

August 29, 2024

VIA ELECTRONIC MAIL

Matthew O'Reilly
postmaster@moreilly.com
maryland.tylerhost.net@moreilly.com

RE: WM Defendants' Response to Plaintiff's August 27, 2024 Discovery Letter
O'Reilly v. Waste Management, et al., Case No. C-02-CV-24-000546
Circuit Court of Maryland for Anne Arundel County

Dear Mr. O'Reilly:

We are in receipt of your letter sent at 10:30PM on August 27, 2024 regarding the WM Defendants' Responses and Objections to your Requests for Production and Requests for Admission ("Responses and Objections"). We trust that this letter addresses your perceived concerns with the WM Defendants' discovery responses without the need to trouble the Court with an unnecessary discovery motion.

I. The WM Defendants Timely Served Objections and Responses to Plaintiff's Burdensome and Overbroad Discovery Requests

The Complaint in this action was filed on March 4, 2024, and the WM Defendants timely moved to dismiss the Complaint. You have amended your complaint twice, which has delayed the decision on the WM Defendants' preliminary motion. Discovery requests were propounded for the first time on July 25, 2024, when you served 134 Requests for Admission, followed the next day by 110 Requests for Production. Providing substantive responses to nearly 250 discovery requests required significant time. Yet, the WM Defendants served responses to the voluminous requests on August 23, 2024, three days before their due date, when **you refused to grant a modest extension of the response deadline**. On the very day that they were due (August 26, 2024), you threatened motions practice and sanctions. **That type of litigation tactic is abusive and wholly inconsistent with the Maryland Discovery Guidelines.**

Your suggestion that the WM Defendants did not avail themselves of opportunities to seek relief from the discovery requests is flatly wrong. See Plaintiff's Letter at 3. The WM Defendants

sought an agreement from you and a protective order from the Court; but you declined the former, and the Court denied the latter. The contention that the Court has rejected any of the WM Defendants' objections is equally untrue. *See id.* at 1. As a threshold matter, the Court denied the WM Defendants' motion to stay discovery ***without prejudice***. Moreover, the Court did not "rule[] that jurisdiction, burden, prematurity, and volume are insufficient objections." *Id.* Your letter simply mischaracterizes the Court's Order. Nothing in that Order prevents the WM Defendants from preserving arguments in their motion to dismiss, particularly as to personal jurisdiction issues, or from objecting to the requests as premature or as otherwise improper.

II. The WM Defendants' Responses and Objections Are Not Deficient

With respect to the perceived "issues" with the WM Defendants' Responses and Objections, it is entirely appropriate and, in fact, necessary for the WM Defendants to object to your discovery requests. The WM Defendants identified general objections that apply to each of the discovery requests served. However, the WM Defendants also made specific, individualized objections to each request on grounds that are appropriate and recognized by the Rules and Discovery Guidelines, such as objections on the basis of privilege, relevance, and undue burden. Nevertheless, if you have a concern with a specific objection to a particular request, please so state. However, stating that ***all*** objections are improper and demanding that the WM Defendants withdraw every objection is absurd.

Many of your requests are overbroad and untethered to the claims or defenses in this action. By way of example only, you requested that Defendant Adam Tsottles produce medical documentation regarding his health, including physicals, drug testing, vision testing, or physical condition while affiliated with Waste Management; all of his health insurance claims, disability claims, or sickness or doctors excuses or his medical records chart for three years prior to the occurrence; and the contents of his social media accounts. *See* Requests for Production Nos. 27, 48, 55. **These requests are not only beyond the scope of any conceivable issues in this case, but they are simply harassing. The objections to these requests, and many others like them, are warranted, appropriate, and necessary to protect against your blatant abuse of the discovery process.**

Your demand that all documents be produced immediately is untenable. As you know, on August 26, 2024, the WM Defendants began a rolling production. We are in the process of collecting and reviewing documents responsive to the voluminous document requests you served. As previously explained, this is not an overnight endeavor. It takes significant time to collect documents, review them for responsiveness, and examine them for privilege. We will produce a privilege log in connection with our rolling productions but doing so piecemeal is inefficient and not useful.

We similarly disagree with your bald contention that the WM Defendants' responses to the Requests for Admission were evasive and incomplete. Nothing could be further from the truth. If

you believe that certain responses require additional detail than is already provided, let us know and we will revisit that particular response.

III. The WM Defendants Have Offered Reasonable Resolutions of the Perceived Discovery Issues

The WM Defendants have attempted (and continue to attempt) to work cooperatively with you to respond to your discovery requests and resolve potential discovery disputes. Initially, we proposed that the parties jointly request that certain discovery deadlines be extended to afford flexibility in the time for responding to your discovery requests before you have to disclose experts. We secured the agreement of the other defendants and prepared a draft motion, only to learn that you would not agree to extend our deadline to respond to the discovery requests. More recently, on August 26, 2024, we invited you to identify documents that you believe you need at this time. You did not respond to that invitation. Instead, you opted to sling threats of motions practice and sanctions, as well as accusations of bad faith, which are not well received. You have since (at 8:36PM on August 29, 2024) requested that the WM Defendants produce certain documents, along with an admission that Waste Management, Inc. (“WMI”) does business in Maryland (thereby subjecting it to personal jurisdiction), within 48 hours in exchange for your agreement to “hold off” on filing a motion to compel. *See* e-mail enclosed. While we remain open to negotiating a reasonable resolution of your perceived discovery issues, your request that we concede the legal defense of lack of personal jurisdiction is wildly improper. A federal court has already found that WMI is not subject to personal jurisdiction in the State, and your attempt to negotiate around that decision in the context of a threatened frivolous discovery motion is nothing short of bad faith.

Again, we strenuously object to burdening the Court with a motion to compel. If, however, you elect to abuse the discovery process and waste judicial resources by seeking Court intervention days after the WM Defendants responded to nearly 250 discovery requests, then we will seek recovery of all fees and costs we are forced to unnecessarily expend in responding to any such motion pursuant to Rule 2-433(d). Moreover, if any contact is made with the Court regarding such motion or a motion to shorten time, we insist on being present for such communications.

Please let me know if you would like to discuss further.

Sincerely,



Geoffrey M. Gamble

Enclosure

Fellona, Ashley N.

From: postmaster@moreilly.com
Sent: Wednesday, August 28, 2024 8:36 PM
To: Gamble, Geoffrey M.
Cc: maryland.tylerhost.net@moreilly.com; Chammas, Nicole
Subject: Re: Waste Management Defendants' Motion to Dismiss Second Amended Complaint

Follow Up Flag: Follow up
Flag Status: Flagged

Geoff -

Thank you for the thoughtful response. Obviously, I cannot agree that your clients are in compliance - as you have no doubt read in the deficiency letter I sent last night, the objections for the vast majority of the responses are improper according to the plain text of the Maryland Rules.

I have acknowledged from the beginning that these requests would be difficult to complete within the 30 days mandated by the Rules. I have offered alternative solutions repeatedly that would have lessened the burden on your clients in time, expense, and scope, but each of my proposals has been refused or ignored. Ultimately, unfortunately, the deadlines are not malleable simply because we wish them to be. Without a modification of the timeline by the Court, I don't have the ground to give, and must hold you to the same standards to which I am held. The Rules dictate 30 days, and we are bound by the Rules.

Thank you for letting me know that the rolling production has begun. As a gesture of good faith, I will hold off on the motions to compel and shorten time if the following can be produced in the next 48 hours:

1. Complete, un-altered, authenticated, and time-stamped copies of all the video, still photos, and audio recordings that have ever been in your clients' possession (including subsidiaries, former employees, affiliates, sister companies, etc.), from all recording sources that could have captured the incident or aftermath, including all of the DriveCam footage from all cameras/microphones on the truck present at the incident, for the entirety of October 16, 2017 (midnight to midnight).
2. Access logs showing who has viewed any of the DriveCam footage for October 16, 2017 (midnight to midnight) from the truck. This includes all access from October 16th, 2017 to the present.
3. The current home address for Roy Palmer.
4. An admission that the CNN Money interview at https://www.youtube.com/watch?v=IxbUR4S_NCI is authentic, and that at that time: Steiner was the CEO/President of WMI; that he confirmed in the video that WMI does business in every state except Wyoming and Montana; that Maryland is a state and is neither Wyoming or Montana; and that a reasonable conclusion is therefore that WMI does business in Maryland.

All four of these items are readily, easily, and cheaply available to your clients. (Online viewing and/or direct download access through the DriveCam web portal is an acceptable stopgap if providing video files takes too long.) I am not trying

to be intractable or unreasonable here - if any item proves to be problematic, give me a heads-up and let me know what the issue is so we can work through an alternative.

While I would like to think you and I have developed a decent rapport, the entire reason we are embroiled in this suit is because your clients have, for years, been less than honest with me. Having these four items in my hands by Friday will go a long way toward establishing trust all the way around.

As always, I appreciate your input and will do my best to accommodate as much as I am able.

Regards,
Matt

On 26/08/2024 20:48, Gamble, Geoffrey M. wrote:

> Matt:

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> I am glad to hear that you are feeling a little better.

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> Thank you for your e-mail regarding the WM Defendants' discovery responses that were served on August 23, 2024 – three days before their due date. As you might imagine, I disagree with most of the assertions in your e-mail below, particularly your claims that (1) the WM Defendants are not complying with the discovery rules, or (2) the objections to your voluminous discovery served during the pendency of a dispositive motion to dismiss are inappropriate. While the Court may have denied our motion for a protective order, without prejudice, we have every right to object to the discovery requests on grounds that, among other things, they are premature given the procedural posture of this case.

>

> While the original action was filed by you in federal court several years ago, the first time any discovery requests were served in any matter was on July 25, 2024. As we mentioned elsewhere, the discovery you served is both voluminous (244 total requests) and overbroad. It took significant time to provide substantive written responses to the nearly 250 discovery requests. We are now in the process of collecting and reviewing documents responsive to the 110 document requests you served. This is not an overnight endeavor as you suggest. To the contrary, it takes significant time to collect documents from the clients, to review the records for responsiveness, and to examine the documents for privilege.

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> We have advised you of the time that it takes to respond to these discovery requests and requested a modest extension of time to so respond. You declined, citing the discovery deadlines in the scheduling order. We identified a solution, whereby the parties would jointly request an extension of the discovery deadlines in exchange for an extension of the defendants' time to respond to your discovery requests. You declined that proposal as well. Now, the day that the discovery responses are due (all defendants responded ahead of time), you have threatened a motion to compel and for sanctions. Your threats are not warranted and are not at all in the spirit of the Maryland Discovery Guidelines.

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> Despite your threats and unreasonable demands, we would like to avoid burdening the Court with a discovery dispute, particularly this early in the case when motions to dismiss have not yet been resolved. Accordingly, we will begin a rolling production starting this evening. If there are specific documents that you believe you need sooner rather than

later, please let us know.

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> I am hopeful that we can resolve your perceived concerns without troubling the Court with unnecessary and inappropriate discovery motions.

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> I am available should you wish to discuss these matters by phone.

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> Thanks,

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> Geoff

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> Geoffrey M. Gamble

> Partner

> SAUL EWING LLP | Baltimore

> Office: (410) 332-8848 Cell: (443) 995-6957

> -----Original Message-----

> From: postmaster@moreilly.com <postmaster@moreilly.com>

> Sent: Monday, August 26, 2024 3:30 PM

> To: Gamble, Geoffrey M. <geoff.gamble@saul.com>

> Cc: maryland.tylerhost.net@moreilly.com; Chammas, Nicole <nicole.chammas@saul.com>

> Subject: Re: Waste Management Defendants' Motion to Dismiss Second Amended Complaint

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> ****EXTERNAL EMAIL**** - This message originates from outside our Firm. Please consider carefully before responding or clicking links/attachments.

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> Good afternoon, Geoff - I hope you had an enjoyable weekend.

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> I apologise for being out of touch last week; the "under the weather" I was feeling turned out to be a rather nasty bout of COVID. I am finally feeling slightly better today.

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> Thank you for sending the discovery responses along - I can see that your client is still being difficult about being willing to comply with the Rules. Obviously many of the objections are inappropriate, not the least of which are those the Court has already rejected in the denial of the stay. I can't say I understand why they're intent on making the process longer and more expensive, but I guess that's not really for me to fathom.

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> The responses to items 1, 2, 3, 4, 6, 7, 10, 14, 15, 17, 18, 20, 21, 25, 28, 30, 32, 41, 58, 60, 79, 81, 107, and 108 in the request for documents leave me slightly baffled, however. Based on the wording of the responses, your client is not refusing to provide the documents requested, but have not provided them, and have offered no time when they will be provided. The documents are due by midnight tonight - shall I expect them by then? If not, the responses are inadequate under Rule 2-432(b)(2), as (of course) are the responses to items 9, 12, 22, 26, 27, 29, 31, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 80, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 104, 105, and 106.

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> This email is just an informal courtesy to let you know that I will be filing a motion to compel for both the admissions and document requests shortly, and given the short timeline we have, it will have to include a request for sanctions based on your clients' refusals. I will follow up with a more formal notice to you detailing the deficiencies and requesting

corrections.

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> I am of course still amenable to working with you to extend the discovery deadline on some of the more difficult items, but there are basics here that are low-lift that there really is no excuse not to provide.

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> If you have any questions, please feel free to email at your convenience.

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> Regards,

> Matt

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> On 15/08/2024 21:35, Gamble, Geoffrey M. wrote:

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>> Matt:

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>> I am attaching a courtesy copy of the above-referenced documents, which were filed this afternoon with the Court.

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>> Thanks,

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>> Geoff

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>> *Geoffrey M. Gamble*****

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>> Partner

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>> geoff.gamble@saul.com <mailto:geoff.gamble@saul.com>

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>> *Read my bio <<https://www.saul.com/professionals/geoffrey-m-gamble>>*

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>> "Saul Ewing LLP (saul.com)" has made the following annotations:

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