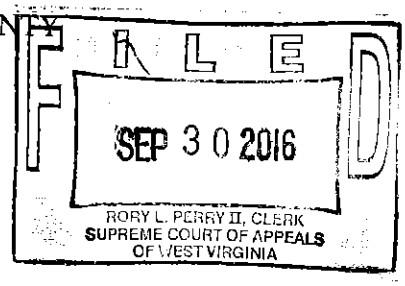
STATE OF WEST VIRGINIA
IN THE CIRCUIT COURT OF PRESTON COUNTY



GREATWIDE CHEETAH TRANSPORTATION, LLC,
a Delaware Limited Liability Company,
successor in interest to,
CHEETAH TRANSPORTATION, LLC,

Plaintiff,

v.

Civil Action No. 14-C-106

RONALD O. SLEMBOSKI, JR., an individual,
and SANDRA L. SLEMBOSKI, an individual,
d/b/a MTF AGENCY, and MEDALLION
TRANSPORT AND LOGISTICS, LLC, a North
Carolina Limited Liability Company,

Defendants.

MEDALLION TRANSPORT AND LOGISTICS, LLC'S MEMORANDUM REGARDING OUTSTANDING DISCOVERY ISSUES AND MOTION FOR PROTECTIVE ORDER

Now comes Defendant Medallion Transport and Logistics, LLC ("Medallion"), and pursuant to this Court's Order dated October 23, 2015 submits the following statement regarding outstanding discovery issues between itself and Plaintiff Greatwide Cheetah Transportation, LLC, and moves for a protective order for the reasons stated herein.

1. Medallion has now provided to Plaintiff supplemental discovery responses providing detailed responses to all discovery requests, and responsive documents, extensively indexed and produced in original format, via electronic copy. See "Medallion Transport and Logistics, LLC's Supplemental Response to Plaintiff's First Set of Interrogatories and Requests for Production of Documents" attached hereto as "Exhibit A."

2. Medallion has further provided to Plaintiff a supplemental response to Plaintiff's

subpoena seeking electronic data, pursuant to agreed computer search methodology, also extensively and specifically indexed and identified to the search terms used. See "Medallion Transport and Logistics, LLC Supplemental Response to August 13, 2014 Subpoena as Modified By Order of April 23, 2015," attached hereto as "Exhibit B." See also "Medallion Transport and Logistics, LLC Response to August 13, 2014 Subpoena as Modified By Order of April 23, 2015," filed with the Court August 25, 2015.

3. The aforementioned discovery responses were accompanied by a computer "zip drive" containing all responsive documents produced at any time during discovery, and in response to all discovery requests, whether made before or after Medallion was added as a party to this case.

4. In addition to attorney client privileged documents, for which a privilege log has been provided, Medallion withheld documents on the basis that they, "contain confidential and/or trade secret information that is neither relevant to, nor reasonably calculated to lead to the discovery of evidence relevant to this case." All such documents, overwhelmingly consisting of reports containing comprehensive information about all of Medallion's prior and current business: all of Medallion's accounts receivable; all of Mediallion's accounts payable; all of Medallion's listings of current and potential customers; all of Medallion's compiled information regarding past, present, or future potential business; all of Medallion's past or present contracts with sales agents; Medallion's comprehensive financial statements, used for obtaining loans or insurance coverage; and even Medallion's computer software contracts; are identified with specificity and detail in the discovery responses. Wherever and whenever searched terms appear in such documents, the appearance of those terms is explained in the responses, in some cases with the entirety of the text containing the responsive terms reproduced. In short, Medallion has

gone to great pains to completely reveal any information relevant to this case, or which may lead to the discovery of evidence relevant to this case.

5. Rule 26(c)(7) of the West Virginia Rules of Civil Procedure expressly provides that protective orders may be entered in order to prevent the disclosure of trade secrets: "Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: .... (7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way."

6. The Supreme Court of Appeals of West Virginia has outlined six factors which should be considered when determining whether a protective order should be issued: "(1) The extent to which the information is known outside of the defendant's business; (2) The extent to which it is known by employees and others involved in the defendant's business; (3) The extent of the measures taken by the defendant to guard the secrecy of the information; (4) The value of the information to the defendant and competitors; (5) The amount of effort or money expended by the defendant in developing the information; and (6) The ease or difficulty with which the information could be properly acquired or duplicated by others." Syllabus, State ex rel. Johnson v. Tsapis, 187 W.Va. 337, 419 S.E.2d 1 (1992).

7. Addressing these factors, for the information withheld and described with great specificity in Medallion's discovery responses, (1) the specific information reported is known

and circulated only to the principal officers in Medallion's LLC, and employees directly responsible for compiling or making business use of the information; (2) the information is known in a general sense by its employees charged with making business use of the information, but is not known in specific detail by people in Medallion's business; (3) Medallion keeps the information secret by circulating it only to its principal officers and those employees responsible for compiling or making business use of it, and none of it is circulated to its business contacts in general; (4) the information is the life blood of Medallion's business, is of vital value to Medallion, and would be of immeasurable value to its competitors, including the plaintiff, who by obtaining it would know everything Medallion has done, and is doing, to maintain its business, and how and why it does it; (5) the information is developed through the constant effort of Medallion's employees, compiled daily, and comprises the vast majority of Medallion's man-hours of labor; and (6) the information could not be properly acquired by others in the absence of theft, or pursuant to regulatory agency, or law enforcement activity, but it could be easily duplicated and distributed once obtained by others.

6. Greatwide has argued, and will continue to argue, that it should be provided with all of the comprehensive Medallion business information described in Medallion's discovery responses, particularly its efforts to recruit, and its retention of, independent trucking agents other than the Slemboski Defendants, because such information is reasonably calculated to lead to the discovery of information relevant to an intention on the part of Medallion to recruit agents under exclusive contract to other trucking companies, generally. Such information, if developed as the result of an examination of Medallion's comprehensive business information, would be in no way relevant to Plaintiff's claims in this case. The Supreme Court of Appeals of West

Virginia, in the case of Torbett v. Wheeling Dollar Savings & Trust Co., 173 W.Va. 210, 314 S.E. 2d 166 (1983), comprehensively set forth the law in West Virginia relating to tortious interference with business relationships. In syllabus point 2 of that case, the Court stated: "To establish prima facie proof of tortious interference, a plaintiff must show: (1) existence of a contractual or business relationship or expectancy; (2) an intentional act of interference by a party outside that relationship or expectancy; (3) proof that the interference caused the harm sustained; and (4) damages. If a plaintiff makes a prima facie case, a defendant may prove justification or privilege, affirmative defenses. Defendants are not liable for interference that is negligent rather than intentional, or if they show defenses of legitimate competition between plaintiff and themselves, their financial interest in the induced party's business, their responsibility for another's welfare, their intention to influence another's business policies in which they have an interest, their giving of honest, truthful requested advice, or other factors that show the interference was proper." All of these factors pertain to a single contractual or business relationship or expectancy, and acts of intentional interference by a party outside that relationship outside that specific expectancy. There is nothing in the law to suggest that a tortious interference claim is a platform for thoroughly exploring a defendant's business practices, in general. Evidence regarding Medallion's recruitment or retention of agents other than any party to this case would invite unfair prejudice, and confusion of the issues, by diverting attention away from the contractual relationships or business expectancies at issue, and what, if anything Medallion did to intentionally interfere with those relationships or expectancies. Medallion, having produced every communication in its possession, between itself and the Slemboski defendants, and every item of business conducted by either Slemboski defendant on behalf of

Medallion, and having available for deposition every officer or employee who conducted business with the Slemboski defendants, as well as the Slemboski defendants, themselves, has provided ample opportunity for Plaintiff to prove its contractual relationship or business expectancy with the Slemboski defendants, Medallion's alleged intentional interference with that relationship, and any damages sustained as a result.

7. In actual fact, Medallion has made a much more directly relevant request for information related solely to Plaintiff's efforts to recruit and retain agents Plaintiff knows or believes to be under exclusive contract, specifically with Medallion, and Plaintiff has refused to answer that request on grounds of relevancy. Interrogatory No. 33 directed by Medallion to Plaintiff, stated: "During the time period from January 5, 2005 to the present, has any owner, officer, executive, board member or employee of Greatwide, or its predecessors in interest, met for purposes of Greatwide's business, with any person or business known to Greatwide, or believed by Greatwide at the time of the meeting, to be an agent soliciting shipping business or owners/operators to provide transport, for Medallion, or an owner/operator hauling freight on behalf of Medallion? If the answer is yes, please provide the date and location of the meeting, and the names of the participants." Plaintiff answered solely with an objection, "Plaintiff objects to this interrogatory as seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence." However, Medallion's interrogatory is directly related to a specific affirmative defense set forth in Torbett, quoted supra, the defense of legitimate competition between the Plaintiff and itself. What more direct proof of legitimate competition could there be, than the Plaintiff soliciting the defendant's agents in precisely the same the Plaintiff accuses Medallion of doing?

8. Medallion has not pursued a further response to its interrogatory number 33, regarding Plaintiff's solicitation of Medallion agents, for the simple and practical reason that competition between trucking companies for business agents is widespread, constant, and commonly known. In a 2008 case from the United States District Court for the Eastern District of Pennsylvania, district Justice Savage, after a bench trial, issued a memorandum opinion in a case remarkably like the instant action before this Court.[1] In his "Memorandum Opinion," issued July 28, 2008, holding that defendant Mason and Dixon Lines, Inc. ("MADL") did not tortiously interfere with an exclusive agency agreement between Plaintiff ATF Trucking, L.L.C. ("ATF"), and Defendant Joseph E. Workman, noted the following: "Agents often switch from one carrier to another, taking with them their customers and drivers. They customarily enter into discussions with the competing carrier while still representing the other carrier so there is no interruption in service to the customers and work for the drivers (page 2 of Memorandum Opinion);" "There is no dispute that there was a contract between ATF and the Workman defendants. Nor is there any question what Workman did terminating the contract. The issues in contention revolve around MADL's role in the termination (page 7 of Memorandum Opinion);" "MADL did engage in conduct that was calculated to sign Workman as its agent, knowing that he would sever his relationship with ATF (page 8 of Memorandum Opinion);" "Conduct that has been accepted as comporting with the 'rules of the game' adopted by society is not considered improper (citations omitted) (page 8 of Memorandum Opinion);" and, "MADL's recruitment practices complied with the 'rules of the

[1] With the notable exception that in the case in Pennsylvania, the agent with whose contract the Defendant was alleged to have tortiously interfered, actually had an exclusive dealing contract with the Plaintiff, unlike Defendant Sandra Slemboski, who was under no contract with Plaintiff at the time Medallion entered into a contract with her.

game' within the freight carrier business. It is not uncommon in the trucking industry for agents to move business from one company to another. Carriers employ recruiters for the specific purpose of hiring agents to secure freight business. Pinion was a recruiter for ATF and later for MADL. His responsibility with both businesses was to recruit and maintain independent sales agents to develop business. While working for ATF, he recruited Workman from DART. The recruiting process Pinion used in moving Workman from DART to ATF was the same process he later employed to transfer Workman from ATF to MADL (page 9 of Memorandum Opinion)." Justice Savage's ultimate decision was based on his finding that Workman had decided to leave ATF before he began his negotiations with MADL, and thus the termination of ATF's contract was not the result of improper interference by MADL, but rather the result of MADL taking a legitimate business opportunity. See Memorandum Opinion, ATF Trucking, L.L.C. v. Quick Freight, Inc., Transportation Resources, Inc. and Joseph E. Workman, E. Dist. Penn., Civil Action No. 06-4627 (July 29, 2008), attached hereto as "Exhibit C." As demonstrated by the ATF case, competition for agents is a given in the trucking industry. It is not necessary, or even useful, for either Plaintiff or Medallion to engage in a comprehensive examination of the other's recruiting processes to allow the Court or jury to determine whether the recruitment and retention of Sandra Slemboski as an agent, or Ronald O. Slemboski, Jr. as an owner/ operator, was in some way in improper.

For the reasons set forth above, Medallion submits that its discovery responses are complete in this case, and **MOVES** that this Court enter a **Protective Order**, prohibiting the Plaintiff from engaging in further discovery attempts, by interrogatory, request for production, or deposition, seeking information regarding the business transactions, finances, profits,

expenditures, or recruitment practices of Medallion, not specifically related to Defendants Sandra Slemboski, and Ronald O. Slemboski, Jr.

MEDALLION TRANSPORT AND LOGISTICS, LLC,

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