

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES SARJEANT, et al.,
Plaintiffs,
v.
FOSTER WHEELER LLC, et al.,
Defendants.

Case No. [24-cv-01216-VC](#) (DMR)

ORDER ON JOINT DISCOVERY LETTER

Re: Dkt. No. 190

The parties filed a joint discovery letter in which Plaintiff James Sarjeant moves to compel Defendant Foster Wheeler LLC (“Foster Wheeler”) to respond to certain requests for production (“RFPs”). [Docket No. 190 (Jt. Letter).] The matter is suitable for resolution without a hearing. Civ. L.R. 7-1(b). For the following reasons, Plaintiff’s motion to compel is granted.

I. BACKGROUND

This is a personal injury lawsuit. Plaintiff was diagnosed with mesothelioma cancer he contends was caused by exposure to airborne asbestos dust. Plaintiff alleges that he was exposed to asbestos from various sources, including from Foster Wheeler’s asbestos-containing equipment, such as marine boilers, on ships being constructed or undergoing repair at Todd Shipyards from 1960-1964. Jt. Letter 2.

The parties dispute “whether Foster Wheeler must produce records regarding its equipment aboard specific ships that were undergoing repair at Todd Shipyards during the time that Plaintiff worked at that shipyard . . . or whether Foster Wheeler’s document production may be limited to only the ships that Plaintiff specifically recalled[.]” *Id.* Plaintiff’s deposition is taking place in phases. In an early session, Plaintiff testified that he recalled working on new construction at Todd Shipyards, including the *USS England*, but did not recall working on ships undergoing repair. Several weeks later, Plaintiff testified that he saw work performed on Foster Wheeler

1 boilers on ships undergoing repair but did not remember their names. *Id.*

2 Plaintiff propounded RFP No. 2, which seeks:

3 Any and all documents and other tangible things of any diagram,
4 reproduction, or model of any place or thing concerning the
INCIDENT.

5 For purposes of these requests, INCIDENT shall mean the
6 circumstances and events surrounding and/or giving rise to the
7 injuries that form the basis of this lawsuit, including the course of
conduct and/or series of events giving rise to the injuries that form the
basis of this lawsuit.

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9 Jt. Letter Ex. 1 at ECF p. 9. Foster Wheeler made numerous objections, including that it “cannot
10 perform a meaningful search for documents based only on the name or location of a shipyard,”
11 and produced records for the *USS England* and one other ship that is not at issue in this dispute.
Id. at ECF p. 13.

12 Following an investigation, Plaintiff’s counsel obtained the names of nine ships that had
13 Foster Wheeler boilers and were repaired at the Todd Shipyards from 1960-1964. *Id.* at 3.¹
14 Plaintiff served a Federal Rule of Civil Procedure 30(b)(6) deposition notice on Foster Wheeler
15 requesting records regarding its equipment or personnel aboard those particular ships. Jt. Letter 3;
16 Jt. Letter Ex. 2 (RFP Nos. 9-44). Foster Wheeler responded with objections only. Jt. Letter Ex. 2
17 at ECF pp. 10-20. Plaintiff has since clarified that he was not employed at Todd Shipyards “for
18 much of 1962” and accordingly withdrew his requests as to three of the nine ships. Jt. Letter 3.
19 Therefore, this dispute centers on six ships that contained Foster Wheeler boilers and that were
20 under repair at Todd Shipyards when Plaintiff worked there in 1961 and 1963-1964.²

21 **II. LEGAL STANDARD**

22 Federal Rule of Civil Procedure 26 provides

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24 Parties may obtain discovery regarding any nonprivileged matter that
is relevant to any party’s claim or defense and proportional to the

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26 ¹ Plaintiff states that his investigators identified eight ships with Foster Wheeler boilers but listed
nine in the joint letter. *See* Jt. Letter 3.

27 ² The six ships at issue are the *USS Bryce Cin AD 36*, the *SS Sonoma*, the *USS Paul Revere LPA*
28 *248*, the *USS Tolovana AO 64*, the *USS Wiseman DE 667*, and the *USS Henrico APA 45*. *See* Jt.
Letter 3.

1 needs of the case, considering the importance of the issues at stake in
2 the action, the amount in controversy, the parties' relative access to
3 relevant information, the parties' resources, the importance of the
4 discovery in resolving the issues, and whether the burden or expense
5 of the proposed discovery outweighs its likely benefit.

6 Fed. R. Civ. P. 26(b)(1). "Information within this scope of discovery need not be admissible in
7 evidence to be discoverable." *Id.* "Relevancy, for the purposes of discovery, is defined broadly,
8 although it is not without ultimate and necessary boundaries." *Gonzales v. Google, Inc.*, 234
9 F.R.D. 674, 679-80 (N.D. Cal. 2006). "While the party seeking to compel discovery has the
10 burden of establishing that its request satisfies relevancy requirements, the party opposing
11 discovery bears the burden of showing that discovery should not be allowed, and of clarifying,
12 explaining, and supporting its objections with competent evidence." *Lofton v. Verizon Wireless*
13 *(VAW) LLC*, 308 F.R.D. 276, 281 (N.D. Cal. 2015) (citing *La. Pac. Corp. v. Money Mkt. 1*
14 *Institutional Inv. Dealer*, 285 F.R.D. 481, 485 (N.D. Cal. 2012)).

13 **III. DISCUSSION**

14 The parties dispute the relevance of discovery regarding the six ships Plaintiff has
15 identified as undergoing repair at Todd Shipyards in 1961 and 1963-1964. Plaintiff argues that the
16 information is relevant because he testified that he recalled seeing work performed on Foster
17 Wheeler boilers on ships undergoing repair at Todd Shipyards. Investigation by his legal team
18 subsequently identified the six ships as having been repaired at Todd Shipyards during that time.
19 Plaintiff notes the possibility that he worked on those repairs; his deposition is "ongoing and he
20 has not been asked specifically if he recalls the names of these ships, and he may [recall them]."
21 Jt. Letter 4. Plaintiff also argues that the requested information is relevant to show "what Foster
22 Wheeler asbestos-containing equipment was aboard ships under repair." *Id.*

23 Foster Wheeler responds that it has produced "all documents it had on" the ships that
24 Plaintiff identified by name at his deposition. *Id.* It argues that Plaintiff wants Foster Wheeler "to
25 scour its records and produce all documentation" regarding "a list of ships with Foster Wheeler
26 equipment that passed through Todd Shipyard," even though he "has no evidence that he was ever
27 aboard any of those ships." *Id.* Foster Wheeler contends that the documents are not relevant to
28 whether Plaintiff worked around its boilers on the ships and that there are less intrusive and more

1 proportional methods of discovery to confirm the presence of Foster Wheeler equipment on the
2 ships. *Id.* at 4-5.

3 Considering the Rule 26 proportionality factors, the court concludes that the requested
4 documents and information are relevant and discoverable. Plaintiff testified that he saw work
5 performed on Foster Wheeler boilers on ships under repair at Todd Shipyards during the years he
6 worked there. The discovery request has been narrowly tailored to the six ships that fit these facts.
7 The discovery is relevant to whether Plaintiff was exposed to asbestos from Foster Wheeler
8 boilers. The exposure could have happened through his direct work on the boilers, or through
9 being in the area when repairs were made. The discovery could also corroborate that Foster
10 Wheeler boilers contained asbestos during the relevant timeframe. Additionally, Plaintiff has not
11 yet completed his deposition; discovery regarding ships under repair at Todd Shipyards may help
12 Plaintiff identify the ships he worked on or that underwent boiler repair while he was in the area.
13 The parties did not identify any other way for Plaintiff to obtain this information. Moreover,
14 Foster Wheeler has not shown that the burden or expense of the discovery outweighs its likely
15 benefit. Despite Foster Wheeler’s reference to “scouring its records,” it does not contend that the
16 requested discovery is burdensome or offer any details about responding to the discovery.
17 Asbestos litigation has been part of the American legal landscape for the better part of a century
18 and has necessitated research about products and exposures over many decades. Given the
19 absence of any specific burden identified by Foster Wheeler, the court suspects that responding to
20 Plaintiff’s discovery would not be unduly burdensome. Accordingly, Plaintiff’s motion to compel
21 is granted.

22 **IV. CONCLUSION**

23 Plaintiff’s motion to compel is granted. Foster Wheeler shall produce the requested
24 documents within 10 days of the days of this order.

25 **IT IS SO ORDERED.**

26 Dated: August 29, 2024

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Donna M. Ryu
Judge
Chief Magistrate Judge

