

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

SHANNON STAATS, et al.,	:	
Plaintiff	:	
	:	
v.	:	No. 98-00,923
	:	
WILLIAM KENNETH MARKS, et al.,	:	
Defendant	:	

OPINION and ORDER

The plaintiffs in this products liability case have alleged that defendant Mack Trucks, Inc., has violated a discovery order issued by this court and should be sanctioned under Pa.R.C.P. 4019(a)(1)(viii). Although we find that Mack Trucks violated our order, we decline to impose sanctions because the violation has not resulted in prejudice to the plaintiffs.

1. The Violation

On 26 August 1999 this court issued an order granting the plaintiffs' Motion to Compel Discovery. The plaintiffs had pointed to numerous interrogatory responses which they found inadequate. After thoroughly reviewing all of the interrogatories and all of the answers, we stated that we found the responses to be "entirely unsatisfactory" and "deplorable," and gave a few examples demonstrating why.¹ Instead of going through each and every interrogatory at issue, we ordered Mack Trucks to file amended answers

¹ For instance, Mack repeatedly attempted to limit discovery to the exact model truck involved in the accident, and maintained that information on accidents involving jack-knifing trucks was not relevant because the suit involved a jack-knifed trailer, rather than tractor.

and stated that if the plaintiffs still felt they were inadequate or if Mack Trucks had a legitimate objection, we would schedule a hearing to determine those matters.

Plaintiffs' interrogatory #115 stated:

Please state whether or not Defendant participated in any manner of lobbying activity concerning mandatory installation of ABS on trucks from 1967 to the present, this includes but is not limited to direct or indirect funding of any organization attempting to prevent adoption of mandatory requirements for ABS as currently adopted by FMVSS 121 as promulgated by the Federal Government.

Mack Truck's amended answer read as follows:

Defendant is without knowledge that Mack Trucks, Inc. engaged in any manner of lobbying activity concerning mandatory installation of ABS.

Plaintiffs' interrogatory #116 was a follow-up question asking Mack to identify and attach any documents relating to such lobbying efforts, to which Mack Trucks answered "N/A."

Subsequently, the plaintiffs learned that Mack Trucks had submitted written comments to the National Highway Transportation Safety Administration (NHTSA), in response to its proposed rule regarding more stringent requirements that effectively mandated the use of anti-lock brakes. The plaintiffs also learned that Mack Trucks is a member of the American Trucking Association, which also was active in attempting to influence the proposed safety regulation.

Mack Trucks claims that its responses were accurate because attempting to influence a federal agency is not lobbying activity. It also maintains that the responses were the result of a good faith effort to properly answer the interrogatories. While it is true that the term "lobbying" means attempting to influence legislation, it is also true that interrogatory #115 clearly considers agency rule-making to be lobbying, and even

mentions FMVSS 121, the very regulation governing braking system performance which Mack Trucks commented upon to the NHTSA. Therefore, Mack Trucks surely must have known that the plaintiffs were asking for information concerning its attempts to influence the NHTSA. This is especially evident in light of the basis of the punitive damage claim, that Mack Trucks worked to avoid having to install safe brakes on its trucks. But although Mack Trucks was fully aware of the information the plaintiffs were after, and certainly must have had the documentation in its files, Mack Trucks tried to wriggle out of providing that information by grasping onto a hyper-literal interpretation of the word “lobbying,” while ignoring the context in which that word was used.

This tactic is particularly reprehensible in light of the court’s discovery order, which stated in the strongest language our displeasure at Mack Truck’s use of such sleezy tactics. Therefore, we find that Mack Trucks willingly violated our discovery order in regard to interrogatory #115 and #116.

Regarding the defendants’ answers to the plaintiffs’ request for production numbers 1, 6, and 24, these responses are just as reprehensible, particularly because they do precisely what we highlighted as improper in our discovery order: they attempt to limit the issue to trailers and not tractors, and attempt to limit the response to the exact model truck involved in the accident. However, since our order addressed only interrogatories, and not production of documents, we find no willful violation of our order in regard to the request for production of documents.

2. Lack of Prejudice

In determining whether to impose a sanction, a court must consider: (1) whether the party acted in bad faith, (2) the extent of the prejudice suffered by the opposing party, and (3) the ability to restore the accuracy of the proceedings. Pride Contracting, Inc. v. Biehn Construction, Inc., 381 Pa. Super. 155, 553 A.2d 82, 83-84 (1989). Although we find that Mack Trucks acted in bad faith, the plaintiffs have suffered no prejudice at this time.

From reading their brief, it is unclear exactly how the plaintiffs are claiming they have been prejudiced. After all, whether Mack Trucks attempted to influence the NHTSA goes to their punitive damage claim, and the late discovery of Mack Trucks' NHTSA activities does not impair that claim in any significant manner. However, at oral argument counsel for the plaintiffs made their position clear: Mack Trucks' communication with NHTSA apparently involved its assertion that anti-lock brakes were unreliable. That is a defense that Mack Trucks had not included in its pleadings, and therefore one which the plaintiffs did not have their experts address when preparing the reports. The plaintiffs suspect that Mack Trucks will attempt to add this new defense, which will cause them to start from scratch developing their theories of liability.

The problem with the plaintiffs' position on prejudice is twofold. First, the essence of the violation does not involve the new defense of reliability. The essence of the violation involves the concealment of the fact that Mack Trucks was opposing the new proposed regulation on anti-lock brakes—not its *reasons* for opposing the regulation. It is true that if Mack Trucks had provided the requested documentation the plaintiffs would

have been tipped off as to the defense of unreliability. However, that would merely have been a coincidence. That was not the plaintiffs' purpose in requesting any communications with the NHTSA.

Second, the plaintiffs have not yet suffered prejudice because Mack Trucks has not yet added the new defense. If and when Mack Trucks does so, then the plaintiffs will definitely be prejudiced as a result of the amended pleading. Therefore, we will deny sanctions at this point but impose them if Mack Trucks succeeds in adding the new defense.

ORDER

AND NOW, this 24th day of August, 2000, after argument, for the reasons stated in the foregoing opinion, the court finds that Mack Trucks willfully violated this court's discovery order of 26 August 1999. However, the plaintiffs' Motion for Sanctions is denied because the plaintiffs have suffered no prejudice.

However, if and when Mack Trucks adds the new defense of unreliability, the plaintiffs will suffer substantial prejudice, and this court will entertain a motion to order Mack Trucks to pay the plaintiffs the costs of revising their expert reports and any other expenses incurred due to the new defense.

It is further ordered that within twenty days from the date of this order Mack Trucks shall produce all documents in answer to the plaintiff's Request for Production, questions 1, 6, and 24, without limiting those responses to information involving trailers, or to the year 1986.

BY THE COURT

Clinton W. Smith, P.J.