

DSM Dyneema, LLC v. Thagard, 2017 NCBC Order 3.

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.

**AMENDED ORDER ON
BCR 10.9 CONFERENCE AND
NOTICE OF HEARING**

1. **THIS MATTER** is before the Court pursuant to North Carolina Business Court Rule (“BCR”) 10.9 in the above-captioned case.¹

2. Plaintiff DSM Dyneema LLC (“DSM”) initiated this matter by e-mailing the Court a letter requesting a telephone conference pursuant to BCR 10.9. DSM raised two issues in its request.

3. First, DSM contends that Defendants Honeywell Specialty Materials, LLC, Honeywell Advanced Composites, Inc., and Honeywell International, Inc. (collectively, the “Honeywell Defendants”) have improperly refused to produce responsive documents in response to Request Nos. 10, 22, 23, 24, 27, 39 in DSM’s Fifth Set of Requests for Production, and Request Nos. 7, 17, 22, 23, 24, 25, 29, 32,

¹ This Amended Order on BCR 10.9 Conference and Notice of Hearing corrects paragraph 8(c) to state that the Spreadsheet Issue relates to “Spectra Shield 5231® and Spectra Shield® 3136.” The Court’s Order dated February 2, 2017 incorrectly stated that relevant products were “Spectra Shield® 5231 and Spectra Shield® 4232.”

33, 34, 41, 42 in DSM's Sixth Set of Requests for Production (the "Disputed Discovery Requests") (more broadly, the "Production Dispute").

4. Second, DSM contends that it should be permitted to depose Defendant James Thagard ("Thagard") for two seven-hour days, rather than a single seven-hour day as contemplated under BCR 10.7(a). Thagard's counsel has refused DSM's request (the "Deposition Dispute") (collectively with the Production Dispute, "DSM's BCR 10.9 Requests" or "Requests").

5. After receiving and reviewing the Honeywell Defendants' and Thagard's respective letters in response to DSM's BCR 10.9 Requests, and the supplemental materials filed in support of and in opposition to the Requests, the Court convened a telephone conference on February 1, 2017, at which all parties were represented by counsel.

6. "Under the rules governing discovery, a party may obtain discovery concerning any unprivileged matter as long as relevant to the pending action and reasonably calculated to lead to the discovery of admissible evidence." *Wagoner v. Elkin City School Bd. of Educ.*, 113 N.C. App. 579, 585, 440 S.E.2d 119, 123 (1994) (citing N.C. R. Civ. P. 26(b)). "During discovery, relevance is broadly construed 'to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case.'" *Mainstreet Collection, Inc. v. Kirkland's Inc.*, 270 F.R.D. 238, 240 (E.D.N.C. 2010) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)). The burden of showing that the discovery is not relevant falls on the party resisting discovery. *See Smithfield Bus.*

Park, LLC v. SLR Int'l Corp., No. 5:12-CV-262-F, 2014 U.S. Dist. LEXIS 110535, at *7 (E.D.N.C. Aug. 11, 2014). Nevertheless, a party seeking discovery is “not entitled to a fishing expedition to locate it.” *Dworsky v. Travelers Ins. Co.*, 49 N.C. App. 446, 448, 271 S.E.2d 522, 524 (1980). Ultimately, the decision “is within the trial court’s sound discretion[.]” *Wagoner*, 113 N.C. App. at 585, 440 S.E.2d at 123; *see also Hudson v. Hudson*, 34 N.C. App. 144, 145, 237 S.E.2d 479, 480 (1977).

7. The Court may extend the deposition period of seven hours of on-the-record time for good cause. BCR 10.7(a); *see also* N.C. R. Civ. P. 30(b)(3); Fed. R. Civ. P. 30(d), advisory committee’s note on 2000 amendments. Rule 10.7(a) provides a default rule for all depositions, but the trial court has “broad discretion to set the length of depositions appropriate to the circumstances of the case” as it does for other determinations concerning the scope of discovery. *Arista Records LLC v. Lime Group, LLC*, No. 06 Civ. 5936, 2008 U.S. Dist. LEXIS 31269, at *1–2 (S.D.N.Y. Apr. 16, 2008) (permitting an additional half-day of questioning of witness, who was a central figure “in a case of this magnitude”); *see also Hudson*, 34 N.C. App. at 145, 237 S.E.2d at 480 (1977) (“It is a general rule that orders regarding matters of discovery are within the discretion of the trial court and will not be upset on appeal absent a showing of abuse of discretion.”)

8. **WHEREFORE**, based on the Court’s review of the materials submitted by the parties and the arguments of counsel at the BCR 10.9 conference, the Court hereby memorializes its oral ruling at the BCR 10.9 conference and, in the exercise

of its discretion and based on the current record before the Court, **CONCLUDES** and **ORDERS** as follows:

- a. The Court is not persuaded that that the Disputed Discovery Requests seek information relevant to the subject matter involved in this action and therefore will not compel the Honeywell Defendants to produce documents in response to the Disputed Discovery Requests to the extent the Disputed Discovery Requests seek documents that do not concern or relate to the Honeywell Defendants' Enhanced Combat Helmet ("ECH").
- b. The Court concludes that good cause exists to permit a deposition of Thagard in excess of the seven-hour time limit in BCR 10.7(a) and will therefore permit DSM to depose Thagard for up to two seven-hour days, provided, however, that (i) the deposition shall occur on two consecutive calendar days and (ii) the deposition shall total no more than fourteen hours of on-the-record time.
- c. DSM contended in the BCR 10.9 conference (but not in its letter submission) that the Honeywell Defendants produced a spreadsheet related to revenues from Spectra Shield® 5231 and Spectra Shield® 3136 that was incomplete (the "Spreadsheet Issue"). The Court therefore orders DSM and the Honeywell Defendants to meet and confer no later than February 14, 2017 to attempt to resolve the Spreadsheet Issue. In the event these parties are unable to reach an agreement concerning the Spreadsheet Issue, the Court shall convene a telephone

hearing on February 15, 2017, and, in connection with that hearing, these parties shall submit statements of no more than seven hundred words in support of their respective positions on the Spreadsheet Issue no later than 1:30 PM on February 14, 2017.

9. **TAKE NOTICE** that a telephone hearing on the Spreadsheet Issue in the above-captioned matter is hereby scheduled for Wednesday, February 15, 2017 at 1:30 PM. If the parties reach agreement concerning the Spreadsheet Issue, the parties shall promptly notify the Court by e-mail. The Court intends to cancel the telephone hearing in the event the parties reach agreement concerning the Spreadsheet Issue.

SO ORDERED, this the 6th day of February, 2017.

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