

DOCKET NO. UWY-CV-14-6026552-S	:	SUPERIOR COURT
	:	
NUCAP INDUSTRIES INC., ET AL.,	:	J.D. WATERBURY
Plaintiffs,	:	
	:	
VS.	:	AT WATERBURY
	:	
PREFERRED TOOL AND DIE, INC., ET AL.,	:	
Defendants.	:	JULY 2, 2015

**PLAINTIFFS’ REPLY BRIEF IN FURTHER SUPPORT OF THEIR
MOTION FOR AN ORDER OF COMPLIANCE**

Plaintiffs, Nucap Industries Inc. (“Nucap Industries”) and Nucap US Inc., as the successor to Anstro Manufacturing (“Nucap US”) (collectively “Plaintiffs” or “NUCAP”), respectfully file this Reply Brief in further support of their Motion for an Order of Compliance by Defendants Preferred Tool and Die, Inc. (“Preferred Tool”), and Preferred Automotive Components, a division of Preferred Tool and Die (“Preferred Automotive”) (collectively, “Preferred”).

I. POINT ONE -- THE CONNECTICUT SUPERIOR COURT’S DECISION IN *Microtech Int’l, Inc. v. Fair*, 1992 Conn. Super. LEXIS 2754, at *7 (Conn. Super. Ct. Sept. 18, 1992), IS DIRECTLY ON POINT AND COMPELS THE RELIEF NUCAP SEEKS

The dispute at hand relates to Preferred’s claim that it should be able to limit review of admittedly relevant and discoverable materials produced in discovery to only the outside attorneys and independent experts employed by NUCAP – *i.e.*, that no representatives of Plaintiffs may review such materials – on the grounds that the materials are trade secrets belonging to Preferred. Preferred’s argument that it ought to be able to restrict NUCAP’s review of the materials at issue to “attorneys eyes only” is at odds with controlling Connecticut precedent.

In *Microtech Int’l, Inc. v. Fair*, 1992 Conn. Super. LEXIS 2754 (Conn. Super. Ct. Sept. 18, 1992), the plaintiff in a case involving the alleged misappropriation of trade secrets by the

defendant sought to compel the defendant to answer questions and produce documents relating to a joint customer of the plaintiff and the defendant's current employer. As is the case here, the defendant also filed a motion for a protective order. The defendant opposed the discovery, contending that the plaintiff impermissibly sought trade secret information that was not discoverable. After finding that the information at issue was discoverable notwithstanding that the information may qualify for trade secret protection, the Connecticut Superior Court issued a partial protective order providing that "any discovery is to be conducted in private with only those persons involved in the litigation being present, the court file in this case is ordered sealed, *and any person involved in this litigation* is not to disclose any alleged trade secret without prior court approval." *Id.* at *9 (emphasis added).

Here, NUCAP has advised Preferred that NUCAP is willing to agree to similar protections as those enforced in *Microtech Int'l*. Indeed, NUCAP has even proposed a protective order that would limit the number of NUCAP's representatives who could review such "attorneys' eyes only" designated documents to two persons – a more narrow restriction than the "any person involved in this litigation" ordered by the Court in *Microtech Int'l*. Preferred seeks to go far further than that, however, seeking a protective order that would prohibit any employees of NUCAP – the very people whose expertise is necessary for NUCAP's counsel to adequately represent its clients – from reviewing any such documents designated as "attorneys' eyes only." There is no Connecticut precedent for this approach, and Preferred's opposition (and corresponding motion for a protective order) directly contradict the protections approved of by the Connecticut Superior Court in circumstances such as this – where the party opposing production claims that the materials at issue qualify for trade secret protection. *See Microtech*

Int'l, 1992 Conn. Super. LEXIS 2754 at *9; *see also Automation Sys. Integration v. Autoswage-Products*, 1996 Conn. Super. LEXIS 1154 (Conn. Super. Ct. May 6, 1996).

II. POINT TWO – PREFERRED BEARS THE BURDEN, AND CANNOT MEET THAT BURDEN, OF DEMONSTRATING AN ENTITLEMENT TO LIMIT REVIEW OF MATERIALS PRODUCED IN DISCOVERY TO “ATTORNEYS’ EYES ONLY”

Preferred cites no Connecticut state court cases for the proposition advanced in its opposition to this Motion, or in its corresponding Motion for a Protective Order, that review of certain materials produced in discovery should be limited to NUCAP’s attorneys (and independent experts). Instead, Preferred cites various federal court cases in support of this proposition.

First, the cases cited by Preferred represent only one side of the coin in terms of how federal courts have addressed similar disputes over sensitive business information produced in discovery. *See, e.g., THK Am., Inc. v. Nippon Seiko K.K. & N.S.K. Corp.*, 141 F.R.D. 461, 462 (N.D. Ill. 1991) (allowing president of a company to have access to the opposing company's confidential documents in a patent infringement lawsuit when the president was the “most knowledgeable person about the issues in the case” and reasoning that the president should be “able to assist in the evaluation and prosecution of his company's suit on his patented inventions”); *see also Medtronic Sofamor Danek, Inc. v. Michelson*, 2002 U.S. Dist. LEXIS 27981, at *15-16 (W.D. Tenn. Jan. 30, 2002) (finding that “impact of prohibiting Dr. Michelson’s access to the confidential documents, however, would greatly impair his ability to defend himself in the lawsuit and that without access to documents, “Dr. Michelson would be unable to assist his attorneys” in the lawsuit).

Second, the cases cited by Preferred make clear that *Preferred* bears the heavy burden of establishing entitlement to a protective order and/or restricting NUCAP in terms of who can

review documents Preferred produces in the lawsuit. “The burden is upon the moving party to demonstrate good cause for the protection sought, and the nature of the protection, if any, to be afforded “is singularly within the discretion of the district court.” *Dove v. Atlantic Capital Corp.*, 963 F.2d 15, 19 (2d Cir. 1992) (quoting *Galella v. Onassis*, 487 F.2d 986, 997 (2d Cir. 1973)). Preferred, as the party seeking a protective order¹ and opposing NUCAP’s ability to consult its clients in ascertaining the significance of the documents at issue, is required to show good cause as to why one is necessary, yet has not cited any relevant Connecticut law that would support its positions or warrant the protective order Preferred is seeking.

III. POINT THREE – PREFERRED’S PURPORTED CONCERN OVER NUCAP’S ALLEGED MOTIVES IS WITHOUT BASIS AND, IN ANY EVENT, IS ADDRESSED BY THE PROTECTIVE ORDER NUCAP HAS PROPOSED

Lastly, Preferred’s views on what NUCAP might do with the requested discovery, especially as it relates to other litigation, are way off base and nothing more than unsubstantiated allegations designed to make it appear as if unspecified harm will come to Preferred in the absence of the protection it seeks. But even if there were something to Preferred’s allegations (which there is not), the confidentiality agreement NUCAP has proposed limits disclosure of discovery materials to this litigation, and imposes severe penalties on a party that violates its terms.

IV. CONCLUSION

For the foregoing reasons, as well as those stated in Plaintiffs’ Motion for Compliance and Memorandum of Law in support thereof, Plaintiffs respectfully request the Court grant

¹ The Defendant’s Motion for Protective Order in this action (Doc. 137.00) was filed in response to Plaintiff’s Motion for Order of Compliance. While some of the issues addressed in this reply brief refer to the Defendant’s Motion for Protective Order, Plaintiffs will be submitting a further memorandum in opposition to that Motion.

Plaintiffs' Motion for an Order of Compliance and enter an order in the form attached to
Plaintiffs' Motion.

PLAINTIFFS,
NUCAP INDUSTRIES, INC. and NUCAP US,
INC.

By /s/Nicole H. Najam

Stephen W. Aronson
Email: saronson@rc.com
Nicole H. Najam
Email: nnajam@rc.com
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103
Tel. No. (860) 275-8200
Fax No. (860) 275-8299
Juris No. 50604

Of counsel:

DUANE MORRIS LLP

Lawrence H. Pockers
(*Pro Hac Vice*)

Harry M. Byrne
(*Pro Hac Vice*)

30 South 17th Street
Philadelphia, PA 19103
Telephone: 215.979.1000
Fax: 215.979.1020

LHPockers@duanemorris.com
HMByrne@duanemorris.com

Attorneys for Plaintiff

