

Konyn v. Lake Superior & Ishpeming R.R. Co.

United States District Court for the Western District of Michigan, Northern Division

February 3, 2012, Decided; February 3, 2012, Filed

Case No. 2:11-cv-51

Reporter: 2012 U.S. Dist. LEXIS 13581

JEFFREY KONYN, Plaintiff(s), v. LAKE SUPERIOR & ISHPEMING RAILROAD COMPANY, Defendant(s).

Core Terms

motion for a protective order, settlement discussions, oral argument, settlement, discover

Counsel: 2012 U.S. Dist. LEXIS 13581, *3 [*1] For Jeffrey Konyn, plaintiff: Gary Wm. Baun, Dennis M. O'Bryan, O'Bryan Baun Cohen Kuebler Karamanian, Birmingham, MI.

For Lake Superior and Ishpeming Railroad Company, defendant: Jeremy Steven Pickens, Karl A. Weber, Plunkett Cooney (Marquette), Marquette, MI.

For Facilitative Mediator, mediator: Ronald D. Keefe, Kendricks Bordeau Adamini Chilman & Greenlee PC (Mqt), Marquette, MI.

Judges: TIMOTHY P. GREELEY, UNITED STATES MAGISTRATE JUDGE, HON. GORDON J. QUIST.

Opinion by: TIMOTHY P. GREELEY

Opinion

OPINION AND ORDER

On January 31, 2012, plaintiff filed a motion for protective order relative to settlement discussions with Vanenkevort Tug & Barge, Inc. (docket #52). On February 3, 2012, defendant filed its response to plaintiff's motion for protective order (docket #59). Oral arguments were presented to the court on February 3, 2012. For the rea-

sons stated on the record and as set forth below, plaintiff's motion is granted in part and denied in part.

Defendant seeks discovery of settlement discussions between plaintiff and his employer, the "empty-chair"¹ non-party Vanenkevort Tug and Barge, Inc. The Sixth Circuit decision in *Goodyear Tire & Rubber Company v. Chiles Power Supply, Inc.*, 332 F.3d 976 (6th Cir. 2003) 2012 U.S. Dist. LEXIS 13581, *1 [*2] provides substantial guidance on the question presented. Defendant will not be permitted to discover any information protected by the attorney client privilege or the spousal privilege.² Conversations between plaintiff or plaintiff's counsel and Vanenkevort regarding negotiation of a settlement of claims plaintiff may have against Vanenkevort are protected from disclosure. See *Goodyear Tire; Grant, Konvalinka & Harrison v. USA*, 2008 U.S. Dist. LEXIS 93741, 2008 WL 4865571 (E.D. Tenn.). See also *Software Tree, LLC v. Red Hat, Inc., et al*, 2010 U.S. Dist. LEXIS 70542, 2010 WL 2788202 (E.D. Tex.), copies of which are attached.

Plaintiff is under a continuing duty to notify defendant if a settlement agreement is reached with Vanenkevort. Thereafter, defendant will be permitted to seek an order from this court seeking production of the agreement. For the foregoing reasons, plaintiff's motion for protective order relative to settlement discussions with Vanenkevort Tug & Barge, Inc., docket #52, is GRANTED in part and DENIED in part.

IT IS SO ORDERED.

Dated: February 3, 2012

/s/ TIMOTHY P. GREELEY

TIMOTHY P. GREELEY

UNITED STATES MAGISTRATE 2012 U.S. Dist. LEXIS 13581, *2 [*3] JUDGE

¹ See MCL 600.2957

² Defense counsel indicated at the oral argument he was not seeking to discover such information.