

**IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

**COVESTRO, LLC
Plaintiff,**

v.

**Civil Action No.: 18-C-202
Presiding Judge: Wilkes
Resolution Judges: Carl and Nines**

**AXIALL CORPORATION,
ALLTRANSTEK, LLC, and
RESCAR COMPANIES,
Defendants,**

and

**AXIALL CORPORATION,
Third-Party Plaintiff,**

v.

**SUPERHEAT FGH SERVICES, INC.,
Third-Party Defendant.**

---CONSOLIDATED WITH---

**AXIALL CORPORATION,
Plaintiff,**

v.

**Civil Action No. 18-C-203
Presiding Judge: Wilkes
Resolution Judges: Carl and Nines**

**ALLTRANSTEK LLC, RESCAR, INC.
t/d/b/a RESCAR COMPANIES, and
SUPERHEAT FGH SERVICES, INC.,
Defendants.**

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FILED

**ORDER GRANTING AXIALL'S MOTION TO QUASH AND FOR PROTECTIVE
ORDER REGARDING INSURER SUBPOENA**

This matter came before the Court this ____ day of September 2021 upon Plaintiff Axiall Corporation's Motion to Quash And For Protective Order Regarding Insurer Subpoena. Plaintiff Axiall Corporation (hereinafter "Axiall"), by counsel, Antoinette C. Oliver, Esq., and Defendants AllTranstek LLC and Rescar, Inc., t/d/b/a Rescar Companies (hereinafter "Defendants" or "AllTranstek" or "Rescar"), by counsel, Michelle L. Gorman, Esq., have fully briefed the issues necessary. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process. So, upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

FINDINGS OF FACT

1. This civil action consists of two consolidated cases¹ containing causes of action surrounding a chlorine leak at Plaintiff Axiall Corporation's facility, which produces chlorine and other products, in Marshall County, West Virginia. *See* Def's Reply to Mot. to Refer, p. 3.
2. On August 24, 2018, Axiall filed its Complaint asserting causes of action against AllTranstek, Rescar, and Superheat FGH Services, Inc. *See* case file.
3. In this civil action, the deadline for fact liability discovery was May 15, 2020, and the deadline for damage liability discovery was June 15, 2020. *See* Pl's Mem., p. 6-7; *see also* Ord. 4/9/20.
4. On July 30, 2021, counsel for Defendants provided notice of their intent to serve a subpoena duces tecum directed to counsel for nonparty Great Lakes Insurance SE (the "Insurer"). *See* Pl's Mem., p. 1-2; *see also* Def's Resp., p 2. In this subpoena, Defendants

¹ *See* Order of Court consolidating cases entered 2/28/19.

requested the production of document transcripts of Axiall witnesses from a related coverage case². See Def's Resp. p. 2. In this subpoena, Defendants seek to attempt the subpoena on a nonparty insurer in New York. See Pl's Mem., p. 3.

5. Meanwhile, on or about February 6, 2020, the undersigned entered a Stipulated Protective Order in Marshall County Civil Action 19-C-59, the coverage case. See case file, 19-C-59; see also Pl's Mot., Ex. 3.

6. On a prior day, Plaintiff filed the instant Axiall Corporation's Motion to Quash And For Protective Order Regarding Insurer Subpoena, seeking to quash said subpoena duces tecum, arguing the discovery sought by it is requested over a year after the discovery deadlines set by the Court, it requests the production of deposition transcripts of Axiall witnesses from the related coverage action (Marshall County Civil Action No. 19-C-59) which are subject to a Stipulated Protective Order in that case, and the Court, by Judge Hummel³, has already ruled in connection with a similar subpoena served by Defendants, that the subpoena is unenforceable because a West Virginia subpoena issued to an out-of-state party must comply with the Uniform Interstate Discovery and Depositions Act (hereinafter "the UIDDA"). See Pl's Mem., p. 2. Further, Plaintiff averred the subpoena issued by this Court would seek the production of documents in another Judicial Circuit in contravention of West Virginia Rule of Civil Procedure 45(a)(2). *Id.*

7. On a prior day, AllTranstek and Rescar filed their Brief in Opposition to Axiall Corporation's Motion to Quash And For Protective Order Regarding Insurer Subpoena, arguing the motion should be denied because the information sought is "clearly relevant to this litigation"

² This case is Marshall County Civil Action 19-C-59, which has also been referred to the Business Court Division and assigned to the undersigned.

³ See Order entered April 11, 2019 in the case file.

and any deposition testimony taken after this civil action's discovery deadline would have been unavailable as those deposition transcripts would not have existed. *See* Def's Resp., p. 2.

8. On a prior day, Axiall filed its Reply to Rescar's Brief in Opposition to Motion to Quash Subpoena And For Protective Order Regarding Insurer Subpoena, averring the Response did not address Judge Hummel's quashing of their prior subpoena for this very same reason, and arguing that Defendants could have requested discovery, including future transcripts, regarding the coverage case, prior to the discovery deadlines in the instant civil action. *See* Reply, p. 2.

9. The Court now finds the instant Motion is ripe for adjudication.

CONCLUSIONS OF LAW

In this matter, Axiall requests the entry of an Order quashing a subpoena for documents issued by Defendants, as well as an Order prohibiting the Defendants from attempting to compel this discovery by other means. *See* Pl's Mot., p. 1-2.

Here, Defendants attempt to serve the subpoena on the Insurer in New York City, New York. *See* Pl's Mem., p. 3; *see also* Pl's Mot., Ex. 1. The subpoena is to be issued by this Court but will be served on the Insurer in New York and seeks the production and inspection of documents and things in Hancock County, West Virginia. *See* Pl's Mem., p. 2, 5. Specifically, the subpoena requests the production of deposition transcripts of Axiall witnesses from the coverage case⁴, Marshall County Civil Action No. 19-C-59, all of which are subject to a Stipulated Protective Order. Indeed, the Court notes that on or about February 6, 2020, the court in 19-C-59 entered a Stipulated Protective Order in Marshall County Civil Action 19-C-59, the coverage case. *See* case file, 19-C-59; *see also* Pl's Mot., Ex. 3. Plaintiff has proffered that the

⁴ Specifically, the subpoena seeks "copies of all transcripts of depositions of witnesses testifying on behalf of Axiall Corporation and/or Westlake Chemical Corporation" in 19-C-59. *See* Pl's Mem., p. 6.

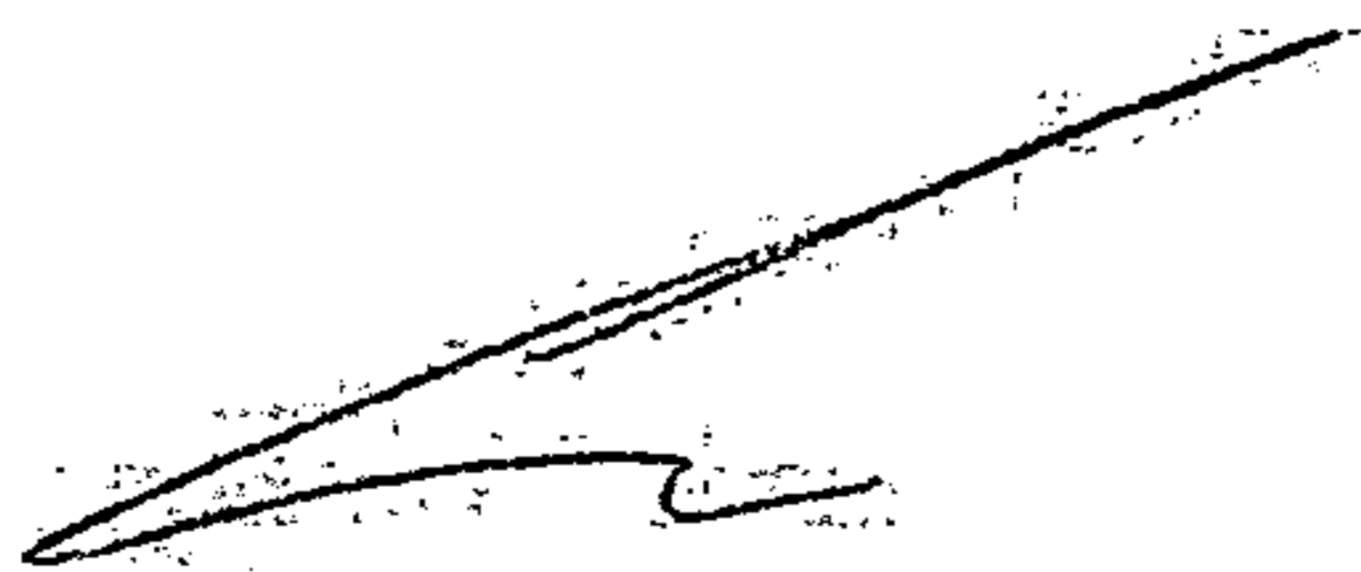
transcripts have been marked confidential and are subject to the protective order entered in 19-C-59. See Pl's Mem., p. 6.

The Court finds that the subpoena in this litigation of an item subject to a protective order in another litigation is an improper method. The Court further finds that the method and relief for deviations from the protective order, or the release of any information subject to the protective order, can only be approved by the court issuing the protective order. Until proper application is made to the Court in Civil Action 19-C-59 to allow a party to release information subject to that stipulated protective order that the parties have agreed to in that matter, and has been entered as a binding order in that matter by the Court, this Court cannot consider the validity of the request. Because this Court cannot uphold the subpoena subject to the protective order in another litigation, the instant motion must be granted.

CONCLUSION

WHEREFORE, it is hereby **ORDERED** and **ADJUDGED** that Plaintiff Axiall Corporation's Motion to Quash And For Protective Order Regarding Insurer Subpoena is hereby **GRANTED**. The Court notes the objections of the parties to any adverse ruling herein. The Clerk shall enter the foregoing and forward attested copies hereof to all counsel, and to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

Sept. 13, 2021
date of entry



JUDGE CHRISTOPHER C. WILKES
JUDGE OF THE WEST VIRGINIA
BUSINESS COURT DIVISION