

IN THE CIRCUIT COURT OF THE TWENTY-FIRST JUDICIAL CIRCUIT  
KANKAKEE COUNTY, ILLINOIS  
CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS, )  
*ex rel.* LISA MADIGAN, Attorney )  
General of the State of Illinois, )  
 )  
Plaintiff, )

v. )

No. 07 CH 303

TOWN & COUNTRY UTILITIES, INC., )  
a Maryland corporation, KANKAKEE )  
REGIONAL LANDFILL, LLC, a limited liability )  
company, EDWARD F. HEIL, an individual )  
and THOMAS A. VOLINI, an individual and )  
as President of Town & Country Utilities, Inc. )  
 )  
Defendants. )

**PLAINTIFF'S REPLY TO DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO  
COMPEL ANSWERS OR RESPONSES TO WRITTEN DISCOVERY**

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* Lisa Madigan,  
Attorney General of the State of Illinois, pursuant to Supreme Court Rule 219, and in reply to  
Defendants', TOWN & COUNTRY UTILITIES, INC. ("Town & Country"), and THOMAS A.  
VOLINI ("Volini") (collectively "Defendants") states as follows:

I. **BACKGROUND**

On April 13, 2010, Plaintiff filed its Motion to Compel Answers or Responses to Written  
Discovery ("Motion to Compel"), requesting that this Court compel Defendants, Town &  
Country and Volini, to immediately furnish complete responses to Plaintiff's First Request for  
Production of Documents, Objects and Tangible Things on Defendants, Town & Country and

Volini ("Requests for Documents") 8, 13, 17, 18, 19, 20, 21, 22 and 24, which were served upon Defendants on March 6, 2008. On June 10, 2010, Defendants filed their Response to Plaintiff's Motion to Compel ("Response"), Plaintiff now replies to Defendants' Response ("Reply").

## II. LEGAL STANDARD FOR DISCOVERY

The issue in dispute in this matter is whether Plaintiff's Requests for Documents regard any matter relevant to the pending action. Rule 201(b) of the Illinois Supreme Court Rules, provides as follows:

(b) Scope of Discovery. (1) *Full Disclosure Required.* Except as provided in these rules, a party may obtain by discovery full disclosure regarding any matter relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking disclosure or of any other party, including the existence, description, nature, custody, condition, and location of any documents or tangible things, and the identity and location of persons having knowledge of relevant facts. The word "documents," as used in these rules, includes, but is not limited to, papers, photographs, films, recordings, memoranda, books, records, accounts, communications and all retrievable information in computer storage. Spr.Ct. Rule 201(b)

It is well established that discovery is to be a mechanism for the ascertainment of truth, for the purpose of promoting either a fair settlement or a fair trial. Ostendorf v. International Harvester Co., 89 Ill.2d 273, 282, 60 Ill.Dec. 456, 465, 433 N.E.2d 253, 257 (1982). The object of all discovery procedures is disclosure and the right of any party to a discovery is "basic and fundamental" Pemberton v. Tieman, 117 Ill.App.3d 502, 504-505, 453 N.E.2d 802, 804, 72 Ill.Dec. 927, 929 (1st Dist. 1983), quoting Slatten v. City of Chicago, 12 Ill.App.3d 808, 813, 299 N.E.2d 442, 445 (1973). "Fractional disclosure" in discovery is not the disclosure contemplated by our discovery rules. Ostendorf at 282. A trial court is vested with wide discretionary powers in pretrial discovery matters. M. Nehring v. First National Bank in DeKalb, 143 Ill.App.3d 791, 797-798, 493 N.E.2d 1119, 1124, 98 Ill.Dec. 98, 103 (2<sup>nd</sup> Dist. 1986).

Discovery presupposes a range of relevance and materiality which includes not only what is admissible at the trial, but also that which leads to what is admissible at the trial. Monier v. Chamberlain, 35 Ill.2d 351, 357, 221 N.E.2d 410, 415 (1966). The right to discovery is limited to disclosure regarding matters relevant to the subject matter of the pending action, Pemberton at 504, Harris Trust & Savings Bank v. Joanna-Western Mills Co., 53 Ill.App.3d 542, 368 N.E.2d 629, 11 Ill.Dec. 78 (1<sup>st</sup> Dist. 1977). Nevertheless, great latitude is allowed in the scope of discovery. Elliot v. Board of Education of the City of Chicago, 31 Ill.App.3d 355, 357, 335 N.E.2d 33, 34 (1<sup>st</sup> Dist. 1975).

Relevancy is determined by reference to the issues; generally, something is relevant if it tends to prove or disprove something in issue. Pemberton at 505. Discovery should be denied when there is insufficient evidence that the requested discovery is relevant. TTX Company v. Whitley, 295 Ill.App.3d 548, 557, 692 N.E.2d 790, 797 229 Ill.Dec. 801, 808, (1<sup>st</sup> Dist. 1998). However, broad discovery “regarding any matter relevant to the subject matter involved in the pending action” is authorized under the Supreme Court Rules. M. Loeb Corporation v. Brychek, 98 Ill.App.3d 1122, 1125, 424 N.E.2d 1193, 1196, 54 Ill.Dec. 290, 294. (1<sup>st</sup> dist. 1981). Moreover, the hostile attitude toward discovery was rejected by the General Assembly in the Civil Practice Act. Krupp v. Chicago Transit Authority, 8 Ill.2d 37, 41, 132 N.E.2d 532, 541 (1956). It is well settled that evidence of a defendant’s net worth and pecuniary position may be introduced in a case in which punitive damages is an issue. Pickering v. Owens-Corning Fiberglas Corporation, 265 Ill.App.3d 806, 823-824, 638 N.E.2d 1127, 1139, 203 Ill.Dec. 1, 13 (5<sup>th</sup> Dist. 1994).

III. DEFENDANTS' HAVE FAILED TO AND REFUSE TO PRODUCE DOCUMENTS REQUESTED BY PLAINTIFF'S REQUESTS FOR DOCUMENTS

A. Plaintiff's Reply to Defendants' Response paragraph 1.c.1. responding to paragraph 25 of Plaintiff's Motion to Compel.

Plaintiff repeats and incorporates by reference herein its Motion to Compel, and further states that Defendants' Response paragraph 1.c.1. misstates Plaintiff's request. In the prayer for relief of Plaintiff's Motion to Compel, Plaintiff requests that Defendants furnish "complete" responses to Plaintiff's Requests for Documents." Plaintiff's Motion to Compel cites several instances in where Plaintiff initially requested relevant documents in Plaintiff's Requests for Documents which Defendants' admit the existence of documents exist and are relevant to liability in this matter and Defendants' verbally agreed to provide said documents and then, in a written response, Defendants' refused to provide said documents. Clearly, upon their own admissions, Defendants' have not provided "complete" responses to Plaintiff's Requests for Documents.

The Defendants' admission that Town & Country and, in turn, whether Volini as President of Town & Country operated at the Site are contradictory and dubious at best. In its Answer to Plaintiff's Complaint, Defendants deny that Town & Country operated at the Site, yet, in a Request to Admit, Defendants admit that Town & Country operated at the Site. Financial documents which show financial involvement by Town & Country and Volini as a corporate officer directly involved in the day-to-day operations at the Site are evidence that both were operating at the Site, a legally required proof to show liability in this matter. See 415 ILCS 5/21(a) (2008).

Additionally, in no instance have Defendants provided Plaintiff with Town & Country's Articles of Incorporation or Bylaws ("Incorporation Papers"), which are required by the State of Illinois incorporation laws. Town & Country's status as a corporation, its purpose and how it operates by law is relevant to the pending action.

**B. Plaintiff's Reply to Defendants' Response paragraph 1.c.2. responding to paragraph 25 of Plaintiff's Motion to Compel.**

Plaintiff repeats and incorporates by reference herein its Motion to Compel, restates and incorporates by reference herein its Reply paragraph III.A. and further states that Defendants' Response paragraph 1.c.2.c conveniently ignores that Defendants' did not conduct due diligence in responding to Plaintiff's Request for Documents when it did not inquire with Volini's secretary for any documents related his work with Town & Country. Volini's secretary attested in her deposition that she dictated letters for Volini, paid invoices, and maintained a Town and Country file at her office but that Volini never inquired with her about said file or any other documents she may have had in her office relating to Town & Country matters. (See Deposition of Cathy Shultz hereto attached as Exhibit A.)

Additionally, providing a list of financial documents relevant to the Site is not the same as producing the original financial documents from which the list was produced. Presumably, if defendant is able to produce a precise list of the date and amounts expended in relation to work done at the Site during the alleged period of violation when there were no permits in place to allow the work, then defendants are able to produce a duplicate of the original financial documents that may act as necessary evidence in proving liability of Defendants. Said financial documents could very well lead to other documents or witnesses that may be used as evidence against defendants. Financial documents and not redacted information from said financial

documents that Defendants decide is relevant is not the same as producing a duplicate of the original financial documents. Duplicates of the financial documents will allow Plaintiff to review and investigate said documents for information that may lead to more evidence.

It is simply ingenuous of the Defendants to produce a list after months of requests for the reproduction of the original financial documents from Plaintiff and continue to refuse to produce the reproduction of the original financial documents.

Defendants do not assert a privilege for Defendants reasons in refusing to produce financial documents in which it extracted information to complete a list of dates and amount of expenses for rental equipment used at the Site. Instead, Defendants purport to determine that Plaintiff does not have a right to a duplicate of the original financial documents. Then Defendants decide that there is no additional information on the documents relevant to the pending action. The holders of the financial accounts and the signatories that allowed the release of the funds from relevant accounts for rental equipment that was used to perform work at the Site are unquestionably relevant to the liability of Defendants in the pending action.

**C. Plaintiff's Reply to Defendants' Response paragraph 1.c.3. responding to paragraph 25 of Plaintiff's Motion to Compel.**

Plaintiff repeats and incorporates by reference herein its Motion to Compel, and further states that Defendants' Response paragraph 1.c.3. incorrectly names Plaintiff's "clients" as the Illinois Department of Natural Resources ("IDNR") in this matter. At no time did Plaintiff indicate it had any contact or discussions with the IDNR regarding this matter. Plaintiff brought said action on the request on the Illinois Environmental Protection Agency ("Illinois EPA")

pursuant to Plaintiff's Complaint. The Illinois EPA and Plaintiff's Complaint alleged that Defendants' did not have a permit from the State of Illinois to dump construction and demolition debris at the Site. An allegation in which the Defendants denied in their Answer and in Defendants' Response to Plaintiff's First Set of Requests to Admit. Since the Plaintiff's "client", the Illinois EPA was unable to produce any permit issued by the State of Illinois for the Site (because it had nothing in its files), Plaintiff requested Defendant to produce all government, including the State of Illinois, permits and plans and applications of said documents related to the Site it purported to possess as follows:

12. Produce any and all documents or records relating to any plans or permits, approved and/or issued by any government agency, including, but not limited to, the Illinois EPA, Kankakee County and the City of Kankakee, for the transportation to and/or deposition of Material on the Site, including, but not limited to, the application for each such plan and/or permit or waiver, and all exhibits and attachments to each application.

Instead of responding to Plaintiff's Requests for Documents that no such documents existed, Defendants produced a City of Kankakee Development Permit and Plan and declared the production of other similar government documents as burdensome and irrelevant while alluding to an IDNR permit application.

The time scope of documents requested began in 2005 and ended no later than March 6, 2008, when Plaintiff served its written discovery requests on Defendants. Only recently has the Plaintiff learned that before March 6, 2008, Defendants had obtained a permit issued by an

IDNR which allowed defendant to raise the grade of the Site to remediate its violations of this matter in August of 2007. In no instance have Defendants produced this permit. Permits issued by the State of Illinois are typically under twenty pages. It is a stretch of the Defendants' imagination to declare twenty pages a burden.

Additionally, the Plaintiff was not aware of the IDNR permit nor, unlike what the Defendants may presume, does the Illinois Attorney General have free and unfettered access to files and documents of all State of Illinois offices and agencies. First, it would require knowledge that such documents exist and then, a special request to general counsel of the IDNR specifying the reasons for the request, or a Freedom of Information Act request or a subpoena from the Plaintiff to the state agency to obtain these documents from the agency, if had we known about them. The Defendants clearly indicate that they possess the State of Illinois permit information. A Plaintiff's request to a third party state agency not involved in the pending action is not less burdensome to the Plaintiff than requesting Defendants' to produce said documents in a discovery request that Defendants' indicate exist. It should not be the taxpayer's burden to produce documents that Defendants possess and can readily produce to Plaintiff.

The permit is without doubt relevant to the litigation as it is evidence that a permit from an Illinois agency was not in place at the time that the Defendants dumped construction and demolition debris at the Site and to show that post-violation, compliance was performed in a legal manner.

D. Plaintiff's Reply to Defendants' Response paragraph 1.c.4. responding to paragraph 25 of Plaintiff's Motion to Compel.

Plaintiff repeats and incorporates by reference herein its Motion to Compel, and further states that Defendants' Response paragraph 1.c.4. In a telephone conversation and in person in court, Plaintiff was engaged in negotiating language of a Consent Order in a settlement with presently settled Defendant, Kankakee Regional Landfill ("KRL"), when George Mueller, defense counsel at the time for KRL, Town & Country and Volini, stated that Town & Country and Volini may be interested in settling with KRL in the final settlement document. Resultantly, it caused Plaintiff to confer with supervisors regarding possible changes in terms of the Consent Order and negotiations for a penalty amount as it related to Town & Country and Volini.

E. Plaintiff's Reply to Defendants' Response paragraph 1.c.5. responding to paragraph 25 of Plaintiff's Motion to Compel.

Plaintiff repeats and incorporates by reference herein its Motion to Compel and further restates and incorporates by reference herein its Reply paragraphs III.A. and C. and further states that Defendants' Response paragraph 1.c.5 ignores the conflicting responses in Defendants Answer and Defendants' Response to Plaintiff's First Requests to Admit. Simply because Defendants repeat a statement of denial over and over after which it is learned that, in fact, the denial is not wholly accurate, does not make it so. Defendants conveniently forget that the Volini and Shultz admit in their depositions that there are, in fact, relevant documents after Defendants stated there were none.

F. Plaintiff's Reply to Defendants' Response paragraphs 1.d. through i. responding to paragraph 25 of Plaintiff's Motion to Compel.

Plaintiff repeats and incorporates by reference herein its Motion to Compel and further restates and incorporates by reference herein its Reply to Defendants' Response to Plaintiff's Motion to Compel paragraph III.A. and C. and further states that Defendants' Response paragraphs 1.d through i. fails to recognize that Defendants income received as a result of work done at the Site and Defendants' assets utilized to perform work at the Site are evidence of operating at the Site during the time of violation. Said activity at the Site are the cause of the violations and therefore wholly relevant to the pending action against Defendants.

Moreover, Defendants fail to recognize that Plaintiff's Complaint is for not only Injunctive Relief but also Penalties. Section 42 (a) of the Illinois Environmental Protection Act ("Act") reads as follows:

42. Civil penalties.

(a) Except as provided in this Section, any person that violates any provision of this Act or any regulation adopted by the Board, or any permit or term or condition thereof, or that violates any order of the Board pursuant to this Act, shall be liable for a civil penalty of not to exceed \$50,000 for the violation and an additional civil penalty of not to exceed \$10,000 for each day during which the violation continues

The Plaintiff has alleged the following violations from at least September 29, 2005 through August 15, 2007:

Section 21(a) of the Act, 415 ILCS 5/21(a)(2008);  
Sections 21(d)(1) and (2) of the Act, 415 ILCS 5/21(d)(1) and (2)(2008);  
Section 812.101(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 812.101(a);  
Section 21(e) of the Act, 415 ILCS 5/21(e) (2008); and

Sections 21(p)(1) and (7) of the Act, 415 ILCS 5/21(p)(1) and (7)(2008).

Accordingly, a maximum penalty for 7 violations of the Act and related regulations for nearly 2 years calculates to a minimum of \$6,470,000.00 in penalties. It is well settled that the deterrent effect of penalties on violator and potential violators is a legitimate goal to consider when imposing penalties for violation of the Act. ESG Watts, Inc. v. Illinois Pollution Control Bd., 282 Ill.App.3d 43, 52, 668 N.E.2d 1015, 1021, 218 Ill. 183, 191 (4th Dist. 1996). Therefore, the financial information that shows Volini and Town & Country's net worth is relevant discovery request to the pending action.

For the foregoing reasons, the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests, pursuant to Supreme Court Rule 219, that this honorable Court enter an order:

1. Compelling Defendants, Town & Country and Volini, to immediately furnish complete responses to Plaintiff's Requests for Documents 8, 13, 17, 18, 19, 20, 21, 22 and 24, which were served upon Defendants on March 6, 2008;
2. Ordering Defendants, Town & Country and Volini, to pay Plaintiff its reasonable expenses incurred in bringing this motion, including reasonable attorney fees; and

3. Imposing any sanction that this Court deems just and appropriate.

Respectfully submitted,  
PEOPLE OF THE STATE OF ILLINOIS,  
*ex rel.* LISA MADIGAN,  
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State of Illinois

MATTHEW J. DUNN, Chief  
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