

IN THE COURT OF COMMON PLEAS  
TUSCARAWAS COUNTY, OHIO

FILED  
COURT OF COMMON PLE.  
TUSCARAWAS COUNTY, OH  
2023 AUG 11 AM 7:57  
JEANNE M. STEPHEN  
CLERK OF COURTS

DOVER CHEMICAL CORPORATION, )  
 ) CASE NO. 2021-CV-02-0097  
 )  
 ) Plaintiff, ) JUDGE ELIZABETH L. THOMAKOS  
 )  
 ) v. ) **DEFENDANT CITY OF DOVER,**  
 ) **OHIO'S RESPONSE IN OPPOSITION**  
 ) **TO PLAINTIFF DOVER**  
 ) **CHEMICAL CORPORATION'S**  
 ) **MOTION FOR PROTECTIVE ORDER**  
 ) **RE: AEP COUNSEL SUBPOENA**  
 )  
 )

**I. INTRODUCTION**

The Court should deny Plaintiff Dover Chemical Corporation's ("DCC") Motion for Protective Order Re: AEP Counsel Subpoena (the "Motion"). DCC's Motion is nothing more than the latest frivolous filing in DCC's campaign to drag out this litigation and raise costs for Defendant City of Dover, Ohio (the "City"). DCC's Motion provides no support for its argument that the City is not entitled to the documents sought in the subpoena to Craig Carlson, American Electric Power, Inc.'s ("AEP") Assistant General Counsel.

DCC has repeatedly placed its transition from the City to AEP for DCC's electric service at the center of its defense against the City's abuse of process claim. DCC cannot now deny the City discovery directly related to DCC's defense. Further, in a continuation of DCC's dubious litigation tactics, the Motion is in direct conflict with DCC's prior representations to the Court that the non-service of notice of the AEP subpoena was somehow prejudicial to DCC.<sup>1</sup> On information and belief, the documents requested in the second AEP subpoena will expose an additional

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<sup>1</sup> The City provided a detailed explanation of the non-service of the subpoena to AEP in the City's Opposition to DCC's Motion for Protective Order Re: AEP Subpoenas. (*See* City's Opposition to DCC's Motion for Protective Order Re: AEP Subpoenas at 1-4). In short, non-service of the subpoena was simply due to an oversight at the paralegal level. The City remedied the oversight as soon as DCC raised the issue. (*See id.*)

misrepresentation to this Court that DCC did not have notice of the City's attempts to subpoena AEP for documents relevant to this litigation. Finally, DCC has again failed to comply with Ohio Rule of Civil Procedure 37(A) because it did not confer or attempt to confer with the City to resolve this issue before filing its Motion and involving the Court.<sup>2</sup> It did so despite conferring with counsel on other discovery issues less than 48 hours before filing the subject motion.<sup>3</sup>

Once again, DCC has filed a baseless motion requiring a response from the City and a ruling from the Court. This persistent and unnecessary motion practice, as well as DCC's habitual disregard for the Ohio Rules of Civil Procedure and the Court's Local Rules, continues to waste the Court's time and resources. DCC's conduct is telling of its continued abuse of process and efforts to drag out this litigation to make it as costly as possible for the City. The Court should deny DCC's Motion accordingly.

## II. LAW AND ARGUMENT

DCC's Motion has no basis in law or fact. Without providing a scintilla of support, DCC again argues that the City is on a fishing expedition. (Motion at 1). DCC's argument ignores that the City's subpoena to Mr. Carlson includes *a single request for documents that the City narrowly tailored to this litigation based on DCC's representations to the Court*. (See Motion at Appendix A). The City is seeking documents and communications between Mr. Carlson and DCC regarding this litigation because DCC has based its defense to the City's abuse of process claim entirely on DCC's alleged—but currently undocumented—efforts to transition to AEP.<sup>4</sup>

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<sup>2</sup> The record documents DCC's habitual disregard for the Ohio Rules of Civil Procedure and the Court's Local Rules. (See City's Opposition to DCC's Motion for Protective Order Re: AEP Subpoenas at 3, fn.4; City's Opposition to DCC's Motion for *In Camera* Inspection at 2-3).

<sup>3</sup> See attached Ex. A. Aug. 2, 2023 email from D. Garcia to T. Rudd. Interestingly, despite the City's counsel's offer to meet and confer on the issues presented in the email from DCC's counsel, DCC's counsel has not responded.

<sup>4</sup> Despite its defense based on its transition to AEP, DCC has not provided *any* supporting documents to the City. Tellingly, DCC continues to refuse to do so through its ongoing motion practice.

DCC cannot now plausibly state that its communications with AEP are immaterial, let alone the subject of a fishing expedition. DCC has repeatedly represented to the Court that its transition to AEP defeats the City's abuse of process claim. (See City's Opposition to DCC's Motion for Protective Order Re: AEP Subpoena at 5-6). *Notably, DCC ignores—and does not (because it cannot) attempt to refute—that it has made its transition to AEP a central issue in this litigation.* (See City's Opposition to DCC's Motion for Protective Order Re: AEP Subpoenas at 5-6).

Additionally, DCC does not present the Court with the correct standard regarding the scope of permissible discovery. DCC cites *Byrd v. Lindsay Corp.*, 9th Dist. Summit No. 29491, 2020-Ohio-3870, ¶ 13—a products liability case inapposite to the facts currently before the Court—for its assertion that “[a]lthough parties may obtain relevant information, discovery may not be used to conduct a mere fishing expedition.” (Motion at 1). DCC further states that the documents the City seeks “cannot make one fact of consequence of this case any more or less likely.” (*Id.* at 2).

As the Court is well aware, the relevancy standard in DCC's Motion is incorrect. Rule 26(B)(1) states, in pertinent part:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

Notably, DCC continues its pattern of ignoring the Ohio Rules of Civil procedure and instead presents the Court with a relevance standard that has no basis in law.

Considering the correct proportionality standard provided in Rule 26(B)(1), there can be no question that the City's narrowly tailored request for DCC's communications with AEP are

proportional to the needs of this case because DCC has repeatedly placed its alleged transition to AEP at the center of its defense to the City's abuse of process claim. The City's subpoena to obtain documents central to the claims and defenses in this litigation. The subpoena is therefore proper under the applicable standard.

Moreover, the Motion belies DCC's prior representation to the Court that non-service of the AEP subpoena was somehow prejudicial to DCC.<sup>5</sup> DCC stated, "[t]he City's failure to provide DCC with notice [of the subpoena] infringes on [Rule 45(A)(3)'s] intent to provide DCC with an opportunity to respond to the subpoena...." (DCC's Motion for Protective Order Re: AEP Subpoenas at 2-3). Through its Motion, DCC has made clear that it was well aware of the subpoena to AEP because DCC's attorneys are in direct contact with AEP. DCC's prior claim that the City somehow deprived DCC of notice of the subpoena to AEP and an opportunity to respond is demonstrably false as *DCC's attorneys unwittingly admit that they were fully aware of the City's subpoena to AEP when DCC filed its Motion for Protective Order Re: AEP Subpoena*. The Court should not tolerate DCC's continued gamesmanship and should deny DCC's Motion.

### III. CONCLUSION

DCC's latest filing is once again devoid of any support in law or fact. By filing its Motion, DCC continues its practice of presenting the Court with baseless, contradictory, and false representations. DCC's Motion is one more example of the ever-growing list of filings demonstrating DCC's continued abuse of process. Moreover, DCC fails to provide any reason—let alone any compelling reason—why the Court should prevent the City from obtaining documents from AEP relating to issues DCC has made central to its defense. DCC cannot claim that its transition to AEP defeats the City's abuse of process claim and simultaneously deny the

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<sup>5</sup> DCC did not—because it could not—explained how it was actually prejudiced. (*See* City's Opposition to DCC's Motion for Protective Order Re: AEP Subpoenas at 2-5).

City any opportunity to verify DCC's representations regarding its transition to AEP. Accordingly,  
the Court should deny DCC's Motion.

Respectfully submitted,

/s/Dolores Garcia

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 10, 2023, the foregoing document was served via

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*One of the Attorneys for Defendant  
City of Dover, Ohio*

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# EXHIBIT A

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## Garcia, Dolores

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**From:** Garcia, Dolores  
**Sent:** Wednesday, August 2, 2023 5:21 PM  
**To:** Tim  
**Subject:** RE: Dover Chemical v City of Dover

Hi Tim,

We did supplement our documents related to SSOE. Any additional documents, we will rest on our objections.

I will check in with Charlie and give you dates for the last week of August.

We are already in the process of supplementing our responses with respect to O'Meara. If following that supplementation you believe there are still issues, we can meet and confer at that time.

I am generally available tomorrow afternoon to discuss. Let me know when you are free.  
Lola

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Dolores Garcia  
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**From:** Tim <trr@braumrudd.com>  
**Sent:** Wednesday, August 2, 2023 4:57 PM  
**To:** Garcia, Dolores <dgarcia@ulmer.com>  
**Subject:** Dover Chemical v City of Dover

Lola,

I wanted to follow-up on a couple of outstanding discovery issues.

First, we have talked about this before, but this is to make one final request that the City produce all documents identified on their privilege log that were copied on SSOE.

Second, can you please give us some potential dates for us to depose Charlie Stull the last week of August?

Third, we are requesting that the City have O'Meara's phone and computer imaged and searched for responsive documents, deleted documents, etc. and that the City supplement its document production with the results of such.

I'm on the road but can be available tomorrow morning or early afternoon to discuss these issues.

Tim

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