

STATE OF NORTH CAROLINA
GASTON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13 CVS 1686

DSM DYNEEMA, LLC,
Plaintiff,

v.

JAMES THAGARD, Ph.D.;
HONEYWELL SPECIALTY
MATERIALS, LLC; HONEYWELL
ADVANCED COMPOSITES, INC.; and
HONEYWELL INTERNATIONAL, INC.,
Defendants.

**ORDER ON HONEYWELL'S
MOTION TO COMPEL AND DSM'S
MOTION TO AMEND CMO
DEADLINES**

1. **THIS MATTER** is before the Court upon (i) Defendants Honeywell Specialty Materials, LLC, Honeywell Advanced Composites, Inc., and Honeywell International, Inc.'s (collectively, "Honeywell") Motion to Compel Responses to Honeywell's First Set of Requests for Production (the "Motion to Compel"), (ii) Plaintiff DSM Dyneema, LLC's ("DSM") Status Report and Motion to Amend CMO Deadlines (the "Motion to Amend CMO"), (iii) Honeywell's Letter to the Court (the "Honeywell Letter"), and (iv) Defendant James Thagard, Ph.D's ("Dr. Thagard") Letter to the Court (the "Thagard Letter") (collectively, the "Pending Matters") in the above-captioned case. Having considered the Pending Matters and other related submissions, the Court hereby **GRANTS** the Motion to Compel and **ORDERS** as follows.

2. Honeywell's discovery requests that are the subject of the Motion to Compel (the "Discovery Requests") were first served on April 21, 2014, nearly two years ago. Honeywell filed its Motion to Compel on December 8, 2015, and after full briefing on the Motion by the parties, the Court held a hearing on the Motion on February 8, 2016.

3. DSM has not argued at any time that Honeywell is not entitled to receive the documents Honeywell has requested in its Discovery Requests. At the time Honeywell filed its

Motion to Compel on December 8, 2015, Honeywell reported that DSM had produced 75,393 pages of responsive documents. As of the date of DSM's response to the Motion to Compel on January 6, 2016, DSM reported that it had produced 172,087 pages of responsive documents. DSM reported at the February 8 hearing that DSM had produced 356,570 pages of responsive documents and that only a "couple of hundred" responsive documents retained in the United States were left to produce. DSM also reported at the February 8 hearing that it had located seven to eleven scientist custodians in the Netherlands who possessed a substantial number of documents that were potentially responsive to Honeywell's requests. DSM advised, however, that it would be necessary to participate in a lengthy regulatory process in the Netherlands to be able to compile and produce the documents in the United States.

4. Based on the Motion, the briefs, and the representations of counsel at the February 8 hearing, the Court indicated at the hearing its intention to grant the Motion and made oral rulings, memorialized in a Scheduling Order dated February 8, 2016, to assist the Court in setting a deadline for DSM's production of responsive documents and setting deadlines for remaining activity in the case. The Court specifically ordered the parties in the February 8 Scheduling Order to meet, confer, and submit to the Court a joint status report and motion to amend case management order no later than February 22, 2016. The Court directed that the report and motion contain (i) Plaintiff's good faith estimate of the date by which Plaintiff will produce all documents from Plaintiff's affiliated entities in the Netherlands that are responsive to Defendants' Discovery Requests in this matter, and (ii) proposed deadlines for completion of fact discovery, mediation, all expert discovery, and filing of post-discovery dispositive motions.

5. On February 22, DSM filed its Motion to Amend CMO, and Honeywell and Dr. Thagard filed their respective Letters. DSM indicated in the Motion to Amend CMO that it was

mistaken about the need for regulatory review in the Netherlands and asked the Court to permit DSM to produce all remaining documents, including, in particular, those located in the Netherlands, beginning on April 29, 2016 and concluding on June 24, 2016. Defendants argued in response that, in light of DSM's dilatory tactics, DSM should not be permitted more than six weeks to complete its remaining document production. The Court held a telephone hearing and status conference concerning the Pending Matters on February 24, 2016.

6. Under Rule 37 of the North Carolina Rules of Civil Procedure, "if a party, in response to a request for inspection submitted under Rule 34, fails to permit inspection as requested, the discovering party may move for an order compelling . . . inspection in accordance with the request." N.C. R. Civ. P. 37(a)(2). Further, "[i]f the motion is granted, the court shall, after opportunity for hearing, require the party . . . whose conduct necessitated the motion . . . to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust." N.C. R. Civ. P. 37(a)(4).

7. After considering the Pending Matters, briefs, arguments of counsel, and other appropriate matters of record, the Court concludes that DSM has failed to timely produce a substantial volume of responsive documents in response to Honeywell's Discovery Requests, that Honeywell has made a proper motion to compel under N.C. R. Civ. P. 37(a)(2), and therefore that good cause exists to grant the Motion to Compel. Although lengthy motions practice reasonably delayed DSM's production of documents for a period of time, the Court finds DSM's continuing delay in its production of documents after the Court's May 12, 2015 order to be unjustified. While DSM contends that Honeywell's Motion to Compel is premature, the Court concludes, based on the evidence presented, that DSM did not have a valid basis to

delay production of the vast majority of its responsive documents and that DSM only produced the bulk of these documents at the time that it did because Honeywell filed the Motion to Compel on December 8, 2015.

8. The Court further concludes that the additional time period that DSM seeks for the production of its responsive documents is excessive and not justified in the circumstances of this case. The Court thus will order DSM to produce all non-privileged responsive documents to Honeywell's Discovery Requests, including DSM's responsive documents in the Netherlands, no later than April 29, 2016—which is slightly over nine weeks from the date of the February 24 hearing. The Court intends this to be a firm deadline and will only extend the deadline for good cause shown through a motion well supported with evidence-based affidavits.

9. Based on the foregoing, including its review of the record and the arguments of counsel, the Court further concludes, in the exercise of its discretion, that DSM's opposition to the Motion to Compel was not substantially justified under Rule 37(a)(4), in particular because DSM has acknowledged that DSM is obligated to produce the documents sought in the Motion to Compel and because DSM has offered no valid reason or excuse for its failure to produce these documents within the time periods provided by the North Carolina Rules of Civil Procedure or as otherwise agreed by the parties. In addition, the Court does not find any other circumstances that would make an award of expenses unjust on the facts of record in this matter. Accordingly, the Court concludes that Honeywell should be permitted to recover its reasonable expenses, including attorney's fees, incurred in obtaining this Order.

10. As requested in the Court's February 8 Scheduling Order, DSM, Honeywell, and Dr. Thagard have each tendered proposed changes to the CMO. Honeywell and DSM each propose that fact discovery conclude on January 4, 2017. Dr. Thagard proposes an earlier fact discovery

deadline—September 9, 2016. The parties’ respective proposals involve similar time periods for post-fact discovery activity, with Honeywell and DSM proposing a dispositive motion deadline of May 29, 2017 and Dr. Thagard suggesting February 6, 2017 as an alternative. While the Court understands Dr. Thagard’s desire for a shorter period for the remaining pre-trial activity in this case, the Court is persuaded that, in the circumstances present here, the longer timeframe proposed by DSM and Honeywell is necessary and appropriate.

11. **WHEREFORE**, the Court hereby **GRANTS** the Motion to Compel and memorializes its oral rulings made at the February 24 telephone hearing as follows:

- a. DSM shall make a full and complete production of all non-privileged documents responsive to Honeywell’s Discovery Requests, including but not limited to DSM’s responsive documents located in the Netherlands, no later than April 29, 2016. The Court intends this to be a firm deadline and will only extend the deadline for good cause shown through a motion well supported with evidence-based affidavits.
- b. DSM shall file with the Court weekly status reports concerning DSM’s collection and production efforts commencing on March 7, 2016 and continuing until DSM has completed its production or the Court orders otherwise.
- c. DSM shall pay to Honeywell the reasonable expenses, including attorney’s fees, Honeywell has incurred in obtaining this Order granting Honeywell’s Motion to Compel.

- d. Honeywell shall file all evidence and materials in support of Honeywell's request for reasonable expenses, including attorney's fees, no later than March 11, 2016.
- e. DSM shall file any objection to the amount of Honeywell's requested expenses, including Honeywell's attorney's fees, no later than March 25, 2016.
- f. Honeywell shall file any reply concerning its request for reasonable expenses no later than April 1, 2016.
- g. The Court will set a hearing on Honeywell's request for reasonable expenses by separate order.
- h. The Case Management Order in this case is hereby amended as follows:
 - i. The parties shall have through and including January 4, 2017 to complete fact discovery on the merits issues.
 - ii. Mediation shall be completed no later than January 4, 2017, and the Report of Mediator shall be filed no later than January 16, 2017.
 - iii. There will be a subsequent period for discovery of expert witnesses through and including April 26, 2017. Reports from retained experts are due from DSM no later than February 1, 2017, and reports from retained experts are due from Defendants no later than March 29, 2017.
 - iv. After the close of discovery, the parties shall have until May 29, 2017 to file all post-discovery dispositive motions.

- v. Except as herein amended, the Case Management Order entered in this case on August 8, 2013, and amended on January 24, 2014, March 6, 2014, May 7, 2014, and September 9, 2015, remains in effect.

SO ORDERED, this the 26th day of February, 2016.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Special Superior Court Judge
for Complex Business Cases