

IN THE CIRCUIT COURT OF GRANT COUNTY, WEST VIRGINIA

SHIRLEY BERGDOLL,
On behalf of JOSHUA DAVID
BERGDOLL, a Protected Person,

Plaintiff,

v.

Civil Action No.: 14-C-62
Judge Phil Jordan

POTOMAC TRUCKING AND EXCAVATING, INC, and
ANNA R. TURPIN, Individually

Defendants.

ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL

CAME THE PARTIES before the Court on January 11, 2016 to be heard in regard to Plaintiff's Motion to Compel. On December 3, 2015, the Plaintiff filed a motion to compel Defendant Potomac Trucking and Excavating, Inc. ("Potomac") to comply with her request to produce the subject Peterbilt semi-truck and trailer for inspection and other testing at the location where the truck was routinely parked and stored by Potomac – the home of its driver/employee, Douglas Wrotchford. The Plaintiff also sought to compel Defendant Potomac to produce pre- and post-trip inspection reports related to the relevant truck. On January 7, 2016, Defendant Potomac filed its Response to Plaintiff's Motion to Compel.

The Court has considered the Plaintiff's Motion and Memorandum in Support, Defendant Potomac's Response, and the arguments of counsel.

WHEREUPON, the Court finds that the Plaintiff's Motion is well-taken and is hereby **GRANTED.**

This civil action arises out of a March 7, 2014 collision that occurred on Route 28 near Petersburg, West Virginia. The Plaintiff alleges that the collision occurred when an employee of Defendant Potomac (Douglas Wratchford) was negligently and recklessly backing one of Potomac's tractors and logging trailers from the driveway of his residence onto an active highway in the dark and blocking the lanes of travel for all oncoming traffic. The Plaintiff alleges that at approximately 5:45 a.m., Plaintiff Joshua Bergdoll was on his way to work when he collided with the Peterbilt semi-truck and logging trailer that had been backed onto and was blocking his lane of travel on the roadway. There is no dispute that, at the time of the collision, Defendant Potomac routinely parked and stored the subject truck and trailer at its employee's residence overnight and over the weekends. The Defendant allowed its truck and trailer to be parked at Mr. Wratchford's home hundreds of times over a period of several years. It is also undisputed that the subject truck and trailer are now located only approximately 3 ½ miles from Mr. Wratchford's home and both (truck and trailer) are routinely driven past the location of the requested inspection site.

The Plaintiff's Complaint alleges that Defendant Potomac is vicariously liable for Mr. Bergdoll's injuries because Mr. Wratchford was acting within the course and scope of his employment at the time of the collision. The Plaintiff's Complaint further alleges that Defendant Potomac is directly liable for Mr. Bergdoll's injuries for its own negligence in permitting Mr. Wratchford to take the truck and trailer to his residence when it knew, or should have known, that Mr. Wratchford could not exit his driveway in a safe manner and without illegally blocking the active lanes of traffic on State Route 28.

The Plaintiff served Defendant Potomac with a request to inspect the truck and trailer at the residence of its employee – the location where the truck was parked and where the collision

occurred. Defendant Potomac agreed to permit (1) the inspection of the truck and tractor, and (2) agreed to allow the inspection of its employee's property. However, Potomac refused to permit the inspection of the truck and tractor to occur at the same time at its employee's residence.¹ Accordingly, the only remaining dispute for resolution by the Court is whether the Plaintiff is entitled to inspect the subject truck and trailer at Mr. Wratchford's property where the truck was routinely parked and stored and where the accident occurred and, if so, is it a "reasonable . . . manner of making the inspection and performing the related acts" to allow the plaintiff's expert to be inside the subject truck at various spots on the driveway, while Defendant's employee operates the tractor, to determine sight lines and to determine what could and could not be seen by Defendant's employee while backing the truck out of the driveway.²

The Plaintiff argues that it is exceedingly important that the inspection occur at the specified location so the truck and trailer can be evaluated in conjunction with and relation to the property where it was parked and the driveway from which it was backing. Defendant Potomac argues that it cannot be compelled to drive the truck to Mr. Wratchford's property because it could potentially result in liability "if there would be an accident going to, while at, or travelling from the inspection". (Defendant Potomac Trucking Response, at pg. 3). Additionally, Defendant Potomac argues that the plaintiff's inspection request is actually a request to create an accident recreation, which should not be permitted. Defendant Potomac argues that the Plaintiff should not be permitted to inspect its truck and trailer on Mr. Wratchford's property and suggests that the plaintiff should be required to "use a like make/model of truck and trailer that they

¹ The Court notes that counsel for Defendant Potomac Trucking and Excavation, Inc. also represents Douglas Wratchford.

² The collision which gives rise to this civil action occurred while the Defendant's employee, Douglas Wratchford, was backing, or had backed, the Defendant's tractor and trailer onto an active highway.

oversee and control to access the property to accomplish what it is they seek to do". Defendant Potomac Trucking Response, at pg. 6).

Rule 34 of the West Virginia Rules of Civil Procedure states that a party requesting an inspection of property or a tangible thing "*shall specify a reasonable time, place, and manner of making the inspection and performing the related acts*". Nonetheless, Defendant Potomac objected to the plaintiff's efforts to conduct the requested inspection at the very location where the collision occurred and where the truck and trailer were routinely parked claiming that the Rules do not permit the plaintiff to specify the location of the inspection. Clearly, the civil rules not only permit the plaintiff to specify the location, but require her to do so. This Court FINDS that the location specified by the plaintiff for the inspection of the truck and trailer is reasonable inasmuch as it is (1) where the collision occurred, (2) where Defendant Potomac parked the truck routinely, and (3) is only three-and-a-half miles from Defendant Potomac's office. Further, the Plaintiff has agreed to pay the cost of fuel and other related expenses associated with the transportation of the vehicle to Mr. Wratchford's property and arrange for traffic control with the local authorities. Inasmuch as the subject accident undisputedly occurred while the Defendant's employee was in the process of backing, or had just backed, the Defendant's truck and trailer out of the employees driveway and a material issue in this civil action is what the Defendant's employee, Douglas Wratchford, could or could not see while backing; it is the opinion of this Court that the plaintiff's inspection of Defendant's truck and trailer at the Defendant's employee's driveway and having the truck and trailer backed out of the driveway to determine the driver's line of sight is within the scope of Rule 34 of the West Virginia Rules of Civil Procedure. The Court FINDS that the location at which the plaintiff specified for conducting the inspection is reasonable, as is the proposed manner of making the inspection and performing the

related acts; therefore, the inspection requested by the Plaintiff is reasonable, appropriate, and within what is permitted by Rule 34 of the West Virginia Rules of Civil Procedure.

WHEREFORE, the Plaintiff's Motion to Compel an Inspection of the subject Peterbilt truck and related logging trailer at the location specified in her request is **GRANTED**.

FURTHER, Defendant Potomac is **ORDERED** to produce the subject truck and trailer at the location specified by the Plaintiff in her request for inspection within a date agreed upon by all parties, but within thirty (30) days from the entry of this Order. Further, the Court finds that the plaintiff's proposed manner of conducting the inspection and performing the related acts is reasonable and permitted by the Rules of Civil Procedure; to wit, allowing the plaintiff's expert to be inside the subject truck at various spots on the driveway to determine sight lines and to determine what could and could not be seen by Defendant's employee while backing the truck out of the driveway. The Court does not place a limit on the number of times the subject truck can be backed out of the driveway; however, the Court emphasizes that the parties should act reasonably and the number of trips up the driveway should not be unreasonably limited or unreasonably demanded. The Plaintiff has agreed and the Court **ORDERS** that the Plaintiff pay for the reasonable fuel expenses related to bringing the subject truck and trailer from the Defendant's offices/shop to the location of the inspection and to pay for the reasonable expenses to have one of the Defendant's employees to operate the subject truck and trailer.

FURTHER, the Parties are **ORDERED** to cooperate fully and in good faith with the Court's Order. The Court notes the objections by the Defendant to the Court's Order Granting this Motion to Compel and preserves those objections for purposes of appeal.

In addition to the inspection, the plaintiff also requested that Defendant Potomac produce all pre- and post-trip inspection reports involving the relevant truck and trailer for the five-day

period preceding the collision, the day of the collision, and the first report after the collision. The Plaintiff argues that Federal law requires Defendant Potomac and its drivers to complete and retain post-trip inspection reports; yet, at the time of Plaintiff's Motion, Defendant Potomac had not produced any such reports. In its Response, Defendant Potomac stated that it produced a post-trip inspection report dated March 7, 2014 and that this single inspection report was the only such report in its custody, possession, or control. The Plaintiff moved the Court to enter an order compelling Defendant Potomac to produce any and all truck inspection reports within seven (7) days, or to state on the record and under oath that it does not have any such reports in violation of Federal law. The Court FINDS that the Plaintiff's Motion related to the pre- and post-trip inspection reports is MOOT based upon the Defendant's supplemental discovery responses and statements made to the Court in its Response to the instant Motion.

ENTERED ON THIS 1 DAY OF ^{February} JANUARY 2016.

Phil Jordan
Judge Phil Jordan

ENTERED FEB 03 2016

A COPY
ATTEST
Mary B. Clayton
CLERK CIRCUIT COURT
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