



Weitz & Luxenberg apparently agrees to produce the missing materials, except with regard to accompanying non-party affidavits. Weitz takes the position that these affidavits, which are largely from other workers (not necessarily co-workers of plaintiff) who worked at the same facilities as plaintiff, are confidential and are work product. These affidavits are offered as proof of exposure by the plaintiff to the products of the bankrupt entity. They are highly relevant to Georgia Pacific's defense.

First, the fact that a document may be "confidential" does not convert it into a privileged document. Confidential documents are often produced in litigation, sometimes subject to a protective order. The affidavits here are not of a sensitive nature and require no such protection. Second, work product is only a qualified privilege. However, any privilege that might have attached to these non-party affidavits at the time they were prepared was vitiated once they were sent on, with the POCs, to the bankruptcy trust.

Weitz further argues that these affidavits are exempt from production because they are part of "settlement negotiations." I disagree. The rule regarding non disclosure of materials offered in attempt to settle a claim is not intended to prevent co-defendants from using sworn testimony of non-parties that go to the heart of proof of exposure. The purpose of that rule is to prevent a party who attempts to settle a claim by making an offer (or demand) from having that number (or accompanying statement) used against it at trial as evidence of the true value of the claim. Nothing of that sort is at stake here. Weitz cannot, on the one hand, use these documents as a "sword" to obtain money from a bankrupt entity and then try to shield it from co-defendants who are required to put in proof at trial of said exposure to reduce their own liability. To the extent that Weitz argues that Georgia Pacific has the plaintiff's own testimony regarding exposure and does not "need" the affidavits to make its case, it is not Weitz's decision as to how Georgia Pacific tries its case or what proofs it should use. Georgia Pacific is entitled to all the relevant evidence and may try its case relying on the evidence it chooses to use.

(1) Plaintiffs shall immediately produce:

- (a) complete, unredacted claims forms filed by or on behalf of plaintiffs with any bankrupt entity's trust, except that plaintiffs may redact the trust claim identification number and the amount of settlement, if any;
- (b) all materials submitted by or on behalf of plaintiffs with a bankrupt entity's trust, including, but not limited to, affidavits (including those signed by plaintiffs, plaintiffs' family members, or a non-party), sworn statements, proofs of diagnosis, extraordinary claim certificates, and signature/certification pages. These materials shall be produced in a manner that sufficiently identifies which documents correspond to which trusts;
- (c) to the extent plaintiffs contend that they have previously provided Georgia-Pacific with some or all of the materials described in paragraph 1(b), a list of all materials submitted by or on behalf of each plaintiff with respect to each trust with sufficient detail to enable Georgia-Pacific to readily identify the materials and their relationship to a given trust;

- (d) to the extent plaintiffs provide Georgia-Pacific with a list in accordance with paragraph 1(c), plaintiffs shall be deemed to have stipulated that any corresponding documents previously provided to Georgia-Pacific are true and accurate copies of the documents submitted to the respective trusts; and
- (e) to the extent plaintiffs filed claims with a bankrupt entity's trust electronically, all electronic filer agreements and attorney certifications unless another accommodation can be reached that would address Georgia Pacific's concerns regarding admissibility.

Dated: June 25, 2011

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Laraine Pacheco, Special Master