

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 17-cv-00210-RBJ

LIST INTERACTIVE, LTD. D/B/A UKNIGHT INTERACTIVE,
LEONARD S. LABRIOLA,

Plaintiffs,

v.

KNIGHTS OF COLUMBUS,
THOMAS P. SMITH, JR.,
MATTHEW A. ST. JOHN,

Defendants.

**DEFENDANT KNIGHTS OF COLUMBUS' MOTION TO QUASH AND FOR A
PROTECTIVE ORDER**

Defendant Knights of Columbus (the "Order"), through Lewis Roca Rothgerber Christie LLP, moves to quash subpoenas issued by Plaintiffs and for a protective order to prohibit discovery with respect to Plaintiffs' RICO claim and states:

Certificate of Conferral Under D.C.COLO.LCivR 7.1(a)

On Saturday, March 4, counsel for Plaintiffs sent an email stating that he intends to serve subpoenas on five entities, seeking broad information regarding the Order's insurance and financial affairs, as well as documents regarding a pending dispute with a former insurance agent. Counsel for the Order twice conferred by telephone with Plaintiffs' counsel, on March 4 and March 8, and proposed a phased discovery plan, which would delay the service of those subpoenas until after the Court has had the opportunity to address the pending motions to dismiss. Plaintiffs' counsel disagreed and insisted that the subpoenas must be served no later

than March 13, 2017. The Order proposed that Plaintiffs delay service of the subpoenas until after the Scheduling Conference, currently set for March 23, to allow the parties the opportunity to present their views on conducting discovery in phases and seek guidance from the Court. Alternatively, the Order proposed that the parties set this matter for a quick hearing to conserve resources and avoid filing a motion, as directed by this Court's Practice Standards. Plaintiffs' counsel disagreed with either proposal and stated that, absent a motion for a protective order, he will proceed to serve the subpoenas.

INTRODUCTION

During the hearing on March 2, this Court observed that this case appears to be "overly dramatized," and nothing more than a commercial case. Nevertheless, two days after the hearing, on Saturday, March 4, Plaintiffs presented broad *subpoenas duces tecum* for the Connecticut Department of Insurance which is principal regulator of the Knights of Columbus insurance division, for A.M. Best and Standard & Poor's, the principal rating agencies for the Order's insurance, and for documents and settlement papers related to an unrelated dispute between the Order and Mr. Seitz, a former insurance agent of the Order in California.

On February 27, 2017, the parties held an in-person conference under Fed. R. Civ. P. 26(f) and discussed, among other things, a proposed discovery plan under Rule 26(f)(3). The Order proposed that discovery be conducted in phases during the pendency of the Order's motion to dismiss the RICO claim. *See Home Design Servs., Inc. v. Trumble*, No. 09-CV-00964WYDCBS, 2010 WL 1435382, at *5 (D. Colo. Apr. 9, 2010) ("[L]itigator has equally important responsibilities as a case manager. For example, Rule 26(f)(3)(B) requires the parties to prepare a discovery plan that addresses 'the subjects on which discovery may be needed, when

discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues.’”). Plaintiffs disagreed. As required by Rule 26(f) and D.C.COLO.LCivR 16.2, a proposed scheduling order, including a proposed discovery plan noting the parties’ disagreement, will be submitted to the Court on March 16, 2017.

Despite the existing disagreement regarding the scope and timing of discovery, which would likely be resolved during the upcoming Scheduling Conference, Plaintiffs proceeded to notify the Order that they intend to serve subpoenas on Earl Seitz, a former insurance agent of the Order, as well as the Connecticut Department of Insurance, Standard & Poor’s, and A.M. Best. Copies of the subpoenas are attached as Exhibits A, B, C, and D.¹ Because these subpoenas implicate the Order’s confidential and proprietary information, the Order is moving to quash and for a protective order to prevent Plaintiffs from conducting broad discovery with respect to their RICO claim until and unless the Court denies Defendants’ pending motion to dismiss the RICO claim.

ARGUMENT

Under Rule 26(c), the Court may issue an order upon a showing of good cause “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c); *Flye v. Elizabeth Sch. Dist. C-1*, 2008 WL 4457844, at *1 (D. Colo. 2008). As relevant here, the Court must quash or modify a subpoena that requires disclosure of privileged or other protected matter. Fed. R. Civ. P. 45(d)(3)(A)(iii); *Broadcort Capital Corp. v. Flagler Sec., Inc.*, 149 F.R.D. 626, 628 (D. Colo. 1993). “[A] court has the power and duty to examine all appropriate issues dealing with persons affected by the subpoena.” *Id.*

¹ The fifth subpoena, to an entity called Information Design, Inc., is not subject of this dispute.

The “trial court enjoys wide discretion” in sequencing discovery; “its rulings with regard to discovery are reversed only upon a clear showing of an abuse of discretion.” *Cruden v. Bank of New York*, 957 F.2d 961, 972 (2d Cir. 1992) (affirming order phasing discovery). “Phasing discovery [in the appropriate case] is consistent with Federal Rule of Civil Procedure 1, which states that the rules ‘should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.’” *Unwired Planet, LLC v. Square, Inc.*, No. 3:13-CV-00579-RCJ, 2014 WL 1159833, at *2 (D. Nev. Mar. 17, 2014); *see also Sedona Conference Commentary on Proportionality in Electronic Discovery*, 11 Sedona Conf. J. 289, 297 (2010):

[If the litigation is in its early stages,] the court, or the parties on their own initiative, may find it appropriate to conduct discovery in phases, starting with discovery of clearly relevant information located in the most accessible and least expensive sources. Phasing discovery in this manner may allow the parties to develop the facts of the case sufficiently to determine whether, at a later date, further potentially more burdensome and expensive discovery is necessary or warranted.

I. Subpoena to Earl Seitz

Earl Seitz is a former insurance agent of the Order. Plaintiffs’ subpoena to Mr. Seitz is seeking information regarding an unrelated ongoing dispute between Mr. Seitz and the Order, in California. *See* Ex. A. This broad document request potentially implicates a number of confidential materials, including those protected by Fed. R. Evid. 408. During efforts to confer, Plaintiffs’ counsel did not articulate the relevance, under Fed. R. Civ. P. 26(b)(1), of the information Plaintiffs seek from Mr. Seitz. As the Court observed during the March 2 hearing, this case is a commercial dispute between Plaintiffs and the Order. The Order’s unrelated dispute

with a former insurance agent who is not a party to this lawsuit is wholly irrelevant to the claims and defenses in this action. Accordingly, the Order moves to quash the subpoena to Earl Seitz.

II. Subpoenas to the Connecticut Department of Insurance, Standard & Poor's, and AM Best

The subpoenas to the Connecticut Department of Insurance, Standard & Poor's and AM Best seek all submissions, communications, emails, examinations, reports, notes, and other information related to the Order from 2011 to present. The subpoenaed documents contain significant sensitive, proprietary, and confidential business and financial information of the Order. That information has no relevance to Plaintiffs' breach of contract claim, which is what this case is about. It is solely directed at Plaintiffs' RICO claim, which has no basis in fact and law, and which is the subject of the Order's pending motion to dismiss. The Order has proposed phasing the discovery to focus on Plaintiffs' contract claims until the Court has had the opportunity to address the motion to dismiss the RICO claim. Doing so would preserve significant resources and prevent waste in the event the Court grants the motion to dismiss.

III. Protective Order until this Matter can be Discussed at March 23 Scheduling Conference

In any event, given the sensitive and confidential nature of many of the documents responsive to these subpoenas, there is a need for a protective order to protect the confidentiality of these and other documents to be produced in this litigation and to prevent dissemination and use of these documents beyond this case. The Order expects that the scope of such a protective order will be discussed at the Scheduling Conference. Plaintiffs should be prevented from serving any subpoenas that implicate production of confidential information until such an order is in place.

WHEREFORE, Defendant Knights of Columbus respectfully requests that the Court quash the subpoenas attached to this Motion, issue a protective order prohibiting discovery related to the RICO claim until the motion to dismiss the RICO claim is resolved, and grant such other relief as the Court deems just.

DATED: March 10, 2017.

Respectfully submitted,

s/ Hermine Kallman

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March, 2017, a copy of the foregoing was filed with the Clerk of the Court using the CM/ECF System, which will send notification to the following:

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s/ Arlene K. Martinez

Arlene K. Martinez