

2017 WL 2821939

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United States District Court, N.D. Oklahoma.

Michelle RIGDON, individually and as Widow and  
Next of Kin of Greg Rigdon, deceased, Plaintiff,

v.

FLOWSERVE CORPORATION, et al., Defendants,  
Vibeserve Corporation  
Defendant/Third-Party Plaintiff

v.

White Reliability Services,  
Inc Third-Party Defendant.

Case No. 16-CV-81-GKF-FHM

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Case No: 16-CV-304 GKF-FHM,

Case No: 16-CV-459-GKF-FHM

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Signed 06/29/2017

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#### OPINION AND ORDER

FRANK H. McCARTHY, United States Magistrate  
Judge

\*1 CVR Energy, Inc. and CVR Refining, LP's Motion to  
Compel Production of Settlement Agreements, [Dkt. 170],  
is before the undersigned United States Magistrate Judge  
for decision. The motion has been fully briefed, [Dkt. 170,  
186, 187], and is ripe for decision. CVR Energy, Inc. and  
CVR Refining, LP's (CVR) motion is denied.

Plaintiffs and some Defendants in this action engaged  
in private mediation. The claims between Plaintiffs and  
the participating Defendants were settled. The settling  
parties agreed that the terms of the settlement are  
confidential. CVR seeks an order compelling production  
of the settlement agreements. In their joint response to  
CVR's motion, the settling parties point out that CVR has  
not served a discovery request seeking production of the  
settlement agreements. Since the settlements were reached  
after the end of the discovery period this is no bar to  
CVR's motion. The settling parties also point out that  
CVR's motion does not contain the required statement  
that counsel have met and conferred in good faith in  
an attempt to resolve their differences. LCvR 37.1. The  
settling parties assert that no meet and confer took place  
and that CVR's motion should be stricken for that failure.  
The court agrees that it would be appropriate to deny  
CVR's motion for its failure to engage in the good faith  
conference required by Fed.R.Civ.P. 37(a)(1) and LCvR  
37.1.<sup>1</sup> However, in this instance judicial efficiency is  
served by denying the motion on its merits.

CVR argues that the settlement agreements are relevant  
and therefore discoverable because they "may bear on  
the credibility of testimony," and "are relevant to the  
evaluation and settlement of the remaining claims." [Dkt.  
170, p. 1]. CVR cited *Trinity Mortgage Companies, Inc.  
v. Dryer*, 09-CV-551-TCK-FHM (June 8, 2010), 2010  
WL 3565525 (N.D. Okla.) in support of its argument. In  
that case the court ordered production of a settlement  
agreement. That case bears no resemblance to this one.  
The damages for the legal malpractice in *Trinity* were  
derived in part from the settlement of a different lawsuit.  
The court ordered production of the settlement agreement  
because of the relationship between that settlement and  
the damages at issue. In the present case CVR has not  
identified any claim or defense made more or less likely  
in the instant suit by reason of the settlement of some  
parties.<sup>2</sup> In other words, CVR has not demonstrated the  
relevance of the settlement agreements sought. The court  
is not persuaded that the settlement agreements should be  
produced without some showing of relevance.

\*2 CVR baldly asserts that the settlement agreements  
"may bear on witness credibility and bias." [Dkt. 170, p.  
4]. CVR also asserts that the terms of the agreements may  
create bias in corporate witnesses of settling defendants  
testifying at trial. CVR does not, however, explain how  
such bias may occur in this case where witness statements

were gathered within hours after the incident in question and where discovery was completed before any settlement occurred.

CVR argues that the settlement agreements should be produced because some courts have ordered production of settlement agreements on the basis that the agreements enable the remaining parties to engage in settlement discussions, and to evaluate their liability, risk, and defense strategy. CVR cited *Transportation Alliance Bank, Inc. v. Arrow Trucking Co.*, 10-CV-16-GKF-FHM (October 19, 2011), 2011 WL 4964034 (N.D. Okla.). In that case the court ordered production of a settlement agreement under the peculiar facts presented. Those facts bear no similarity to the instant case. CVR relies on *Zlotogura v. Progressive Direct Ins. Co.*, 2013 WL 1855879 (W.D. Okla.). In that case the defendant insurance company sought production of the settlement agreement between Plaintiff and the other insurance company that provided coverage for a motorcycle accident. The *Zlotogura* Court ruled that the settlement agreement was not privileged, but the key to requiring production of the settlement agreement was the finding that the settlement agreement was relevant to the claims and defenses in that case. *Id.* at \*2. In the present case, there has been no showing of how settlement is related to any of the claims or defenses.

In its reply brief CVR asserts that it has a justifiable curiosity about why none of the settling defendants have been dismissed. [Dkt. 187, p. 5]. That curiosity could have been satisfied by engaging in the required meet and confer. Curiosity does not present a reason to require production of the settlement agreements. In any event, stipulations of dismissal were filed on June 21, 2017.

The court is aware that maintaining the bargained for confidentiality of settlement agreements promotes the laudable goal of inexpensively resolving disputes through out-of-court settlement. To the extent possible, the court honors the confidentiality clauses contained in settlement agreements. However, a confidentiality clause in a settlement agreement is not a bar to the discovery of a settlement agreement where the settlement agreement itself is relevant to a party's claims or defenses. Fed.R.Civ.P. 26(b)(1). CVR has not demonstrated that the settlement agreement is relevant, and for that reason CVR Energy, Inc. and CVR Refining, LP's Motion to Compel Production of Settlement Agreements, [Dkt. 170], is DENIED.

SO ORDERED this 29th day of June, 2017.

**All Citations**

Not Reported in Fed. Supp., 2017 WL 2821939

**Footnotes**

- 1 CVR asserts that the parties communicated orally and in writing which complied with LCvR 37.1. The oral communication took place at a deposition. While a conversation between counsel during a deposition may qualify as a meet and confer, this one does not. [Dkt. 186-4]. Nor does the exchange of e-mails satisfy the requirement for a personal meeting and a sincere attempt to resolve differences as required by LCvR 37.1. The very question about whether a meet and confer took place demonstrates that one did not occur.
- 2 The settling parties have represented that the settlement agreements do not contain any collusive so-called "Mary Carter" agreements or any admissions of liability. [Dkt. 186-1, ¶¶ 7, 8; 186-2, ¶¶ 8, 9].