

No. 2014-40964

ERIC TORRES, ADAM SINN, XS CAPITAL INVESTMENTS, L.P., AND ASPIRE COMMODITIES, L.P.	§ § § § § § § § § § §	IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS
VS.		
CRAIG TAYLOR, AND ATLAS COMMODITIES, L.L.C.		157 TH JUDICIAL DISTRICT

Plaintiffs' Motion to Quash and For Protective Order
Against Abusive and Harassing Discovery

Plaintiffs file this Motion to Quash and for Protective Order Against Defendants' Abusive and Harassing Discovery. On August 18 and 22, 2014, Defendants Craig Taylor and Atlas Commodities, LLC (collectively "Defendants") served the following discovery requests by electronic mail:

- Interrogatories and Requests for Production to Eric Torres;
- Interrogatories and Requests for Production to Adam Sinn;
- Interrogatories and Requests for Production to XS Capital;
- Interrogatories and Requests for Production to Aspire Commodities;
- Notice of Requests for Production to Non-Party Paul Sarver;
- Notice of Requests for Production to Non-Party Robert Shults;
- Notice of Requests for Production to Non-Party Michael Bridges;
- Notice of Requests for Production to Non-Party Christopher Yarrow
- Notice of Intention to Take Deposition by Written Questions on AT&T Mobility
- Notice of Intention to Take Deposition by Written Questions on Sprint Spectrum
- Notice of Intention to Take Deposition by Written Questions on Verizon Wireless
- Notice of Intention to Take Deposition by Written Questions on Atlas Commodity Holdings, LLC and Atlas Petroleum Markets, LLC

Defendants' Requests are entirely overbroad, seek the production of information wholly unrelated to the disputed issues, appear to have been sent for the sole purpose of harassment, and amount to nothing more than a fishing expedition. Moreover, non-parties Robert Shults, Michael Bridges, and Christopher Yarrow of Atlas Commodity Holdings, LLC and Atlas Petroleum Markets, LLC have nothing to do with this case or the allegations of either party.

Background

On August 15, 2013, without admitting or allocating fault or liability, Craig Taylor, Atlas Commodities, Eric Torres, Adam Sinn, and Aspire Commodities entered an agreement to permanently resolve and settle any and all claims, issues, matters, or disputes that they had or may have had among them (the “Settlement Agreement”). Pursuant to the Settlement Agreement, Atlas paid \$250,000 of the \$500,000 settlement amount to Eric Torres. Atlas agreed that “The remainder of the Settlement Amount shall be paid at a rate of Ten Thousand Dollars (\$10,000) per month for 25 months beginning 30 days after the Effective Date.” Atlas has only made four of the required monthly payments, and must make 21 remaining monthly payments.

On December 21, 2013, Sinn hosted a holiday party at his home. During the party, Sinn and four other attendees took a photograph holding up their middle finger to the camera. On December 22, 2013, Sinn sent the photograph via text message to Craig Taylor, Joonsup Park, David Schmidli, and the persons pictured in the photograph.

The central issue in this dispute is the text message that Sinn sent to Craig Taylor on December 22, 2013, and whether the sending of that message violated the non-disparagement clause of the settlement agreement. Despite this narrow issue in dispute, Defendants discovery requests go well beyond the issues raised by the pleadings and request documents and communications that have absolutely no relationship to Plaintiffs’ or Defendants’ pleaded allegations. For example, this matter does not involve “all communications” that Plaintiffs and numerous non-parties ever sent or received since August 15, 2013. Nor does this matter involve “all communications and documents” that Plaintiffs and numerous non-parties ever sent or received that “directly or indirectly mention, relate, or refer” to Defendants from August 15, 2013 to present.

Indeed, neither party has made a single allegation regarding communications or text messages sent or received before December 22, 2013. Nor have Defendants alleged that a single employee, associate, or affiliate of Atlas, other than Craig Taylor, received the December 22, 2013 text message, or any other message that refers, relates, or references the photograph that Craig Taylor received. Worse, Defendants have not alleged that any of the numerous non-parties subject to Defendants' requests (Paul Sarver, Evan Caron, Joonsup Park, David Schmidli, Robert Shults, Michael Bridges, Christopher Yarrow)—all non-signatories to the Settlement Agreement—ever sent a single message that references Defendants or that could possibly violate the terms of the Settlement Agreement. Still worse, the allegations involved in the unrelated *Atlas Commodities, LLC v. Atlas Commodity Holdings, LLC*, Cause Nos. 2011-72629 and 2013-70101, pending in the 334th Judicial District Court of Harris County, in which Defendants and Non-Parties Robert Shults, Michael Bridges, and Christopher Yarrow are currently entangled in litigation, have absolutely nothing to do with the disputed issues in this case. Defendants' voluminous and duplicative discovery requests served on Plaintiffs and non-parties amount to nothing more than harassment and should be quashed pending a decision on the proper scope of discovery in this case.

Objections to Discovery¹

Defendants' Notice to Non-Party Paul Sarver includes the following requests:

- Request Nos. 1 and 16: Produce all documents or communications sent to, received from, or created by you mentioning, relating, or referring to the photograph attached as Exhibit A to Defendants' Original Counterclaim.

¹ Plaintiffs previously filed discovery objections with motions to quash and for protective order regarding the notice to produce documents served on non-party Paul Sarver, and the notice of intention to take depositions by written questions served on AT&T Mobility, Verizon Wireless, and Sprint Spectrum. This motion focuses on numerous other duplicative and abusive requests.

- Request No. 2: Produce all contact information for every person you knew as “Craig Taylor” as that contact information existed on your mobile phone between December 21, 2013 and December 24, 2013.
- Request Nos. 3 thru 8, 10: Produce all communications and documents sent to or from you and Eric Torres, Adam Sinn, Evan Caron, Paul Sarver, Sean Kelly, Joonsup Park, or any person named Craig Taylor between August 15, 2013 and the present.
- Request Nos. 9 and 11: Produce all communications in your possession, custody or control that, directly or indirectly, mention, relate, or refer to Atlas, Taylor, or Marshall from August 15, 2013 to the present.
- Request Nos. 12 thru 15: Produce all communications in your possession, custody or control which say “Happy Holidays from Atlas” or “Happy Holidays from Aspire” sent to or by you between December 21, 2013 and the present.

Plaintiffs object to Request Nos. 1-16 as overly broad and harassing. Plaintiffs further object that Request Nos. 1-16 improperly seek confidential and personal information and documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiffs further object that Request Nos. 1-16 are an improper attempt to discover the confidential business and personal records of individual energy traders, brokers, and competitors who must keep client contacts confidential. Plaintiffs further object to the extent that information actually relevant to the disputed issues may be sought by less burdensome means. Plaintiffs further object to the extent that Request Nos. 1-16 seek the production of information protected by the attorney- client privilege, attorney-expert privilege, or the work-product doctrine.

By Request Nos. 1-16, Defendants are literally attempting to discover “all forms of contact, oral or written, electronic, non-verbal or verbal, formal or informal direct or indirect, at any time or place” including “all written, printed, typed, recorded, or graphic matter of every kind and description, both originals and copies, and all attachments and appendices” sent to or

from plaintiffs and a whole host of non-parties, irrespective of the subject matter of those communications or relevancy to the disputed issues in this case. The requests, as worded, would reveal all of the personal, confidential, and business related communications that Eric Torres, Adam Sinn, Non-Party Paul Sarver, Non-Party Evan Caron, Non-Party Joonsup Park, Non-Party David Schmidli, and potentially other third-party individuals ever sent or received since August 15, 2013, that have nothing to do with the allegations in this case or the timing at issue. Defendants are not entitled to such far reaching and irrelevant information.

Motion to Quash and Motion for Protection

TRCP 192.6(a) provides that “A person from whom discovery is sought, and any other person affected by the discovery request, may move within the time permitted for response to the discovery request for an order protecting that person from the discovery sought.” TRCP 192.6(b) provides that this Court “may make any order in the interest of justice” to “protect the movant from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights.”

As shown above, the wide range of personal, confidential, and third-party information sought by Defendants’ Notice goes far beyond any possible scope of relevancy, and appears to have been sent for the sole purpose of harassment. Request Nos. 1-16 seek the production of information unrelated to the facts at issue, and amount to an improper fishing expedition. *See Kmart Corp. v. Sanderson*, 937 S.W.2d 429, 431 (Tex. 1996) (“We reject the notion that any discovery device can be used to ‘fish’”); *In Re American Home Assurance Co.*, 88 S.W.3d 370, 374 (Tex. App.—Texarkana 2002, no pet.) (“discovery requests must be reasonably tailored to include only matters relevant to the case” and “may not be used as a fishing expedition or to impose unreasonable discovery expenses on the opposing party.”).

Defendants are not entitled to the personal, confidential, and third-party documents sought in Request Nos. 1-16. Accordingly, this Court should quash Defendants' overly broad and unduly burdensome discovery requests.

Respectfully submitted,

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Aspire Commodities, L.P.*

CERTIFICATE OF CONFERENCE

Counsel for plaintiff has conferred with counsel for defendants on September 8, 2014 at 3:00 p.m. in a good faith effort to resolve the matters raised by this motion, and counsel for defendants is opposed as to the disposition of the matters raised in this motion.

/s/ Chanler A. Langham

Chanler A. Langham

CERTIFICATE OF SERVICE

This is to certify that on this the 22nd day of September, 2014, a true and correct copy of the above and foregoing instrument was properly forwarded to the following counsel of record in accordance with Rule 21 of the Texas Rules of Civil Procedure as indicated below:

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