

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

REGSCAN, INC.,	:	NO. 02-00,304
Plaintiff	:	
	:	
vs.	:	CIVIL ACTION
	:	
CONWAY TRANSPORTATION	:	Motion to Compel
SERVICES, INC.,	:	Motion to Extend
Defendant	:	Motion to Strike

**OPINION AND ORDER**

Before the Court are Defendant's Motion to Compel Discovery Responses, filed November 26, 2003, Defendant's Motion to Extend Deadlines, also filed November 26, 2003, and Plaintiff's Motion to Strike Defendant's Motion to Extend, filed December 9, 2003. Argument was heard January 21, 2004.

In its Complaint for Declaratory Judgment and Damages, filed February 20, 2002, Plaintiff seeks to have the Court declare invalid a contract entered into by the parties on May 3, 2000, and also declare that Plaintiff's product, the HazMat Loader, was not created using Defendant's System Design. Plaintiff claims Defendant's System Design was not as represented, and the Complaint asserts damages of \$50,000 to \$75,000. Plaintiff's Motion for Judgment on the Pleadings, filed April 12, 2002, was denied by Order dated January 15, 2003.

The tortuous path taken by the discovery process in this matter, which will hopefully end with the entry of the instant Order, began on January 17, 2003, when Defendant served written discovery requests on Plaintiff. As responses were not forthcoming, Defendant filed a Motion to Compel, on March 21, 2003. By Order dated May 12, 2003, Defendant's motion was granted and Plaintiff was directed to provide answers by May 16, 2003. As those "answers" turned out to be mostly objections to Defendant's interrogatories and requests for production of documents, Defendant filed a Motion for Sanctions on July 21, 2003. By Order dated October 17, 2003, Plaintiff's objections were sustained in part and overruled in part, and Plaintiff was directed to supply answers or documents consistent with the Order, within thirty days. Significantly, many of the rulings sustaining Plaintiff's objections were based on the

Court's "difficulty" understanding Plaintiff's claim for damages. The Court made clear in its Order that certain of the details requested by Defendant in its discovery requests may indeed become discoverable depending on the claim for damages, even though at that time they appeared non-discoverable. Plaintiff served answers on Defendant on November 17, 2003, which, apparently responding to the Court's suggestion regarding what sort of damages it might be claiming, indicated for the first time that Plaintiff was seeking damages of over \$900,000. As the answers did not, however, provide much more than the claim itself, Defendant filed the instant Motion to Compel, on November 26, 2003.

Defendant seeks complete answers to its interrogatories number 12, 13, 14, 16, 17, 19 and 20, and requests for production of documents number 1 through 14, 17 and 18. All of these requests were addressed by the Order of October 17, 2003, and further reference to that Order is necessary to understand Defendant's instant request. As noted above, the Court indicated Plaintiff's "claim for damages is not clear" and that perhaps Plaintiff is "seeking damages for the time, effort and expense costs in developing the HazMat Loader" which would not have been incurred had Defendant's software, the subject of the contract between the parties, been as represented. While finding the details of the HazMat Loader "could be protectable as a proprietary product of Plaintiff," the Court also noted that "depending on Plaintiff's claim for damages, such details could become a legitimate inquiry for discovery." With this background in mind, the Court will address each request seriatim.

Interrogatory Number 12 asks Plaintiff to identify all communications with any actual or potential purchasers, licensees, or users of the HazMat Loader. The Order of October 17, 2003 indicates the answer to be relevant only if Plaintiff is claiming damages from loss of business with a potential purchaser, and directs Plaintiff to answer by indicating any potential purchaser of the HazMat Loader that it claims to have lost as part of its damages claim against Defendant. The Order further directs Plaintiff to so specify if it is not pursuing its damages claim. In the answer provided on November 17, 2003, Plaintiff indicates it cannot prove any damages for loss of business with potential purchasers. While somewhat vague, the Court will interpret this answer, in accordance with the Order of October 17, 2003, to mean that Plaintiff

is not seeking damages for an alleged loss of business with a potential purchaser, and will not direct any further answer.

Interrogatory Number 13 asks Plaintiff to describe the process of development of the HazMat Loader, including when it was first conceived, what other names (if any) were used to identify the product, what steps were taken to develop the product and when those steps were taken, what prototypes were developed and when the product was first ready for sale or license. The Order of October 17, 2003, directs Plaintiff to answer when the product was first conceived and when the product was ready for sale or license, and also to indicate and explain any damages it is claiming in the development of the HazMat Loader as a result of the alleged misrepresentation of Defendant. In the answer provided on November 17, 2003, Plaintiff answers as directed and then goes on to indicate it suffered “substantial damages as set forth in Exhibit 1”, consisting “largely of the time require (sic) of Plaintiff’s staff to develop an acceptable HazMat Loader product.” Plaintiff further explains the “[t]he rates for each employee set forth in Exhibit 1 include the appropriate burden and corporate overhead allocations. Hours represent Plaintiff’s best-efforts estimate of time spent developing that which Plaintiff expected to receive from the Defendant.” Exhibit 1 lists a number of employees, hours spent, rate and a total amount attributable to each employee, totaling \$909,200. For example, the exhibit indicates one Russ Shanahan spent 2,268 hours at a rate of \$100 for a total expenditure of \$226,800. No other information or documentation is provided. The Court believes Exhibit 1 falls far short of explaining Plaintiff’s damages claim and that Defendant is certainly entitled to more information, such as what it was that each of the specified employees did with respect to development of the product and when it was done. Obviously, since Plaintiff was able to specify that Mr. Shanahan spent 2,268 hours, Plaintiff has access to some sort of documentation of such fact and that documentation should be provided to Defendant. If no such documentation exists, Plaintiff must so state.

Interrogatory 14 asks Plaintiff to identify all communications or documents describing or related to the development of the HazMat Loader as a product. In the Order of October 17, 2003, the Court sustained Plaintiff’s objection to this question on the same basis given for its ruling with respect to Interrogatory Number 13. In light of Plaintiff’s answer to Number 13,

however, the Court will now require Plaintiff to answer Number 14 to the extent directed with respect to Interrogatory Number 13.

Interrogatory Number 16 asks Plaintiff to identify all persons or entities to whom the HazMat Loader has been sold or licensed. The Order of October 17, 2003, directs Plaintiff to answer by indicating any person or entity that purchased the HazMat Loader who will be identified by Plaintiff in proving damages. In its answer of November 17, 2003, Plaintiff once again states it “cannot prove any damages for loss of business with potential purchasers.” As with Interrogatory Number 12, the Court will interpret this answer to mean that Plaintiff is not seeking damages for an alleged loss of business with a potential purchaser, and will not direct any further answer.

Interrogatory Number 17 asks Plaintiff to describe in detail all facts related to Plaintiff’s efforts to market or sell the HazMat Loader. The Order of October 17, 2003, sustained Plaintiff’s objection to this question and Defendant has at this time provided no basis upon which to change that ruling.

Interrogatory Number 19 asks Plaintiff to describe in detail all of the operating computer systems in Plaintiff’s organization. The Order of October 17, 2003, sustained Plaintiff’s objection to this question and, again, Defendant has at this time provided no basis upon which to change that ruling.

Interrogatory Number 20 asks Plaintiff to describe in complete detail all bills, costs, and overhead incurred by Plaintiff in connection with the HazMat Loader project. The Order of October 17, 2003, directs Plaintiff to answer by indicating what bills, costs and overhead were incurred by Plaintiff in connection with the HazMat Loader, which costs it is claiming as damages. Plaintiff failed to answer as directed, merely stating “it took our programming staff in excess of a year to build HazMat Loader and would require all of our staff to spend hours and days to interpret.” As with Interrogatory Number 13, Plaintiff must answer this question by providing specific documentation of its claim for damages, or a statement that no such documentation exists.

Document Requests number 1 through 4 seek production of documents reflecting communications between the parties and any actual correspondence between the parties.

Request number 5 seeks production of correspondence between employees, agents or contractors of Plaintiff regarding Defendant or the HazMat Loader. Plaintiff answered that all such documents were already in the possession of Defendant. Defendant seeks at this time any such documents Plaintiff might have in support of its \$909,200 damages claim, contending that such are not in its possession, and as stated above, the Court believes Plaintiff should be required to produce such.

Request numbers 6 through 14 seek production of various items and Plaintiff's objections to such requests were sustained by the Order of October 17, 2003. The Court indicated, however, that Defendant's request could be renewed after Plaintiff clarified its damages claim. In light of the new claim for \$909,200 damages, renewal of these requests is appropriate and Plaintiff will be required to produce the requested items to the extent they are related to the damages claim. If there are no such items to support the claim, Plaintiff shall so state.

Request number 17 seeks production of any and all documents, records, memoranda, files, papers, emails, correspondence, etc. regarding Defendant or the HazMat Loader. The Order of October 17, 2003, sustained Plaintiff's objection in part, with respect to the HazMat Loader, but directed Plaintiff to answer with respect to Defendant. In its answer of November 17, 2003, Plaintiff fails to answer, merely stating it is a fishing expedition. Plaintiff must answer as directed in the Order of October 17, 2003, and further, must also produce any of the requested items with respect to the HazMat Loader to the extent such items relate to Plaintiff's claim for damages.

Finally, Request number 18 seeks production of all documents supporting any claim for costs and expenses in connection with the HazMat Loader project. The Order of October 17, 2003, directed Plaintiff to produce all documents supporting its claim for damages, including costs or expenses in connection with the HazMat Loader project, which are claimed as damages. In its answer of November 17, 2003, Plaintiff fails to answer, again merely stating it is a fishing expedition. Plaintiff must answer as directed in the Order of October 17, 2003.

With respect to the Motion to Extend Deadlines as set forth in the Scheduling Order of February 27, 2003, Defendant seeks additional time to complete discovery, which requires

moving the trial from the March 2004 term to the June 2004 term. Inasmuch as Plaintiff is being directed herein to answer certain of Defendant's discovery requests, Defendant's motion to extend the deadlines and move the trial is reasonable. Plaintiff's Motion to Strike Defendant's Motion to Extend is without merit.

ORDER

AND NOW, this 28<sup>th</sup> day of January, 2004, for the foregoing reasons, Defendant's Motion to Extend Deadlines is hereby GRANTED and an Amended Scheduling Order will be entered. Plaintiff's Motion to Strike is hereby DENIED. Defendant's Motion to Compel is hereby GRANTED in part, and Plaintiff is directed to provide answers consistent with the foregoing opinion, within thirty (30) days of this date.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Allen E. Ertel, Esq.  
J. David Smith, Esq.  
Gary Weber, Esq.  
Hon. Dudley Anderson