


THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY
IN THE COURT OF COMMON PLEAS

BRANHAM
vs.
S. LONERGAN
ROHM & HAAS CO., et al.

DOCKETED
APR 26 2010

: TRIAL DIVISION- CIVIL
: MAY TERM, 2006
: No. 3590 (Lead Case)
:
: Control# 10033459
: Defendants Motion to Enforce
: the Case Management Order and to
: Preclude Plaintiff from Collaterally
: Attacking Epidemiology Studies
:
: Control # 10033269
: Dow Chemical Co's Motion to
: Quash Plaintiff's Subpoena
:

Braham Vs Rohm&Haas Co Etsl-ORDER



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FINDINGS and ORDER

AND NOW, this 26th day of April, 2010, these brief Findings and Order are intended to address the issues raised in Defendant Rohm & Haas' Motion to Enforce the Case Management Order and to Preclude Plaintiff from Collaterally Attacking Epidemiology Studies found under Control #10033459 and Non-Party, Dow Chemical Company's¹ Motion to Quash Plaintiff's Subpoena found under Control # 10033269.

The focus of both Motions concern the Plaintiff's attempt to take the deposition of a representative of Rohm and Haas/Dow for the purpose of securing trial testimony on the issue of how certain epidemiological studies were conducted.

Dow's argument that it is not subject to the Subpoena power of the Court is misplaced as it clearly is a corporate resident of this County as it succeeded to the prominent corporate presence of Rohm and Haas which had been acquired by Dow.

Dow's Motion to Quash the Subpoena on this basis and on the other asserted

1. Dow Chemical Company now owns Rohm & Haas and is not a Defendant in this action. This current ownership creates an ostensible standing to lodge an objection to the Subpoena

bases is denied.

The gravamen of Rohm and Haas' Motion is its objection to Plaintiff's decision to conduct a trial deposition of a fact witness in advance of the trial. In reaching its conclusion which follows below, this Court considers the following facts which are relevant hereto.

This Court has conducted extensive "Frye" Motions during which time there was ample opportunity to be exposed to the various scientific theories of both sides and to be exposed to the evidentiary basis of these theories. This Court further had the benefit of very competent legal memoranda with voluminous supporting scientific documentation, which allows this Court to anticipate the issues and arguments to be advanced during the upcoming trial.

Defendant Rohm and Haas has manifested its intent to present evidence that would have the effect of contradicting Plaintiff's evidence which is offered to show that there is a significant correlation between exposure to vinyl chloride chloride and brain cancer. The Defendants have relied upon the Mundt Study in the past and will use the Study during the course of this litigation to advance this proposition.

Plaintiff seeks to depose the corporate representatives from Rohm and Haas and/or Dow having certain knowledge of the statistical data which was supplied to the persons conducting the Mundt Study. The asserted purpose for this is to allow Defendant's Experts to be effectively cross-examined concerning their position, that there is either a weakened and or insignificant correlation between vinyl chloride exposure and the Plaintiff's brain cancer.

Defendant's various arguments to the contrary, notwithstanding this request by Plaintiff, would be permitted at trial if the circumstances were obtained and the request to do it in the form of a trial deposition is also permitted. Given the complexity of the upcoming trial such a methodology is considered to be judicially advantageous and expeditious. To deprive Plaintiff of this would prevent a vigorous advocacy and deny Plaintiff the right of cross-examination.

The argument that this falls into a case management enforcement issue is unavailing as this is a trial management issue.

The further argument that this is somehow a prohibited collateral attack upon epidemiological studies finds no purchase here as these Defendants provided some of the information upon which these studies were founded and clearly Plaintiff has raised a valid issue concerning the data supplied upon which the studies conclusions were in part based. Depriving the Plaintiff of the ability to question the correctness or the completeness of the information supplied by the party/non-party motioning here, has no basis in fact or in law in this Commonwealth.

Therefore, Defendant Rohm and Haas' Motion is denied as is non-party Dow's Motion to Quash.

A Corporate representative shall be locally produced within fifteen (15) days for the purpose described in Plaintiff's instant Subpoena as found in Exhibit B to Plaintiff's Response to the Motion herein.

BY THE COURT:


ALLAN L. TERESHKO, J.

April 26, 2010
DATE

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PURSUANT TO Pa.R.C.P. 236(b)

APR 26 2010

FIRST JUDICIAL DISTRICT OF PA
USER I.D.: SFC

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