

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

THE WEITZ COMPANY, LLC., an)
Iowa limited liability)
company,)
))
Plaintiff,)
))
v.)
))
ALBERICI CONSTRUCTORS, INC.,)
a Missouri corporation; and)
TRAVELERS CASUALTY & SURETY)
COMPANY OF AMERICA,)
))
Defendants and)
Third-Party Plaintiffs,)
))
v.)
))
AMBASSADOR STEEL CORPORATION, an)
Iowa corporation,)
))
Third-Party Defendant.)
_____)

8:08CV199

ORDER

This matter is before the Court on defendant/third-party plaintiff Alberici Constructors, Inc.'s ("Alberici") cross-motion to disqualify Woods & Aitken as counsel for plaintiff (Filing No. 137), and plaintiff The Weitz Company, LLC's ("Weitz") motion to file under seal (Filing No. 142). Upon review of the motions, the parties' briefs, evidentiary submissions, and the applicable law, the Court finds Alberici's cross-motion to disqualify Woods & Aitken as counsel for plaintiff should be denied, and Weitz's motion to file under seal should be denied as moot.

1. Alberici's cross-motion to disqualify Woods & Aitken as counsel for plaintiff (Filing No. 137)

Alberici moves to disqualify Woods & Aitken, LLP as Weitz's counsel on the basis that Woods & Aitken has a conflict of interest. In support of the motion, Alberici argues (1) Woods & Aitken currently represents Alberici in an unrelated matter, (2) Woods & Aitken previously represented Alberici in a matter that was the same or substantially related to this case, (3) Woods & Aitken signed a disclosure statement that precludes its representation of Weitz in this matter, and/or (4) Weitz will not be prejudiced by disqualification.

The Court finds the motion to disqualify should be denied at this time. Alberici is not currently a client of Woods & Aitken and was not a current client of the firm at the time Weitz retained Woods & Aitken to represent it in this matter. The firm's representation of Alberici in 2006 regarded the construction project at issue in this litigation, but under a conflict of interest analysis, the 2006 representation did not involve a matter that was the "same" or "substantially related" to this case. The disclosure form Woods & Aitken signed in connection with the 2006 representation does not support disqualification because the disclosure does not apply to situations in which Alberici is a former client of the firm. Finally, the privacy of Alberici's prior attorney/client relationship with Woods & Aitken is not threatened in this case,

and therefore, the fact that Weitz may not suffer any significant hardship by Woods & Aitken's disqualification is of minimal significance and does not support disqualification in this case.

2. Weitz's motion to file under seal (Filing No. 142)

The motion to file under seal will be denied as moot as the document has already been filed under seal.

IT IS ORDERED:

1) Alberici's cross-motion to disqualify Woods & Aitken as counsel for plaintiff (Filing No. 137) is denied; and

2) Weitz's motion to file under seal (Filing No. 142) is denied as moot.

DATED this 19th day of January, 2010.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court