

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:08cv548**

TRAVELERS INDEMNITY COMPANY)
as subrogee of THE RESIDENCES AT)
BILTMORE CONDOMINIUM HOA,)
INC.,)

Plaintiff ,)

Vs.)

DIBOCO FIRE SPRINKLERS, INC.,)

Defendant and)
Third-Party Plaintiff,)

Vs.)

ORDER

VICTAULIC COMPANY,)

Third-Party)
Defendant,)

Vs.)

ALLIED TUBE & CONDUIT,)
CORPORATION,)

Third-Party)
Defendant.)

THIS MATTER is before the court on Victaulic’s Motion to Compel. A hearing was conducted on January 22, 2010, and each discovery request which was subject of the Motion to Compel was addressed. In addition, the court addressed another discovery request which had been inadvertently omitted from both the

discovery responses and the motion to compel due to clerical error. The court will memorialize such decisions in the following Order.

ORDER

IT IS, THEREFORE, ORDERED that Victaulic's Motion to Compel (#41) is ALLOWED, as follows:

A. Interrogatories:

1. Resolved.
2. Resolved.
3. Resolved.
4. Resolved upon agreement of parties placed in record: Allied waives objections and affirms absence of responsive information. Allied will provide privilege log in the future if it discovers privileged documents, and will otherwise supplement.
5. Allied will produce along with expert report. Inasmuch as expert deadline has run, objections overruled, and Allied to provide all photos.
6. Objection overruled, Allied to answer.
7. Objection overruled, Allied to answer in accordance with definitions at page 3, ¶ 10(a).
8. Resolved upon agreement of parties placed in record: Allied waives objections and affirms absence of responsive information. Allied will provide privilege log in the future if it discovers

privileged documents, and will otherwise supplement.

9. Resolved upon agreement of parties placed in record: Allied waives objections and affirms absence of responsive information. Allied will provide privilege log in the future if it discovers privileged documents, and will otherwise supplement.
10. Resolved upon agreement of parties placed in record: Allied waives objections and affirms absence of responsive information. Allied will provide privilege log in the future if it discovers privileged documents, and will otherwise supplement.
11. Objection overruled, Allied to answer subject to Protective Order and no production required to parties other than Victaulic. Only list of tests required, not results of tests as not sought in interrogatory.
12. Objection overruled, Allied to answer and state facts supporting defense.
13. Objection overruled, Allied to answer and state facts supporting defense.
14. Objection sustained.
15. Objection overruled, Allied to answer and state facts supporting defense.
16. Objection overruled, Allied to answer and state facts supporting defense.

17. Objection overruled, Allied to answer.
18. Objection overruled, but supplemental answer sufficient.
19. Objection overruled, but supplemental answer sufficient.
20. Objection overruled, supplement previous supplementation.
21. Objection overruled, supplement answer by stating previous formula not changed.
22. Resolved upon agreement of parties placed in record: Allied waives objections and affirms absence of responsive information. Allied will provide privilege log in the future if it discovers privileged documents, and will otherwise supplement.
23. Resolved upon agreement of parties placed in record: Allied waives objections and affirms absence of responsive information. Allied will provide privilege log in the future if it discovers privileged documents, and will otherwise supplement.
24. Objection overruled, supplement previous answer.
25. Objection overruled, supplement previous supplementation with data on or after 7/13/07.
26. Objection overruled, but answer is sufficient.

B. Requests for Production of Documents and Things

1. Resolved.
2. Resolved. All identified documents will be produced in supplemental response.

3. Resolved upon agreement of parties placed in record: Allied waives objections and affirms absence of responsive documents or things. Allied will provide privilege log in the future if it discovers privileged documents or things, and will otherwise supplement.
4. Resolved upon agreement of parties placed in record: Allied waives objections and affirms absence of responsive documents or things. Allied will provide privilege log in the future if it discovers privileged documents or things, and will otherwise supplement.
5. Objections overruled.
6. Resolved upon agreement of parties placed in record: Allied waives objections and affirms absence of responsive documents or things. Allied will provide privilege log in the future if it discovers privileged documents or things, and will otherwise supplement.
7. Objection overruled, Allied to answer in accordance with definitions at page 3, ¶ 10(a).
8. Resolved upon agreement of parties placed in record: Allied waives objections and affirms absence of responsive documents or things. Allied will provide privilege log in the future if it discovers privileged documents or things, and will otherwise

supplement.

9. Resolved upon agreement of parties placed in record: Allied waives objections and affirms absence of responsive documents or things. Allied will provide privilege log in the future if it discovers privileged documents or things, and will otherwise supplement.
10. Resolved upon agreement of parties placed in record: Allied waives objections and affirms absence of responsive documents or things. Allied will provide privilege log in the future if it discovers privileged documents or things, and will otherwise supplement.
11. Objection sustained, answer limited to definition contained in request.
12. Not raised in Motion to Compel.
13. Due with expert disclosure.
14. Due with expert disclosure.
15. Due with expert disclosure.
16. Resolved upon agreement of parties placed in record: Allied waives objections and affirms absence of responsive documents or things. Allied will provide privilege log in the future if it discovers privileged documents or things, and will otherwise supplement.

17. Resolved upon agreement of parties placed in record: Allied waives objections and affirms absence of responsive documents or things. Allied will provide privilege log in the future if it discovers privileged documents or things, and will otherwise supplement.
18. Objection overruled. Allied to explain what was done and, if a code is given, to search and report results of search.
19. Overruled in part. Allied to provide any documents construed as a complaint as defined. Objection sustained as to reports of investigation, settlements, and release agreements.
20. Objections overruled in part and sustained in part. All communications, emails, etc., concerning testing of product not created in anticipation of litigation shall be produced. Specifically, the court requires production of any tests and the results thereof that were conducted or created for product development or promotional purposes. Tests and the results thereof created by consulting litigation experts are specifically exempt, unless such reports were used for other-than litigation purposes or formed the basis of communications with customers.
21. Objections overruled in part and sustained in part. All communications, emails, etc., concerning testing of product not created in anticipation of litigation shall be produced.

Specifically, the court requires production of any tests and the results thereof that were conducted or created for product development or promotional purposes. Tests and the results thereof created by consulting litigation experts are specifically exempt, unless such reports were used for other-than litigation purposes or formed the basis of communications with customers

22. Resolved upon agreement of parties placed in record: Allied waives objections and affirms absence of responsive documents or things. Allied will provide privilege log in the future if it discovers privileged documents or things, and will otherwise supplement.
23. Resolved upon agreement of parties placed in record: Allied waives objections and affirms absence of responsive documents or things. Allied will provide privilege log in the future if it discovers privileged documents or things, and will otherwise supplement.
24. Objection overruled, but answer sufficient.
25. Objection overruled, produce pursuant to protective order and no production to other parties required.
26. Objection overruled, produce pursuant to protective order and no production to other parties required.

27. Resolved upon agreement of parties placed in record: Allied waives objections and affirms absence of responsive documents or things. Allied will provide privilege log in the future if it discovers privileged documents or things, and will otherwise supplement.
28. Resolved upon agreement of parties placed in record: Allied waives objections and affirms absence of responsive documents or things. Allied will provide privilege log in the future if it discovers privileged documents or things, and will otherwise supplement.
29. Objection overruled, but answer sufficient.
30. Objection overruled, produce documents.
31. Objection overruled, produce documents.
32. Objection overruled, but answer sufficient.
33. Objection overruled, produce documents.

All such answers, documents, and things shall be produced and/or served not later than February 5, 2010.

IT IS, THEREFORE, ORDERED that Victaulic file its Motion for Fees not later than January 29, 2010, and Allied file its response thereto not later than February 5, 2010.

Signed: January 27, 2010

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

