

DJW/2

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**WAUSAU UNDERWRITERS
INSURANCE COMPANY,**

CIVIL MISCELLANEOUS ACTION

Movant,

v.

Case No. 09-mc-234-KHV-DJW

IMA OF KANSAS, INC.,

Respondent.

MEMORANDUM AND ORDER

This is a civil miscellaneous action to enforce a subpoena. Movant Wausau Underwriters Insurance Company (“Movant”) seeks to enforce a subpoena issued by the United States District Court for the District of Kansas to IMA of Kansas, Inc. (“Respondent”). Pending before the Court are the following motions filed by Movant: (1) Civil Miscellaneous Action for a Petition to Enforce a Subpoena - Wausau Underwriters Insurance Company Motion to Compel Production of Documents (doc. 1) (“Motion to Compel”), (2) Wausau Underwriters Insurance Company’s Motion to Transfer Motion to Compel Production of Documents (doc. 4) (“Motion to Transfer”) and (3) Wausau Underwriters Insurance Company’s Motion to Expedite Hearing on Wausau’s Motion to Transfer and, if Necessary, on Wausau’s Motion to Compel (doc. 6) (“Motion to Expedite”). For the reasons set forth herein, the Motion to Transfer is granted, the Motion to Expedite is found moot, and the Motion to Compel is transferred to the United States District Court for the Eastern District of Louisiana for decision.

Background

Movant is a defendant in a lawsuit pending in the United States District Court for the Eastern District of Louisiana (the “Louisiana Suit”).¹ The Louisiana Suit is set for trial on January 25, 2010, with a discovery cutoff of December 9, 2009.² Respondent is a former co-defendant in the Louisiana Suit.³ Movant subpoenaed Respondent to produce documents on September 24, 2009.⁴ The subpoena was issued from the United States District Court for the District of Kansas, but arises out of the Louisiana Suit, a complex litigation which has been ongoing for over three years in the Eastern District of Louisiana.⁵ To date, counsel for Movant and Respondent have conferred in an effort to resolve their disputes regarding the subpoena, but have been unsuccessful.⁶ Consequently, Movant filed its Motion to Compel, Motion to Transfer and Motion to Expedite. The Court will address Movant’s Motion to Transfer first.

Analysis

Movant seeks an order from this Court transferring the Motion to Compel to the United States District Court for the Eastern District of Louisiana. “[I]t is within the discretion of the court that issued the subpoena to transfer motions involving the subpoena to the district in which the

¹ Civil Miscellaneous Action for a Pet. to Enforce a Subpoena - Wausau Underwriters Insurance Company Mot. to Compel Produc. of Docs. (doc. 1) (“Motion to Compel”) at 1.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*; Wausau Underwriters Insurance Company’s Mem. in Supp.of Mot. to Transfer Mot. to Compel Produc. of Docs. (doc. 5) at 4.

⁶ Motion to Compel at 1.

action is pending.”⁷ Movant argues that its Motion to Compel should be transferred to the Eastern District of Louisiana because (a) it would not prejudice Respondent who was involved in the Louisiana Suit for over three years, (2) the litigation out of which the Motion to Compel arises, the Louisiana Suit, is complex and ongoing, and (3) resolution of the Motion to Compel would require this Court to examine the Louisiana Suit. The Court notes that Respondent does not oppose Movant’s Motion to Transfer. Rather, Respondent agrees that the Eastern District of Louisiana is the proper forum in which the Motion to Compel should be resolved.

The Court is persuaded that the Motion to Compel should be transferred. It appears to this Court that the Eastern District of Louisiana is better positioned to consider the issues raised in the Motion to Compel. The Court therefore grants Movant’s Motion to Transfer.

Movant also filed a Motion to Expedite, which asks this Court to schedule a hearing on its Motion to Transfer and, if necessary, its Motion to Compel. Having granted Movant’s Motion to Transfer, the Court finds moot the Motion to Expedite.

Conclusion

For the foregoing reasons, the Motion to Transfer is granted, the Motion to Expedite is found moot, and the Motion to Compel shall be transferred to the United States District Court for the Eastern District of Louisiana for decision.

IT IS THEREFORE ORDERED that Wausau Underwriters Insurance Company’s Motion to Transfer Motion to Compel Production of Documents (doc. 4) is granted.

⁷ *Goodyear Tire & Rubber Co. v. Kirk’s Tire & Auto Servicenter of Haverstraw, Inc.*, 211 F.R.D. 658, 660 (D. Kan. 2003) (citing *Petersen v. Douglas County Bank & Trust Co.*, 940 F.2d 1389 (10th Cir.1991)).

IT IS FURTHER ORDERED that the Civil Miscellaneous Action for a Petition to Enforce a Subpoena - Wausau Underwriters Insurance Company Motion to Compel Production of Documents (doc. 1) shall be transferred to the United States District Court for the Eastern District of Louisiana. The Clerk of Court is instructed to transfer the motion accordingly.

IT IS FURTHER ORDERED that Wausau Underwriters Insurance Company's Motion to Expedite Hearing on Wausau's Motion to Transfer and, if Necessary, on Wausau's Motion to Compel (doc. 6) is found moot.

IT IS SO ORDERED.

Dated in Kansas City, Kansas on this 24th day of November 2009.

s/ David J. Waxse
David J. Waxse
U.S. Magistrate Judge

cc: All counsel and *pro se* parties