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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2222**

In re: Minnesota Asbestos Litigation

**Filed September 1, 2009
Affirmed
Halbrooks, Judge**

Ramsey County District Court
File No. 62-C8-94-002875

Robert E. Cattanach, Michael J. Wahoske, Colin Wicker, Dorsey & Whitney, LLP, 50 South 6th Street, Suite 1500, Minneapolis, MN 55402; and

Mark J. Peschel, Daniel E. Hintz, Johnson & Lindberg, P.A., 7900 International Drive, Suite 960, Minneapolis, MN 55425 (for appellant Bucyrus International, Inc.)

Michael S. Polk, Michael R. Strom, Shauna M. Verheyen, Sieben Polk, P.A., 1640 South Frontage Road, Suite 200, Hastings, MN 55033 (for respondent Joyce E. Rock)

Considered and decided by Halbrooks, Presiding Judge; Lansing, Judge; and Shumaker, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court order denying its motion to quash a commission issued to allow presuit discovery in an asbestos case. Because the district

court had the authority under the case-management order to allow presuit discovery, we affirm.

FACTS

Appellant Bucyrus International, Inc., a corporation headquartered in Wisconsin, employed Dona Rock from 1948 to 1951. Rock, who died of mesothelioma on February 18, 2008, may have been exposed to asbestos during his employment. Respondent Joyce E. Rock, trustee for Rock's next-of-kin, may have a claim against the unknown parties who supplied products containing asbestos to appellant during the period of Rock's employment. Respondent has not commenced an action against appellant.

In March 2008, following an *ex parte* motion by respondent, the district court issued a commission that allowed respondent to obtain discovery from appellant in Wisconsin. Pursuant to this commission, respondent sought and received a subpoena from the circuit court for Milwaukee County, Wisconsin.¹ The subpoena ordered appellant to appear for a deposition and to produce certain documents. Appellant later moved the Wisconsin circuit court to quash the subpoena based on immunity under the Wisconsin Worker's Compensation Act, Wis. Stat. §§ 102.01–.89 (2007–08). In June 2008, the Wisconsin circuit court stayed the subpoena but ordered the parties “to work in good faith to provide discoverable information and to attempt to work out any disagreements between them.”

During the pendency of these proceedings, appellant moved the district court for a protective order under Minn. R. Civ. P. 26.03 to prevent the deposition of appellant's

¹ See Wis. Stat. §§ 887.24, .26 (2007–08).

corporate representative. On August 28, 2008, the district court issued an order that denied appellant's motion but limited the scope of discovery. Appellant then challenged this order by filing petitions for a writ of prohibition and for discretionary review with this court. We denied these petitions without reaching the issue of whether presuit discovery was authorized. *In re Bucyrus Int'l, Inc.*, No. A08-1611 (Minn. App. Sept. 30, 2008) (order).

On October 13, 2008, appellant moved the district court to quash the commission and dismiss the proceedings for lack of subject-matter jurisdiction. The district court denied this motion, concluding that it had "broad jurisdictional power in determining all issues relating to asbestos." This appeal follows.

D E C I S I O N

The district court "has wide discretion to issue discovery orders and, absent clear abuse of that discretion, normally its order with respect thereto will not be disturbed." *Shetka v. Kueppers, Kueppers, Von Feldt & Salmen*, 454 N.W.2d 916, 921 (Minn. 1990). Appellant contends that the district court did not have jurisdiction to issue a commission for presuit discovery. We disagree.

In 1987, the Minnesota Supreme Court appointed a judge of the district court "to hear and decide all matters, including all pretrial and trial proceedings, in all presently pending and future actions before Minnesota state [district] courts . . . that arise from or seek recovery for the manufacture, distribution, use or exposure to asbestos and asbestos-containing products." As a part of the judge's authority, the supreme court also ordered that "Case Management Orders governing all phases of pleading, discovery, motions,

settlement and trial shall be prepared[.]”² The supreme court anticipated the unique problems of asbestos-related litigation, stating that asbestos-related actions “will involve, in numerous instances, similar questions of law and fact, *problems in discovery*, theories of recovery and defense.” *In re Minn. Pers. Injury Asbestos Cases*, 481 N.W.2d 24, 26 (Minn. 1992) (emphasis added) (quotation omitted).

In 1994, the district court issued a case-management order, setting forth general discovery provisions for “all presently pending and future Minnesota Personal Injury Asbestos cases.” In January 1999, the district court amended the 1994 case-management order by modifying the form of discovery requests, the method for scheduling a trial, and the admissible evidence at trial. On November 25, 2008, the district court issued an updated case-management order. The 2008 case-management order contains identical language regarding the applicability of discovery to “all presently pending and future Minnesota Personal Injury Asbestos Cases.” Following this language, the 2008 case-management order states: “The discovery permitted includes discovery for the purpose of determining proper parties to anticipated litigation, eliminating the need for any prospective plaintiff to file a separate action for a bill of particulars.”

While the 2008 case-management order explicitly allows presuit discovery, the 1994 case-management order does not mention presuit discovery. The issue before us is whether the district court had the authority to allow presuit discovery under the 1994 case-management order. We conclude that such authority existed.

² Since the original 1987 order, the supreme court has appointed several successive judges of the district court to be responsible for asbestos litigation.

In 1987, the supreme court vested the district court with “broad managerial and substantive authority” over “all phases” of asbestos litigation. *Minn. Pers. Injury Asbestos Cases*, 481 N.W.2d at 26-27. The supreme court also recognized that discovery problems unique to asbestos litigation might arise. *Id.* This case presents such a discovery problem: the identification of potential defendants. While the 2008 case-management order explicitly resolves this discovery problem by allowing presuit discovery, we interpret the presuit-discovery language of the 2008 case-management order as a clarification, not an alteration, of the scope of discovery in the context of asbestos litigation. That is, we conclude that the district court’s authority to allow presuit discovery existed before the issuance of the 2008 case-management order. The district court therefore did not abuse its discretion in denying appellant’s October 13, 2008 motion to quash the commission.

Affirmed.