

Stadtler v. Aurora Pump Co.

Superior Court of Rhode Island, Providence

July 22, 2022, Filed

C.A. No. PC-2019-6648

Reporter

2022 R.I. Super. LEXIS 54 *

JOHN STADTLER, personal representative of the Estate of Ann Stadtler, and JOHN STADTLER, Plaintiffs, v. AURORA PUMP CO., et al., Defendants.

Core Terms

Station, turbines, documents, asbestos, discovery, products, steam, motion to compel, insulation, records, requested documents, boilers, pumps, deposition, subject matter, manufacturers, exposure, exposed, logs

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Judges: GIBNEY, P.J.

Opinion by: GIBNEY

Opinion

DECISION

GIBNEY, P.J. Before the Court for decision is Plaintiffs' motion to compel the production of documents from Defendant Paramount Global, formerly known as Westinghouse Electric Corporation (Westinghouse). Westinghouse objects to Plaintiffs' motion. Jurisdiction is pursuant to [G.L. 1956 § 8-2-14](#).

I

Facts and Travel

Proceeding against multiple defendants, Plaintiffs have alleged that Ann Stadtler developed mesothelioma and died due to her exposure to the asbestos fibers that her

stepfather, Charles Ferguson (Ferguson), inadvertently brought home on his work clothes. See Pls.' Mot. Compel Docs. from Def., CBS Corporation (Pls.' Mot.) 1-2; Hr'g Tr. 1:12-15, June 30, 2022. Ann Stadtler lived with Ferguson from 1948 to 1965; during those years, as part of his employment as a union insulator, Ferguson worked at several different power stations in the New England area. See Pls.' Mot. 2; Def. Paramount Global's Obj. Pls.' Mot. Compel (Def.'s Obj.) 2.

On November 6, 2019, Plaintiffs served Westinghouse with interrogatories and requests for production of documents. Pls.' Mot. 2; see Pls.' Mot. Ex. 1 (Objs. and Resps. to Pls.' Interrogs. [*3] and Reqs. for Produc. Docs. Directed to CBS Corporation (Def.'s Objs. and Resps.)). Plaintiffs' Interrogatory No. 2 read as follows:

"2. Please state whether the defendant made, sold and/or distributed products to the following jobsites prior to 1966:

"a. Montaup Electric;

"b. Narragansett Electric;

"c. Boston Edison Electric Light & Power a/k/a Quincy Powerhouse;

"d. Jewett City Powerhouse;

"e. Norwich Gas & Electric Co. Powerplant;

"f. Montville Powerhouse;

"g. Yankee Rowe Nuclear Power Station; and

"h. New Bedford Powerhouse.

"If yes, then please identify the products made, sold and/or distributed." (Def.'s Objs. and Resps. 2.)

Plaintiffs also requested all documents in Westinghouse's possession related to products sold or distributed to the named power stations prior to 1966. *Id.* at 6-7.

In its initial response of December 19, 2019, Westinghouse stated that it manufactured and sold turbines for use at the following power stations: Montaup Electric's Somerset Station (Montaup Station); Narragansett Electric's Manchester and South Street Stations (Narragansett Stations); City of Norwich Gas and Electric's North Main Street Station (Norwich Station); Connecticut Light & Power's Montville Station [*4] (Montville Station); Yankee Atomic Electric's Rowe Plant (Yankee Rowe Station); and New Bedford Gas & Edison Light Co's Cannon Street Station (New Bedford Station). *Id.* at 3, 8. Westinghouse also represented that it would produce the requested documents relating to those turbines at a mutually agreeable time. *Id.* at 3.

On July 16, 2020, Westinghouse served Plaintiffs with a

supplemental response stating that it now only intended to "produce documents relative to the turbines at the Narragansett Electric Stations, where Charles Ferguson testified he worked on turbines[.]" Def.'s Obj. Ex. D (Suppl. Objs. and Resps. to Pls.' Interrogs. and Reqs. for Produc. Docs. Directed to CBS Corporation (Def.'s Suppl. Objs. and Resps.)) 3; see Def.'s Obj. 3-4 (stating that Westinghouse filed supplemental response after reviewing Ferguson's deposition testimony). To date, Westinghouse has only produced the requested documents with respect to the two Narragansett Stations and has not agreed to produce the remaining power station documents. See Def.'s Obj. 1; Pls.' Mot. 3.

On June 6, 2022, Plaintiffs filed the instant Motion to Compel; Westinghouse filed its Objection on June 22, 2022, and this Court conducted [*5] a hearing on June 30, 2022. Westinghouse previously filed a Motion for Summary Judgment on April 29, 2021, which is currently scheduled for hearing on September 15, 2022. See Def.'s Obj. 2. Through their Motion to Compel, Plaintiffs ask the Court to prohibit Westinghouse from moving for summary judgment or dismissal until it has produced the relevant documents and properly responded to Plaintiffs' discovery requests; conversely, Westinghouse asks that the Court deny Plaintiffs' Motion to Compel and then proceed to hear and grant its Motion for Summary Judgment. *Id.*; Pls.' Mot. 6.

II

Standard of Review

"The provisions of the Superior Court Rules of Civil Procedure pertaining to discovery generally are liberal, and are designed to promote broad discovery among parties during the pretrial phase of litigation." [DeCurtis v. Visconti, Boren & Campbell, Ltd., 152 A.3d 413, 420 \(R.I. 2017\)](#) (quoting [Henderson v. Newport County Regional Young Men's Christian Association, 966 A.2d 1242, 1246 \(R.I. 2009\)](#)). Pursuant to [Rule 26\(b\) of the Superior Court Rules of Civil Procedure](#),

"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any documents, [*6] electronically stored information or

tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." [Super. R. Civ. P. 26\(b\)\(1\)](#).

Under [Rule 34 of the Superior Court Rules of Civil Procedure](#), a party "may serve on any other party a request within the scope of [Rule 26\(b\)](#)" to produce documents or electronically stored information "in the responding party's possession, custody or control[.]" [Super. R. Civ. P. 34\(a\)](#). Under [Rule 37 of the Superior Court Rules of Civil Procedure](#), if the responding party fails to produce the designated documents as requested, "the discovering party may move for an order compelling . . . production or inspection in accordance with the request." [Super. R. Civ. P. 37\(a\)\(2\)](#).

"The Superior Court has broad discretion to regulate how and when discovery occurs." [Martin v. Howard, 784 A.2d 291, 296 \(R.I. 2001\)](#) (citations omitted). This discretion extends to motions to compel discovery, which will only be disturbed by our Supreme Court if it finds "an abuse of that discretion." [Colvin v. Lekas, 731 A.2d 718, 720 \(R.I. 1999\)](#) (citing [Corvese v. Medco Containment Services, Inc., 687 A.2d 880, 881-82 \(R.I. 1997\)](#)). In the context of reviewing discovery orders for abuses of discretion, the test that our Supreme Court has "adopted to determine relevancy for discovery purposes is 'whether the material [*7] sought is relevant to the subject matter of the suit, not whether it is relevant to the precise issues presented by the pleadings.'" [Cardi v. Medical Homes of Rhode Island, 741 A.2d 278, 279 \(R.I. 1999\)](#) (quoting [DeCarvalho v. Gonsalves, 106 R.I. 620, 627, 262 A.2d 630, 634 \(1970\)](#)).

III

Analysis

Plaintiffs argue that the requested documents are directly related to their prima facie case against Westinghouse because Westinghouse has admitted that its products, some of which may have contained **asbestos**, were present at the power stations where Ferguson worked. (Pls.' Mot. 4.) Plaintiffs point out that Ferguson's duties as an insulator primarily involved working on or around the power stations' steam

systems, which incorporated piping, pumps, valves, tanks, boilers, and turbines; as such, Ferguson worked at the locations where Westinghouse's products were installed, maintained, repaired, and insulated. *Id.* at 5. Against Westinghouse's characterization of its turbines as discrete, self-contained units, Plaintiffs assert that Westinghouse was often involved with the design and construction of power stations' entire steam systems. *Id.* at 5-6; see Hr'g Tr. 7:14-8:2, June 30, 2022. Similarly, Plaintiffs argue that the requested documents are likely to reveal information about the larger context of the power stations' operations [*8] during the period in question, which could be relevant to Plaintiffs' claims against utilities, vendors, and other product manufacturers in this action. Hr'g Tr. 8:3-9:5, June 30, 2022. Plaintiffs also assert that Westinghouse has conflated the liberal discovery standard of [Rule 26\(b\)](#) with a party's burden of proof on a motion for summary judgment. *Id.* at 4:2-5:3.

Westinghouse objects and asserts that the requested documents will not lead to the discovery of admissible evidence. (Def.'s Obj. 1.) Westinghouse argues that nothing in Ferguson's deposition testimony—in which he discussed his employment history—suffices to show that Ferguson was present at any of the named power stations at a time when the **asbestos** insulation on a Westinghouse turbine was being applied, removed, or otherwise disturbed. See *id.* at 7; Hr'g Tr. 16:25-17:20, June 30, 2022. Therefore, asserts Westinghouse, any claim that Ferguson was exposed to **asbestos** from its products is speculative because Plaintiffs can only establish that Ferguson worked at power stations that used Westinghouse turbines. (Def.'s Obj. 1, 7; Hr'g Tr. 17:21-25, June 30, 2022.) Noting that this showing is insufficient to establish its liability, Westinghouse [*9] submits that it is also an insufficient basis for the Motion to Compel because the contents of the requested documents will not fill in the gaps in Plaintiffs' case. (Def.'s Obj. 6-8.)

"The scope of relevancy in discovery proceedings is much broader than when considering the relevancy of evidence adduced at a trial." [DeCarvalho, 106 R.I. at 627, 262 A.2d at 634](#) (citing [Independent Productions Corp. v. Loew's, Inc., 30 F.R.D. 377 \(S.D.N.Y. 1962\)](#)); cf. [R.I. R. Evid. 401](#) ("'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."). Nevertheless, on a motion to compel, the discovering party must establish the "requisite materiality of [the] request to produce."

[DeCarvalho, 106 R.I. at 627, 262 A.2d at 634.](#)

In [DeCarvalho](#), our Supreme Court reviewed a trial justice's order that the defendants produce their business records by first discerning "the subject matter of the pending suit" with reference to the plaintiff's complaint, his motion to produce with supporting affidavit, and the parties' depositions. [Id. at 625-27, 262 A.2d at 633-34.](#) Based on "the gravamen of [the] complaint[.]" which alleged that defendants had made false representations to the plaintiff and breached their fiduciary duties to the import corporation of which the plaintiff was a stockholder, [*10] the Supreme Court had little difficulty in finding that the requested records were directly relevant to the subject matter of the case. [Id. at 627-28, 262 A.2d at 634-35.](#)

However, the Supreme Court also found that the challenged order was "too broad, immaterial in some respects, and place[d] an undue burden on" the producing defendants. [Id. at 628, 262 A.2d at 635.](#) Specifically, the Supreme Court was concerned that the requested records extended well beyond the time period of the alleged misconduct, could reveal personal information from the joint income tax returns of individual defendants and their spouses, and contained customer information that could be used for improper ends. [Id. at 628-29, 262 A.2d at 635.](#) After limiting the order to address these concerns and providing that defendants could meet their discovery obligations by making the records available for plaintiff's inspection, the Supreme Court otherwise upheld the full scope of the trial justice's order. [Id. at 628-29, 262 A.2d at 635-36.](#)

In [In re Asbestos Litigation \(Sherman\), No. Civ. A. 01-0696, 2002 R.I. Super. LEXIS 89, 2002 WL 1378965 \(R.I. Super. June 20, 2002\)](#), this Court considered a plaintiff's motion to compel the production of a defendant corporation's business records. See [Sherman, 2002 R.I. Super. LEXIS 89, 2002 WL 1378965 at *5-6.](#) While plaintiff asserted that the requested records were relevant because they contained a comprehensive history of the **asbestos**-containing products that defendant had sold to plaintiff's [*11] employer, defendant maintained that it had already given plaintiff the sole document in its possession relating to plaintiff's employer in which any **asbestos** products were mentioned. [2002 R.I. Super. LEXIS 89, \[WL\] at *1.](#) Despite that assertion, defendant's president—who had performed the document review—admitted at an evidentiary hearing before this Court that only the products' manufacturers

would know for certain whether and when the products contained **asbestos** during the salient time frame. [2002 R.I. Super. LEXIS 89, \[WL\] at *2.](#)

Applying the approach set forth in [DeCarvalho](#), this Court concluded from its review of plaintiff's complaint and other materials that the "potential materiality of the items requested [was] clear" because "product identification and exposure [would] constitute the central issue at trial." [2002 R.I. Super. LEXIS 89, \[WL\] at *5;](#) see [2002 R.I. Super. LEXIS 89, \[WL\] at *1](#) ("Plaintiff [has] filed suit against several manufacturers and distributors of products containing **asbestos** to which he claims he was exposed over the course of his career.") This Court also noted that the documents could potentially be used to impeach the credibility of defendant's president. [2002 R.I. Super. LEXIS 89, \[WL\] at *5](#) (citation omitted). Next, this Court found that the document request was both sufficiently descriptive and—unlike [DeCarvalho](#)—appropriately "limited in scope and time." [*12] [2002 R.I. Super. LEXIS 89, \[WL\] at *6](#) (citations omitted). Finally, and despite acknowledging that there was likely no way to limit the use of the requested documents to the instant **asbestos** case, this Court found nothing to suggest that producing the documents would be prohibitively burdensome to the defendant. [2002 R.I. Super. LEXIS 89, \[WL\] at *6.](#) This Court then granted the plaintiff's motion to compel. *Id.*

Turning to the instant Motion, a review of the Complaint and other pertinent filings shows that the nature and extent of Ferguson's alleged occupational exposures to **asbestos** constitute central issues in this suit. See, e.g., Pls.' Mot. 1-2; Def.'s Obj. 2. As in [Sherman](#), Plaintiffs advance their claims against multiple defendants, thereby implicating issues of product identification. See [Sherman, 2002 R.I. Super. LEXIS 89, 2002 WL 1378965 at *1, *5.](#) Westinghouse does not dispute that Ferguson worked at the named power stations at times when Westinghouse's turbines were present, and Ferguson's deposition testimony indicates that he worked on or around turbines and other elements of the power stations' steam systems. Def.'s Suppl. Objs. and Resps. 2-3; see Pls.' Mot. Ex. 2 (Ferguson Dep. Vol. 1), 44:1:17 (stating that Ferguson worked with **asbestos** insulation designed to serve as a "special covering for high-temperature [*13] vessels" such as tanks, boilers, and turbines).

According to the Affidavit of Douglas Ware, a former Westinghouse employee experienced in the "installation, service and repair of turbines and related

equipment[,]" the turbines that Westinghouse supplied to the Narragansett Stations included both massive "steam turbine generator units" and smaller "mechanical drive steam turbines" that were used to "operate auxiliary equipment such as condenser pumps, boiler feed pumps, fans and blowers and D.C. exciters that were integral to the operating systems of the power stations." Def.'s Obj. Ex. C (Aff. of Douglas Ware), ¶¶ 1, 4-8, 10-12. Both steam turbine generator units—and six of the thirty-three mechanical drive steam turbines—provided by Westinghouse to the Narragansett Stations contained **asbestos** insulation. *Id.* ¶¶ 8, 11. The Affidavit also indicates that Westinghouse personnel were present at the Narragansett Stations during "various shutdowns and overhauls" of the turbines and that Westinghouse documented the turbines' repairs through its "service report[s]." *Id.* ¶¶ 5-6, 12-13.

Given the above, documents relating to the **asbestos**-containing products present at Ferguson's jobsites are plainly [*14] "relevant to the subject matter involved in the pending action[.]" [Super. R. Civ. P. 26\(b\)\(1\)](#). The Court also finds that Plaintiffs have put forth an adequate showing of Ferguson's work at the named power stations to establish the "requisite materiality" of their discovery requests. [DeCarvalho, 106 R.I. at 627, 262 A.2d at 634](#) (citation omitted); see Ferguson Dep. Vol. 1 at 53:4-56:23 (stating that Ferguson's work at Montaup Station included maintenance of turbines and boilers); Pls.' Mot. Ex. 3 (Ferguson Dep. Vol. 2), 122:10-123:7 (stating that Ferguson's work at Norwich Station involved insulation of boilers, piping, tanks, pumps, valves, high-pressure valves, and pumping stations); *id.* at 165:7-168:3 (stating that Ferguson's work at Montville Station was mostly repair work on boilers, steam pipes, pumps, and tanks); Pls.' Mot. Ex. 4 (Ferguson Dep. Vol. 3), 185:12-23, 192:16-22 (stating that Ferguson's work at New Bedford Station involved insulation of boilers, pumps, and high-pressure steam lines, and identifying General Electric and Westinghouse as manufacturers of the turbines that were present). Only with respect to Yankee Rowe Station was Ferguson, nearly ninety-seven years old at the time of his deposition, unable to recall any details about [*15] the work he performed; nevertheless, the potential materiality of these records is supported by Plaintiffs' showing that Westinghouse "was selected to construct the nuclear steam supply system" at Yankee Rowe Station "and acted as a joint contractor with Stone & Webster Engineering, which . . . design[ed] and construct[ed]" that power station. Pls.' Mot. Ex. 5 (Nuclear Newswire Article) 2; see Ferguson Dep. Vol. 1 at 14:14-18; Ferguson Dep. Vol. 3 at 184:5-185:9.

Moreover, under [Rule 26\(b\)](#), discoverable evidence may "relate[] to the claim or defense of the party seeking discovery or to the claim or defense of any other party[.]" [Super. R. Civ. P. 26\(b\)\(1\)](#). Plaintiffs have represented that, due to the passage of time and the concomitant changes in the corporate identities of the utility defendants in this case, those defendants have been unable to provide substantive responses to Plaintiffs' requests for production. (Hr'g Tr. 22:17-23:4, June 30, 2022.) Plaintiffs have further represented that documents of the type they have requested from Westinghouse frequently contain contracts and communications with utilities, insulation specifications, and additional varieties of information that may be relevant to Plaintiffs' claims [*16] against other defendants. *Id.* at 8:3-9:2. Although Westinghouse characterizes this argument as pure speculation, Plaintiffs' assertion is substantiated by the Affidavit of Douglas Ware, which references "contract[s] between Westinghouse and Narragansett Electric Company," alludes to the extensive work that went into the installation of steam turbines at the Narragansett Stations, and indicates that Westinghouse kept records of the on-site maintenance it performed on its turbines. Aff. of Douglas Ware ¶¶ 5-8, 10-13; Hr'g Tr. 14:11-20, June 30, 2022. It is reasonable to infer that Westinghouse may possess similar documents with respect to the other power stations, and that such documents are likely to encompass "material that could help determine the validity or invalidity of [Plaintiffs'] claims" not only against Westinghouse, but also against utilities and other defendants. [Callahan v. Nystedt, 641 A.2d 58, 60 \(R.I. 1994\)](#).

Continuing the [DeCarvalho](#) analysis, the Court finds that Plaintiffs' requests for production are sufficiently descriptive and are properly "limited in scope and time." [Sherman, 2002 R.I. Super. LEXIS 89, 2002 WL 1378965, at *6](#); cf. [DeCarvalho, 106 R.I. at 627-29, 262 A.2d at 634-35](#). Plaintiffs' requests for records pertaining to Westinghouse products that were sold or distributed to the power stations where Ferguson worked prior [*17] to 1966 are consonant with their allegations that Ann Stadler was exposed to **asbestos** fibers on Ferguson's work clothes at some point during the period from 1948 to 1965. See Def.'s Obj. 2; cf. [DeCarvalho, 106 R.I. at 628, 262 A.2d at 635](#) (limiting production to "the period which is relevant to plaintiff's charges"). There is also "nothing before this Court to suggest that the production of documents would be prohibitively burdensome in the present case." [Sherman, 2002 R.I. Super. LEXIS 89, 2002 WL 1378965, at *6](#). The requests are not overly broad as compared to Plaintiffs'

allegations, and Westinghouse initially responded to Plaintiffs' Interrogatories by stating that it possessed and could produce documents relating to the turbines it supplied to each of the power stations at issue. Def's Objs. and Resps. 2-3; cf. [Cardi, 741 A.2d at 279](#) (quashing trial court's order that allowed plaintiff to depose sixty-seven out-of-state banking institutions "without any evidence that any party actually maintained an account at a particular institution"). Accordingly, Plaintiffs' instant Motion to Compel "satisfies all three elements of the test enunciated by the Rhode Island Supreme Court in [DeCarvalho](#)." [Sherman, 2002 R.I. Super. LEXIS 89, 2002 WL 1378965, at *6](#).

None of Westinghouse's contentions to the contrary are persuasive. [Hsieh v. Apache Deepwater, LLC, No. 19-00408-BAJ-DPC, 2021 U.S. Dist. LEXIS 149010, 2021 WL 3502467 \(M.D. La. Aug. 9, 2021\)](#), which Westinghouse offers as a comparable example [*18] of a plaintiff embarking on a "fishing expedition" without any "factual basis" for the alleged **asbestos** exposure, is clearly distinguishable. (Def.'s Obj. 6 (quoting [Hsieh, 2021 U.S. Dist. LEXIS 149010, 2021 WL 3502467, at *7](#).) In [Hsieh](#), the plaintiff claimed that he was exposed to **asbestos**-laden "drilling mud" through his work at the defendants' oil wells and sought to compel production of an exhaustive collection of "well logs" from every well operated by the defendants throughout the entire Gulf of Mexico over a seven-year span. See [Hsieh, 2021 U.S. Dist. LEXIS 149010, 2021 WL 3502467, at *1-3, *7](#). However, for some defendants, the plaintiff was unable to "identify any rig, vessel or other structure that [the defendant] owned or operated where he worked[.]" [2021 U.S. Dist. LEXIS 149010, \[WL\] at *2](#). Although the plaintiff could identify specific jobsites with respect to other defendants, those defendants contrasted the plaintiff's failure to provide testimony or other evidence that he was exposed to **asbestos** drilling mud with "witness testimony confirming that they did not use **asbestos** drilling mud additives . . . during the relevant time period[.]" [2021 U.S. Dist. LEXIS 149010, \[WL\] at *3](#); see *id.* ("Texaco further argues that it discovered one of the two well sites where Plaintiff worked and provided the logging reports, which information fails to reflect any mention of **asbestos** [*19] additives.").

The district court therefore denied plaintiff's motion to compel, finding that because he had "failed to provide any factual basis or information regarding alleged exposure to **asbestos** on Defendants' premises, his request that Defendants produce seven years' worth of well logs from forty years ago covering over half a million square miles in the Gulf of Mexico [was]

improper and not proportional[.]" *Id.* at *7; see *id.* ("While well logs may provide information as to materials used by Defendants, Plaintiff fails to explain how any information from the well logs will shed any light on whether or not Plaintiff performed any services at that particular location during the use of such materials.") By contrast, as previously discussed, Ferguson has testified to his work on and around steam systems at specific power stations; Westinghouse has also confirmed that it supplied turbines to those stations during the relevant time frame and that those turbines might have contained **asbestos**. See Ferguson Dep. Vol. 1 at 53:4-56:23 (Montaup Station); Ferguson Dep. Vol. 2 at 122:10-123:7, 165:7-168:3 (Norwich and Montville Stations); Ferguson Dep. Vol. 3 at 184:5-185:23, 192:16-22 (New [*20] Bedford and Yankee Rowe Stations); Def.'s Suppl. Objs. and Resps. 3, 6 ("Thermal insulation materials installed on turbines may have contained **asbestos**, up until the time adequate substitutes became commercially available in the early 1970's.").

Finally, although Westinghouse maintains that Ferguson's deposition testimony cannot support Plaintiffs' Motion to Compel because that testimony is insufficient to establish Westinghouse's liability, this argument relies on an improperly stringent standard for determining discoverability.¹ See [DeCurtis, 152 A.3d at 420](#) (quoting [Super. R. Civ. P. 26\(b\)\(1\)](#)) (stating that parties' arguments over "the admissibility and weight of the documents at issue" were not "directly . . . on point" to the question of those documents' discoverability because "[Rule 26\(b\)\(1\)](#) requires only that the materials sought be 'reasonably calculated to lead to the discovery of admissible evidence'"); see also [DeCarvalho, 106 R.I. at 628, 262 A.2d at 635](#) ("[T]he proof required to adjudicate [plaintiff's] suit can only be secured by an inspection of the type of records he has set forth in his motion."). Westinghouse puts the cart

¹ Westinghouse also points out that Ferguson (1) did not mention Westinghouse turbines in the testimony he offered in previous **asbestos** lawsuits, including his own; and (2) referred to a handwritten list of products and manufacturers during the course of his deposition in this case. See Def.'s Obj. 2; Hr'g Tr. 11:2-11, 11:19-12:7, June 30, 2022 ("On that list was written, among other things, 'turbines at Westinghouse.' [Ferguson] didn't write that list[.]"). In the Court's view, however, Westinghouse has not satisfactorily explained how and why these facts should affect the operative inquiry; namely, whether the materials sought are "relevant to the subject matter involved in the pending action[.]" [Super. R. Civ. P. 26\(b\)\(1\)](#).

squarely before the horse: the issue of its liability to Plaintiffs has yet to be determined, and the proper foundation for that inquiry will be the parties' **[*21]** shared knowledge of "all data relevant to the pending controversy[.]" [Henderson, 966 A.2d at 1246](#) (quoting [Cabral v. Arruda, 556 A.2d 47, 48 \(R.I. 1989\)](#)); see [La Petite Auberge, Inc. v. Rhode Island Commission for Human Rights, 419 A.2d 274, 282 \(R.I. 1980\)](#) (citing [Hickman v. Taylor, 329 U.S. 495, 507, 67 S. Ct. 385, 91 L. Ed. 451 \(1947\)](#)) ("Mutual knowledge of the matters in issue and mutual opportunity to plan for a contested hearing are the bases of proper litigation.").

IV

Conclusion

For the foregoing reasons, Plaintiffs' Motion to Compel is hereby granted. Counsel shall submit the appropriate order for entry.

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