UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

TG PLASTICS TRADING, CO., d/b/a NATIONAL PLASTICS TRADING, CO.	:	
v.	:	C.A. No. 09-336M
TORAY PLASTICS	:	

MEMORANDUM AND ORDER

Pending before me for determination (28 U.S.C. § 636(b)(1)(A); LR Cv 72) is Defendant's Motion to Compel Responses to its Third Request for Production of Documents. (Document No. 64). Plaintiff opposes the Motion. (Document No. 71). For the reasons discussed below, Defendant's Motion is DENIED.

Background

In October 2007, the parties entered into a Settlement Agreement which resolved the claims and counterclaims asserted by them in the case of Toray Plastics (America), Inc. v. TG Plastics Trading Co., Inc. d/b/a Nat'l Plastics Trading Co., et al., C.A. No. 06-219ML (D.R.I.). On July 29, 2009, Plaintiff initiated this action alleging that Defendant had breached the Settlement Agreement by (1) refusing or failing to exclusively sell to it "one hundred percent (100%) of all scrap plastic, other scrap, second quality materials, downgraded materials, recyclable materials not reused internally and aged film;" and (2) failing to comply with Plaintiff's request for the documentation necessary to conduct an audit pursuant to the terms of the Settlement Agreement. (Document No. 1). Although highly detailed in many respects, the Settlement Agreement does not specifically define the scope of the terms "scrap plastic, other scrap, second quality materials, downgraded

materials, recyclable materials not reused internally and aged film." The Settlement Agreement also fails to define the permissible scope of the annual audit provided for by the Agreement.

Discussion

The scope of discovery is governed by Fed. R. Civ. P. 26(b)(1) which provides that "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense." "Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Id. In addition, the scope of discovery is subject to the limitations set forth in Fed. R. Civ. P. 26(b)(2)(C) such as proportionality and duplication.

In Request No. 1, Defendant seeks production of "[a]ll documents presented to the arbitrator by any party in the arbitration between National Plastics and Fognani & Faught, PLLC."[1] Plaintiff objects, arguing that the requested documents are irrelevant and/or privileged.

The law firm of Fognani & Faught represented Plaintiff during the 2006 litigation and at the time the Settlement Agreement was reached which resolved the prior suit and is the subject of this suit. In 2008, Fognani & Faught commenced an action against Plaintiff for over $100,000.00 in unpaid and disputed legal fees. The fee dispute was resolved in Plaintiff's favor by arbitration before the Colorado Bar Association Legal Fee Arbitration Committee on December 12, 2008.[2] Fognani & Faught is not representing Plaintiff in the instant action.

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[1] The parties have resolved their dispute as to Request No. 2 so only Request No. 1 remains in dispute.

[2] Plaintiff has produced the Committee's procedural rules which provide for confidentiality as to matters related to the fee dispute. (See Document No. 71-2 at p. 1 and No. 71-3 at pp. 1-4).

This case centers on the interpretation of certain terms in the 2007 Settlement Agreement. While Defendant recognizes that the 2008 arbitration was about a fee dispute, it speculates that "there may also have been a dispute concerning the legal services rendered by the law firm to [Plaintiff] concerning the negotiation of the Settlement Agreement." (Document No. 64 at p. 2). Defendant offers no evidence in support of its assertion and posits that "[t]he only way to know is to review the documents provided to the arbitrator by [Plaintiff]." Id. Thus, Defendant argues that since "the requested documents may lead to the discovery of admissible evidence [,they] should be produced." Id.[3]

Plaintiff counters with the Sworn Declaration of its CEO who testifies that he negotiated the Settlement Agreement on behalf of Plaintiff and that the subsequent fee dispute arose from Plaintiff's belief that Fognani & Faught's "fees were unnecessarily and inappropriately high as a result of litigation strategy that [Fognani & Faught] suggested and employed." (Document No. 73-1 at p. 3). He also specifies that Plaintiff did not contend in the fee arbitration that Fognani & Faught "provided inadequate or deficient legal services concerning the negotiation or drafting of the Settlement Agreement." Id.

After reviewing the parties' submissions and applying the relevance standard set forth in Rule 26(b), I conclude that Request No. 1 seeking "all documents" presented to the arbitrator in the fee dispute arbitration is overly broad and not "reasonably calculated to lead to the discovery of admissible evidence" as required by Rule 26(b)(1), Fed. R. Civ. P. In addition, there are significant

[3] Under Rule 26(b)(1), Fed. R. Civ. P., the relevance standard is not whether discovery "may" lead to admissible evidence but rather whether it "appears reasonably calculated to do so."

policy reasons counseling against broad discovery of matters submitted in a confidential bar-sponsored mechanism to resolve attorney-client fee disputes. If such matters were discoverable by an adversary, a client who wished to challenge his lawyer's fee would have to consider the risk of waiving privilege or otherwise suffering prejudice in ancillary litigation by pursuing a fee challenge. Such a conundrum would necessarily chill a client's willingness to dispute a lawyer's fee. Cf. Siedle v. Putnam Inv., Inc., 147 F.3d 7 (1st Cir. 1998) (requiring continued sealing of privileged documents filed in adversarial litigation between an attorney and former client).

For the foregoing reasons, Defendant's Motion to Compel (Document No. 64) is DENIED.

SO ORDERED

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
January 10, 2012