

Special Master Orders Travelers Atty To Sit For PFAS Depo

By **Emily Sawicki**

Law360 (December 4, 2023, 5:49 PM EST) -- A Travelers Indemnity Co. attorney must be compelled to sit for a deposition in a PFAS coverage suit launched against the insurer by footwear company Wolverine World Wide Inc., a special master in the lawsuit in Michigan federal court has ordered, despite Travelers' argument that, as in-house counsel, the attorney should be shielded.

On Friday, Special Master Paula J. Manderfield issued an opinion and order that attorney Michael Ungaro, a claims handler for Travelers, appear at a deposition by the footwear company, determining the insurer's argument that Ungaro is in-house counsel and therefore cannot be compelled to testify unpersuasive.

"Because Mr. Ungaro was performing a business function and acting as a claims handler, Wolverine is entitled to depose Mr. Ungaro, regardless of his title," Manderfield opined.

Manderfield referenced "numerous exhibits" Wolverine presented including emails that she said "demonstrate that Mr. Ungaro is responsible for directing the ordinary business of claims handling," not litigation.

Later in the order, Manderfield said that, rather than being considered "opposing counsel" for the purposes of the litigation, "he is more akin to a claims handler who went to law school and now routinely handles and evaluates claims within the ordinary business functions of a claim handler for Travelers."

Travelers is among three insurance companies remaining in a wide-ranging suit Wolverine filed in 2018 alleging that, for years, its various insurance companies failed to offer coverage for more than 200 individual tort actions, two government PFAS disposal suits, and three class actions brought by Michigan residents claiming to have been injured by chemicals that originated in tanneries operated by Wolverine.

Commonly called "forever chemicals," perfluoroalkyl and polyfluoroalkyl substances are long-lasting chemical compounds that accumulate in the environment.

Manderfield's latest opinion comes months after the special master sanctioned Travelers for **failing to properly comply** with previous discovery requests, determining it was "obvious" the insurer did not make a reasonable effort to search for requested documents. Travelers **objected to the sanction** and brought a writ of mandamus before the Sixth Circuit seeking to overturn it; the circuit court denied the motion.

Travelers **sought to block** Ungaro from testifying in a deposition by arguing the lawyer is an in-house attorney for Travelers and that, because there are several non-attorney witnesses Wolverine could question, it was unnecessary to compel Ungaro to appear.

Manderfield was not convinced by the argument, saying Ungaro's knowledge of the specific claims at issue in the case was "crucial."

"Mr. Ungaro is ordered to testify in full, and without assertion of privilege, about the handling of Wolverine's claims, coverage analysis, Travelers' process for and guidelines concerning the handling of claims, how Travelers takes and maintains claim notes, and other relevant topics," Manderfield said

in the order.

Wolverine's request to depose Ungaro is directly related to the discovery sanctions, according to counsel for Wolverine, because the footwear company is continuing to face resistance when it comes to discovery requests.

Kevin Dreher of Barnes & Thornburg LLP told Law360 on Monday that the sanctions ruling was "designed to fix" attempts by Travelers to dodge discovery, but so far the insurer has "not stopped playing this game of using lawyers to shield production of material."

"Michael Ungaro holds himself out as an in-house lawyer for Travelers, and what Travelers has done here and continues to do is to have this 'counsel' try to protect what would otherwise be standard insurance industry businesslike documents, and they're trying to protect all of that under this guise of privilege," Dreher said.

Dreher said he expected Travelers to continue to fight discovery in the matter, likening Wolverine's work in the suit to "peeling back an onion layer by layer."

"They're in it too deep, in my opinion," Dreher said of Travelers.

A representative for Travelers did not immediately respond to a request for comment on Monday.

Wolverine is represented by Kevin B. Dreher and Charles M. Denton of Barnes & Thornburg LLP.

Travelers is represented by Charles W. Browning, Mary Massaron, Patrick E. Winters and Drew L. Block of Plunkett Cooney PC.

The case is Wolverine World Wide Inc. v. The American Insurance Co. et al., case number 1:19-cv-00010, in the U.S. District Court for the Western District of Michigan.

--Additional reporting by Emily Enfinger and Jennifer Mandato. Editing by Philip Shea.