

IN THE COURT OF COMMON PLEAS
WASHINGTON COUNTY, PENNSYLVANIA
CIVIL DIVISION

JANINE LITMAN and TIMOTHY MAS-
TROIANNI, individually and
jointly,

Plaintiffs,

v.

CANNERY CASINO RESORTS, LLC, a Ne-
vada limited liability company,
WASHINGTON TROTTHING ASSOCIATION,
INC., a Delaware corporation, WTA
ACQUISITION CORP., a Delaware cor-
poration, CANNERY CASINO RESORTS,
LLC, CANNERY CASINO RESORTS and
WASHINGTON TROTTHING ASSOCIATION,
INC. t/d/b/a THE MEADOWS RACETRACK
& CASINO, an unincorporated asso-
ciation, CANNERY CASINO RESORTS,
an unincorporated association con-
sisting of one or more yet uniden-
tified natural and/or legal per-
sons, individually and jointly,

Defendants.

CASE NO: 2012-8149

**BRIEF IN SUPPORT OF MOTION TO COM-
PEL DISCOVERY**

On behalf of Plaintiffs

Counsel of Record for this Party:

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BRIEF IN SUPPORT OF MOTION TO COMPEL DISCOVERY

1. Plaintiffs are entitled to discovery of any matter, not privi-
leged, if reasonably calculated to lead to the discovery of admissible
evidence. Pa.Civ.P. 4001, *et. seq.*

2. Defendants pervasively mix three objections in a pot of gen-
eral abstractions: relevancy, privilege and confidentiality. Plaintiffs'
position is that all questions asked are clearly relevant for discovery
purposes, and any such objection by Defendants should be overruled. As to
privilege, Defendants are entitled, subject to law, to withhold documents,
but Plaintiffs are entitled to an identification log of what is withheld,
so that an assessment can be made for motion practice and *in camera* review
by this Court for rulings in due course. As to confidentiality, Plain-
tiffs have already expressly offered, in the record, to hold production as

confidential, subject to consent, other public disclosure or seal. Accordingly, there is no basis for lack of production. The discovery sought is relevant, confidentiality is handled by stipulation, and privilege is handled by a log.

3. Defendants' orally represent that they have answered some questions "notwithstanding the objection" but the record is that the responses are "subject to the objection" the objection. This crafted variance allows Defendants to withhold within the scope of the objection. That is, to give some information and to withhold some information. Stating it another way, if there is no information withheld, then the objection is unnecessary (it is a discovery objection naturally reserving trial evidence objections). If there is an objection stated, it needs to be ruled upon if requested by the party propounding the discovery.

4. a) The documents sought regarding the PA Gaming Board civil penalty are not related to the amount of a confidential settlement, which is usually the subject of the interest; that result of the stipulation is public record of the civil penalty is public record. b) The information solicited is not regarding the concern of an unrelated third party; indeed, the subject-matter is the same nucleus of operative facts of Plaintiffs' cause of action. c) The information is discoverable under separately stated request; that is, because the same documents underpin the same cause of action, the production is the same whether or not named by the previous PA Gaming Board request. Defendants' objection is or should be either substantively ineffective, or moot.

5. Requests for Production: Copies of Rules, and drafts (2); documents referring to Plaintiffs (3); training manuals (4); advertising materials (5); financial transactions with Plaintiffs (6); revenue reports for craps tables (7); craps table profitability (8); documents regarding business approvals [license, fictitious names, trademarks] (9); license agreements regarding trademarks (11); documents evidencing claims of non Washington Trotting "owner" or "operator" (12); Players Club terms and conditions (13); craps table revenue/play reports (14-17). Interrogatories: Responsible parties for compliance (1,5); financial information (2-3,6); Pa Gaming records (7,14); destruction policies (8-10); Plaintiff

transactions (12-13); public record factual inaccuracies (15-16); witnesses (28-30, 32); evidence location (31); evidence (32-35).

6. Defendants cite to the statutory standard for the Board's release of information, which is not applicable; indeed, Defendants cite no rule that prevents Defendants from releasing the investigative materials within their possession. The issue before this court is not a request for discovery propounded upon the Board.

Moreover, Defendants cite to *Philadelphia Entm't & Deve. Partners, LP v. Pa. Gaming Control Board*, 34 A.3d 261, 279 (Pa.Comm. Ct. 2011), which is entirely inapplicable. This is similar to the Defendants citing analytically confusing and inapplicable cases in the prior jurisdictional challenge. Defendants' case regards information sought regarding third parties; to wit, seeking information regarding "**the Board's treatment of similarly situated licensees**," not applicable in this case. *Id.* (p. 279, first full paragraph).

Plaintiffs are seeking information regarding the complaint processes that they initiated. Plaintiffs are not asking for privileged mental impressions; Plaintiffs are not asking for information regarding other cases in Pennsylvania or throughout the country. Plaintiffs are seeking the otherwise properly discoverable documents from Defendants on the very cause of action upon which this case is grounded. Any social policy regarding not allowing settlement discussions to be opened to third parties is not applicable; any social policy regarding not allowing others to see the settlement amount of others is not applicable. The information provided to the Board should have been true and forthright, and bears the highest level of discoverable information to achieve justice in this case.

7. Under "Terms of Agreement" (Third Am. Complaint, Ex. 12, page 7) the Board expressly states that, if instrument of settlement itself is not adopted, then it cannot be used as evidence, which, by negative implication, provides, if adopted, it can be used as evidence.

8. Plaintiffs hereby incorporate by this reference Defendants' multiple motions, briefs, supplements and email submissions on the issue of subject-matter jurisdiction in which Defendants clearly stated that Plaintiffs should have intervened, for meaning contribution, into the very process that Defendants now claim is protected from discovery. Defendants have waived the objection. Cause is shown for this context.

WHEREFORE, Plaintiffs request that this Court compel the discovery requested, as Defendants are clearly, based upon the history in this case, are acting to delay, harass and to increase the costs of litigation.

February 27, 2014

Respectfully submitted,
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By: /Gregg Zegarelli/
Gregg R. Zegarelli

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Delaware corporation, CANNERY
CASINO RESORTS, LLC, CANNERY CA-
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CASINO, an unincorporated asso-
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an unincorporated association
consisting of one or more yet
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gal persons, individually and
jointly,

Defendants.

ORDER

AND, NOW, this _____ day of February, 2014, upon consideration of the
Plaintiffs' Motion to Compel, it is hereby ORDERED that each Defendant
shall fully and completely respond to Plaintiffs' requests for produc-
tion and interrogatories, and shall further produce a privi-
lege/workproduct log to the extent relying upon such objection. PA
Gaming materials shall be produced to the extent that the subject-
matter would be otherwise discoverable under an independent request for
the subject-matter (and Defendants shall identify documents withheld in
its privilege log). Defendants shall do so within _____ cal-
endar days or be subject to sanction by this Court.

Except for public information, any discovery responses may be identi-
fied as "Confidential" and shall be used only for purposes of this
litigation and not be publicized without written consent of the party
providing the information or pursuant to Court Order; otherwise, any
such documents shall be filed only under seal.

BY THE COURT,

_____, J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on this date, by hand delivery upon the following:

PATRICK ABRAMOWICH, ESQ.
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February 27, 2014

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