

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ESTATE OF THE LATE DAYTONA J. BREWSTER,
LORI A. BARTRAM, JASON A. BREWSTER and
MONICA BARTRAM,

Plaintiffs,

ORDER

v.

05-C-005-C

DOREL JUVENILE GROUP, INC.,

Defendant.

Before the court is plaintiffs' multipart "Motion to Compel Defendant's Compliance with Discovery Rules." (Dkt. 12). Plaintiffs seek disclosure of several types of information that they believe are relevant mainly to their claim for punitive damages. Defendants object to further disclosures on the disputed topics.

Not unexpectedly, the court's view of how much discovery is appropriate lies somewhere between the limits suggested by the parties. Because trial is looming and discovery is about to end, I will eschew extended analysis and cut to the chase. Here is what the court is ordering the defendant to produce:

(1) Complete responses to all of plaintiffs' interrogatories and requests for production, but limited to defendants' infant restraint seats that employed both a metal tongue/plastic catch mechanism and a three-point harness, and further limited to incidents involving or alleging false latching, partial latching choking or strangulation, for the period from June 25, 1992 to June 25, 2002.

(2) Complete responses to all nine of plaintiffs' interrogatories and requests for production for all of defendants' infant restraint seats that employed both a reversible metal tongue/metal catch mechanism and a five-point harness, and further limited to incidents involving or alleging false latching, partial latching, choking or strangulation, for the period June 25, 1992 to June 25, 2002.

(3) Complete disclosure of defendant's procedures from June 25, 1992 to June 25, 2002 for obtaining, processing, analyzing responding to and storing customer reports of problems or incidents involving infant restraint seats.¹

(4) Any and all information (including information beyond the scope of ¶¶ (1) & (2) of this order) in defendant's possession or control that to any degree or in any fashion relates to or addresses the absolute or relative safety of three point harnesses, harness retainer clips, harness or metal tongue/plastic catch mechanisms, "false latch" or "partial latch" issues in defendant's products designed to restrain infants.

(5) When complying with the preceding four paragraphs, defendant must provide copies of original call logs, letters, reports and similar documents to the extent it has not done so already. Defendant may redact from these documents first names, identification numbers (such as SSNs or DLs) street addresses and telephone numbers, regardless whether defendant has disclosed such information in the past in other cases or under other circumstances.

(6) To the extent that this is not covered by the preceding five paragraphs, defendant shall gather, copy and mail the case file information requested by plaintiffs regarding other actual and threatened previous lawsuits involving metal tongue/plastic catch mechanism and a three-point harness on infant restraint seats for the period from June 25, 1992 to June 25, 2002. Plaintiffs and defendant shall split all associated costs 50/50.

Also, I am extending the close of discovery from October 14 to October 28 to provide a bit more breathing room for what will be a very compressed end game.

This should provide a sufficiently deep and broad pool of information from which plaintiffs may gather data to support their hypotheses. This court's philosophy, guided by the intent of the rules, is that doubts should be resolved in favor of allowing discovery. Even so, plaintiffs are not entitled to whatever they want in whatever fashion they seek it.

¹ I am not limiting these procedural disclosures to the product lines and problems specified in ¶¶(1) & (2) of this order because I assume that defendant's procedures will be consistent across its entire product line. If this assumption is incorrect, then defendant need only disclose the procedures for the product lines specified in ¶¶(1) & (2).

By way of background for these rulings, I note that on June 25, 2002, Daytona Brewster, the infant child of plaintiffs Lori Bartram and Jason Brewster, died of strangulation, noosed in the straps of a combination child car safety seat/baby stroller manufactured by defendant. This particular model had a metal tongue/plastic catch and a three point harness. In their complaint, plaintiffs allege that defendant is responsible for Daytona's death because the car seat was defective and unreasonably dangerous. Among other things, plaintiffs allege that the metal tongue/plastic catch mechanism was defective because it allowed users to obtain a "false latch" or "false lock" capable of "disconnecting," which contributed to false lock and false latch situations and allowed the straps to form a "hangman's loop." Plaintiffs allege that this child safety seat failed to incorporate necessary and known safety features that would have prevented Daytona's death, including separate shoulder harnesses that did not incorporate a "hangman's loop" and the use of a reversible metal-on-metal latching mechanism. Plaintiffs allege that these features, among others they list, were logical and reasonable, had been incorporated into other seats manufactured by defendant, and would have prevented Daytona's death.

Plaintiffs allege that defendant knew or should have known of the dangers inherent in the design of the child safety seat in which Daytona died, because defendant had actual notice of these and other defects in similar products sold by defendant; nevertheless, plaintiffs allege defendant failed to correct these defects or warn consumers prior to Daytona's death. Plaintiffs characterize these alleged acts and omissions as an intentional failure by defendant to advise of, recall or correct the unreasonably dangerous conditions of their child safety seat, which bespeaks

a reckless, wanton and intentional disregard for the rights of the plaintiffs.² See Complaint, Dkt. 3, at 3-7.

Against this backdrop, plaintiffs have sought from defendant wide-ranging discovery in order to determine what defendant knew and when defendant knew it about the alleged defects and dangers of the car safety seat in which Daytona had been placed before he died. Defendant has resisted much of this discovery, claiming among other things that it is irrelevant, unduly burdensome and a fishing expedition for new clients. The parties' inability to resolve these disputes led to the instant motion. I am mildly surprised at the edginess of the submissions from both sides' attorneys, who are experienced in litigation of this nature; on the other hand, perhaps their cynicism regarding their opponent's *bona fides* and motivation is a result of having been down this road before. Regardless, the court's function is not to critique the attorneys' *weltanschauung* but to determine, pursuant to the federal rules of discovery and the equities of the situation, how much information needs to change hands in response to plaintiffs' attempts to establish an evidentiary foundation for an award of punitive damages.

Toward that end, it is reasonable for plaintiffs to seek information about all of defendant's metal tongue/plastic latch, three point harness infant restraint seats because whatever defendant might have learned about a danger present in one such system could be

² This last allegation is the means by which plaintiffs seek to qualify for an award of punitive damages. See, e.g., *Strenke v. Hogner*, 279 Wis. 2d 52, 69-71, 694 N.W.2d 296, 304-5 (2005) (punitive damages available if defendant acts with a purpose to disregard the plaintiff's rights or is aware that its conduct is substantially certain to result in the plaintiff's rights being disregarded; a court should not present a punitive damages question to the jury unless it concludes that a jury could find from the evidence that an entitlement to punitive damages has been proven by clear and convincing evidence).

viewed by a jury as information that defendant should have applied to its other models. Similarly, evidence that that defendant knew of different, safer design—namely the metal-on-metal, five point harness design on which plaintiffs focus—would be directly relevant to plaintiffs’ theory that defendant had safer alternatives that it could have employed exclusively but declined to do.³ None of this evidence by itself would suffice to establish a disregard for plaintiffs’ rights, but all of it is relevant to the process. Therefore, it is discoverable.

The parties also disputing the mechanics of some disclosures. They disagree whether defendant needs to provide plaintiffs with identifying information of complaining and reporting customers; defendant need not provide this information. The salient point is what defendant knew, which is reflected in the content of the reports. Redacted copies of the reports will provide plaintiffs with the information they need in this regard. Therefore, there is no valid evidentiary reason for plaintiffs to contact the reporting parties directly. It is irrelevant that defendant might have released this information in unredacted form in the past; if, in fact, defendant has some newfound concern for its customers’ privacy, it is hardly plaintiffs’ place to disparage this. To paraphrase Emerson, consistency for its own sake is small-minded. Even if the reason given is veneer for defendant’s desire not to plant the seeds of future lawsuits, plaintiffs cannot insist on unredacted disclosures absent some showing of an actual evidentiary need for this information.

³ I am aware that plaintiffs’ discovery demands include every single restraint system used by defendant in the last twenty years, but these demands are too broad and not necessary to prove the point, if it’s provable. Defendant must provide information only on the specified set of design features, used either individually or in combination.

Then we have the slightly catty dispute between counsel over the boxes of files from defendant's previous lawsuits. This hardly merits court attention. Since the parties cannot agree on how or where to produce the documents, they can split the bill.

Hopefully this order provides sufficient guidance for the parties promptly and efficiently to complete this phase of the discovery. Given the imminent discovery cutoff, if new discovery disputes arise, the parties may request, and will receive a prompt telephonic hearing.

ORDER

It is ORDERED that plaintiffs' motion to compel discovery is GRANTED IN PART and DENIED IN PART in the fashion and for the reasons set forth in this order.

Entered this 7th day of October, 2005.

BY THE COURT:
/s/
STEPHEN L. CROCKER
Magistrate Judge