting alternative reasons for product defects. Consequently, Glasforms must produce documents responsive to request number fifteen for the period January 1, 2000, through December 15, 2007.

B. Interrogatory Number Six

Interrogatory number six by its terms may lead to the discovery of information relevant to the defense that Glasforms' own manufacturing process caused the failures at issue. Glasforms states that the information defendants seek in interrogatory number six is not directly known because Glasforms' customers voluntarily reported any failures. That is, to the extent Glasforms has the information defendants seek, that information is found in the documents Glasforms' customers provided. Glasforms contends that to compile a summary of these documents is burdensome and unnecessary because the information requested has already been provided to defendants in the list of documents identified by [*9] Bates number.

Except to the extent that Glasforms' response is unduly restricted as to time period and should be extended back to January 1, 2000, it has satisfied its discovery obligations in connection with this request by adopting the option set forth in *Rule 33(d)* designating produced documents by Bates number. See *United States ex rel Englund v. Los Angeles County*, 235 F.R.D. 675, 680 (E.D. Cal. 2006) ("[W]here the information is contained

in business records and answering the question would require the responding party to engage in burdensome or expensive research, the responding party may answer by specifying the records from which the answer may be obtained . . ."). The motion to compel a further response to interrogatory number six is therefore granted in part and denied in part. Glasforms shall answer that interrogatory for period commencing January 1, 2000, as described above.¹

1 It is troubling that defendants filed this motion while it appeared both parties were still working on interrogatory number six. As of July 14-15, 2008, only seven to eight days prior to the filing of this motion, the parties were communicating and amending the interrogatory. Glasforms agreed to [*10] supplement its answer, which it filed on August 6, 2008. Instead, defendants did not wait to file its motion to compel.

C. Interrogatory Number Nine

Interrogatory number nine similarly requests information potentially relevant to the defense that Glasforms' own manufacturing process caused the failures at issue. Glasforms' answer to interrogatory number nine, with the exception of the unduly restrictive time frame imposed, appears to be adequate. Defendants asked for Glasforms to identify each document by Bates number, which Glasforms did. Interrogatory number nine asks for nothing more. Therefore, defendants' motion to compel is granted in part and denied in part. Glasforms shall produce a response to interrogatory number nine for the period commencing January 1, 2000.

IV. CONCLUSION

Accordingly, defendants' motion to compel is granted in part and denied in part as follows:

(1) Glasforms shall produce documents beginning January 1, 2000, that respond to document request number fifteen. To the extent defendants seek documents pertaining to that request for the period after December 15, 2007, the original discovery cut-off date, the motion is denied.

(2) Glasforms shall produce responses [*11] to interrogatory numbers six and nine for the period beginning January 1, 2000.

(3) The motion is denied in all other respects.

IT IS SO ORDERED.

Dated: September 3, 2008

/s/ Richard Seeborg

RICHARD SEEBORG

United States Magistrate Judge