

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARINER HEALTH CARE, INC.,	:	CIVIL ACTION
CORNERSTONE HEALTH MANAGEMENT	:	
COMPANY, MARINER HEALTH CARE OF	:	
NASHVILLE, INC., AND LIVING CENTERS	:	
OF TEXAS, INC.	:	
	:	
	:	
V.	:	NO. 04-MC-00180
	:	
	:	
INDEMNITY INSURANCE COMPANY OF	:	
NORTH AMERICA, INC.	:	

SURRICK, J.

JANUARY 7, 2005

MEMORANDUM & ORDER

Presently before the Court is non-parties' ACE American Insurance Co., INA Holdings Corp., and ACE US Holdings, Inc.'s (together the "ACE entities") Motion Pursuant to Fed. R. Civ. P. 45 To Quash The Subpoena Issued To It By Mariner Health Care, Inc., Cornerstone Health Management Company, Mariner Health Care Of Nashville, Inc. And Living Centers Of Texas, Inc. (Doc. Nos. 1, 2, 3, 4), and the Response of Plaintiffs' Mariner Healthcare Inc., Cornerstone Health Management Company, Mariner Health Care of Nashville, Inc., and Living Centers of Texas, Inc. ("Mariner"). (Doc. No. 5.) For the following reasons, the instant Motion will be granted in part and denied in part.

I. Factual Background

This is an insurance coverage case in which Mariner seeks from the ACE entities documents that may be relevant to a lawsuit pending in the United States District Court of the Eastern District of Texas, *Mariner v. Indem. Ins. Co., Inc.*, Civ. A. No. 03-CV-0279, (E.D. Tex. filed May 8, 2003). (Doc. No. 5 at 1.) The dispute underlying the motions involves insurance

coverage for losses sustained by Mariner at eight of its nursing homes in southeast Texas as a result of Tropical Storm Allison and its attendant flooding in June 2001. (*Id.* at 2.) Mariner alleges that its excess insurer, Defendant Indemnity Insurance Company of North America (“IINA”), paid only a fraction of Mariner’s claim, contrary to the terms of IINA’s policy and in bad faith. (*Id.*) Mariner asserts that an important element of its claim is the property insurance policy purchased by Mariner to cover the damaged facilities and the interpretation thereof, including certain exclusions allegedly drafted by one or more of the ACE entities. (*Id.*) Mariner asserts that one or more of the ACE entities employ the underwriters of that policy and possess critical information pertaining to the resolution of this case. (*Id.*) Mariner sought to obtain this information through subpoenas duces tecum issued by the United States District Court for the Eastern District of Pennsylvania on September 22, 2004. (Doc. No. 1 Ex. A.)¹ In response, the ACE entities filed identical Motions to quash the subpoenas on October 12, 2004. (Doc. Nos. 1, 2, 3, 4.) The ACE entities allege that the subpoenas impose an undue burden upon them and does not allow reasonable time for compliance. (Doc. No. 1 at 3.)

II. Legal Standard

Federal Rule of Civil Procedure 45(c)(3)(A) provides:

On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance; [or]
- ...
- (iv) subjects a person to undue burden.

Fed. R. Civ. P. 45(c)(3)(A). “A District Court may quash or modify a subpoena if it finds that

¹When citing Document Number 1, we also refer to Document Numbers 2, 3 and 4 which are identical Motions filed by each recipient of the subpoenas.

the movant has met its heavy burden of establishing that compliance with the subpoena would be ‘unreasonable or oppressive.’” *Composition Roofers Union Local 30 Welfare Trust Fund v. Graveley Roofing Enter., Inc.*, 160 F.R.D. 70, 72 (E.D. Pa. 1995) (quoting *Heat & Control, Inc. v. Hester Indus.*, 785 F.2d 1017, 1023 (Fed. Cir. 1986)).

III. Discussion

The ACE entities assert that the subpoenas impose an undue burden because the document requests seek “all documents from the office files, email files or computer files” of sixteen (16) individuals without specifying any temporal or subject matter limitation. (*See* Doc. No. 1 Ex. A.) The ACE entities also assert that the subpoenas seek “all documents that constitute or reference communications between ACE USA, Inc.” and other third parties without any temporal limitation. (*Id.*) Mariner responds that its request ““for all of the office files of the sixteen (16) individuals only seeks information [regarding] Mariner’s claim.” (Doc. No. 5 at 7.) The ACE entities respond that the request as drafted in the subpoenas, however, is not so worded. (Doc. No. 7 at 5.) In response to the ACE entities’ argument that the subpoenas contains no temporal limitation, Mariner asserts, “[l]ogic dictates that no documents related to Mariner’s claim could pre-exist Tropical Storm Allison in June 2001. The narrow temporal limitation on these requests is clear on the face of the subpoena[s].” (Doc. No. 5 at 8.) The ACE entities respond, “to the extent that Mariner claims for the first time in its [Response] that its requests for communications between Movants and third parties are limited to the period June 2001 - present, the requests as they appear in the subpoenas contain no such express limitation.” (Doc. No. 7 at 6.)

“To establish undue burden, the movant must show that compliance with the subpoenas

would be unreasonable and oppressive.” *Owens v. QVC*, 221 F.R.D. 430, 432 (E.D. Pa. 2004) (quoting *Composition Roofers Union*, 160 F.R.D. at 73). That burden must be a *heavy* burden. *Composition Roofers Union*, 160 F.R.D. at 72. In the instant case, the ACE entities argue that the subpoenas place an undue burden by its vague wording. Mariner’s counsel argues that “any confusion . . . could have been resolved by a conference with Mariner’s counsel as is mandated by the local rule.”² (Doc. No. 5 at 7.)

Federal Rule of Civil Procedure 45 allows us to modify a subpoena. Other than clarifying subject matter and temporal guidelines, the ACE entities have presented no real evidence that

²Mariner refers to Eastern District of Pennsylvania Local Rule 26.1(f), which provides: “[n]o motion or other application pursuant to the Federal Rules of Civil Procedure governing discovery or pursuant to this rule shall be made unless it contains a certification of counsel that the parties after reasonable effort, are unable to resolve the dispute.” E.D. Pa. Local Rule 26.1(f). The ACE entities argue that the Rule does not apply because it governs discovery disputes between “parties,” and that the ACE entities are not parties. While the ACE entities may technically be correct, the Eastern District of Pennsylvania has time and again explained the purpose behind the rule: to preserve scarce judicial resources. In *Crown Cork & Seal Co. v. Chemed Corp.*, 101 F.R.D. 105 (E.D. Pa. 1984), the court explained, “[t]his rule is not a formalistic requirement developed by the court to increase the volume of each discovery motion filed. It was intended to reduce the unnecessary burden on the court and added expense to the parties caused by the expectation that the court would interject itself in minor pretrial skirmishes.” *Id.* at 106. In *Riggins v. Stokuis Multi-Ton Corp.*, No. 91-CV-7157, 1992 U.S. Dist. LEXIS 19530 (E.D. Pa. Dec. 17, 1992), a motion to compel answers to interrogatories was dismissed without prejudice where parties had not made good faith efforts to resolve a dispute without the court’s aid. The court stated, “[a]s rapidly increasing dockets place ever greater demands on the resources of the court, counsel should not cry ‘Wolf!’ whenever problems arise in discovery.” *Id.* at *5. In *Dickman v. Eberly*, No. 90-CV-2076, 1991 U.S. Dist. LEXIS 139 (E.D. Pa. Jan. 4, 1991), the court stated, “[o]ne purpose of this rule is to protect the Court from unnecessary work on motions that would not have to be filed if the parties were *communicating* with each other.” *Id.* at *10. (emphasis added). We find that the intent of Rule 26.1(f) certainly compels its application to this case. Mariner has presented evidence of letters and electronic communications evincing the ACE entities’ evasiveness and refusal to communicate with Mariner. (Doc. No. 5 Exs. A, B, C, D.) If counsel had communicated prior to filing the instant Motion, Mariner would have been able to specify that it sought information post Tropical Storm Allison in 2001 and only related to Mariner’s lawsuit.

compliance with the command of the subpoenas would subject it to unreasonable or oppressive cost, labor, or inconvenience. Accordingly, we will modify the subpoenas to demand the evaluation of all requested documents after Tropical Storm Allison occurred in 2001 that are related to Mariner's claim in *Mariner v. Indemnity Ins. Co. of North America, Inc.*, Civ. A. No. 03-CV-0279 (E.D. Tex. filed May 8, 2003).

The ACE entities also argue that the subpoenas do not allow reasonable time for compliance. (Doc. No. 1 at 4.) The ACE entities received the subpoenas on September 29, 2004. (*Id.* Ex. A.) The compliance deadline was originally October 8, 2004, and was later extended by agreement to October 11, 2004. (*Id.* at 2-3.) The ACE entities argue that it could not compile and produce the amount of documents requested within the twelve (12) days permitted by the subpoenas. Now that we have narrowed the scope of the subpoenas, we find that twelve (12) days is a reasonable time period to comply with the subpoenas. We are cognizant of the fact that there is a discovery deadline in the United States District Court of the Eastern District of Texas of January 27, 2005. (Doc. No. 5 Ex. K.) Should the Eastern District of Texas extend the discovery deadline, it may grant the ACE entities more time in accordance with its Scheduling Order.

IV. Conclusion

For the foregoing reasons, the ACE entities' Motion to Quash (Doc. No. 1) will be granted in part and denied in part. We modify the subpoenas to demand that all requested documents that post-date Tropical Storm Allison in 2001 and that are related to Mariner's claim in *Mariner v. Indemnity Ins. Co. of North America, Inc.*, Civ. A. No. 03-CV-0279 (E.D. Tex. filed May 8, 2003), be produced. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARINER HEALTH CARE, INC.,	:	CIVIL ACTION
CORNERSTONE HEALTH MANAGEMENT	:	
COMPANY, MARINER HEALTH CARE OF	:	
NASHVILLE, INC., LIVING CENTERS	:	
OF TEXAS, INC.	:	
	:	
	:	
V.	:	NO: 04-MC-00180
	:	
	:	
INDEMNITY INSURANCE COMPANY OF	:	
NORTH AMERICA, INC.	:	

ORDER

AND NOW, this 7th day of January, 2005, upon consideration of non-parties ACE American Insurance Co., INA Holdings Corp., and ACE US Holdings, Inc.'s Motion Pursuant to Fed. R. Civ. P. 45 To Quash The Subpoena Issued To It By Mariner Health Care, Inc., Cornerstone Health Management Company, Mariner Health Care Of Nashville, Inc. And Living Centers Of Texas, Inc (Doc. Nos. 1, 2, 3, 4, No. 04-MC-00180), and Plaintiffs Mariner Healthcare Inc.'s Response thereto, we ORDER the instant Motion to be GRANTED in part and DENIED in part.

We modify the subpoenas to clarify its scope to demand all requested documents which post-date Tropical Storm Allison in 2001, and that are related to Mariner's claim in *Mariner v. Indemnity Ins. Co. of North America, Inc.*, Civ. A. No. 03-CV-0279,(E.D. Tex. filed May 8, 2003).

BY THE COURT:

R. Barclay Surrick, Judge

