

IN THE IOWA SUPREME COURT  
No. 21-1652

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IN THE MATTER OF THE SUBPOENAS  
ISSUED TO DETHMERS  
MANUFACTURING COMPANY

DETHMERS  
MANUFACTURING COMPANY,

Appellant

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APPELLANT'S FINAL REPLY BRIEF

APPEAL FROM THE IOWA DISTRICT  
COURT FOR OSCEOLA COUNTY

HON. NANCY L. WHITTENBURG, PRESIDING

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## Routing Statement

Mittapalli spends a significant amount of digital ink proving why he agrees with Dethmers' statement that "there is not a body of reported Iowa law specific to the topics involved in this case."<sup>1</sup> Dethmers Appellant Brief, p. 6. Both parties examined the case law and agree on this point. Ia. R. Civ. P. 1.1701 has been in force over 20 years and no case involving its interpretation has made its way to the appellate courts of Iowa.

Mittapalli agrees with Dethmers that the Iowa rule is based on Fed. R. Civ. P.45(d), but asserts that "Although a good portion of the language is similar, there are differences." Appellee's Brief p. 7. While this sounds like the start of a promising argument, the remainder of Mittapalli's brief does not identify the differences; does not analyze the policy choices that may have informed such differences; and does not explain why those differences should result in ignoring federal case law. In fact, there are no material differences.

The following is a redlined comparison showing the changes in Ia. R. Civ. P. 1.1701(4) from Fed. R. Civ. P. 45(d). Where the change consisted solely of changing capital letters, it is disregarded:

"1.1701(4) Protecting a person subject to a subpoena.

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<sup>1</sup> Mittapalli incorrectly characterizes Dethmers as arguing that this case does not present an issue of first impression. See Appellee's Brief p. 9.

a. Avoiding undue burden or expense; sanctions.

A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction, which may include lost earnings and reasonable attorney's fees, on a party or attorney who fails to comply.

b. Command to produce materials or permit inspection.

(1) Appearance not required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(2) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises, or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

1. At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

2. These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

c. Attendance. Any party shall be permitted to attend at the same time and place and for the same purposes specified in the subpoena. No prior notice of intent to attend is required.

d. Quashing or modifying a subpoena.

(1) When required. On timely motion, the issuing court must quash or modify a subpoena that:

1. Fails to allow a reasonable time to comply;
2. Requires a person who is neither a party nor a party's officer to travel more than 50 miles from where that person resides, is employed, or regularly transacts business in person, except that a person may be ordered to attend trial anywhere within the state in which the person is served with a subpoena;
3. Requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
4. Subjects a person to undue burden.

(2) When permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:  
“

Obviously, none of these changes are material to any issue in this case.

If the Iowa Supreme Court is going to depart from federal precedent about the identical language, there should be a sound policy reason for it. If the Iowa Supreme Court retains this case, it would be best to follow federal precedent to produce a consistent body of law, rather than charting a new path which may not be the subject of an opinion from this Court for another 20 years.

### Additional Statement of the Facts

Mittapalli has withdrawn its requests for information relating to U-Haul but contends that some of its demands for testimony and documents from Dethmers remain necessary as to Horizon Global, which he identifies as the coupler manufacturer. The only mention of Horizon Global in his filings in the trial court was in footnote 1 of Plaintiff's Opposition to Combined Motion filed June 11, 2021. In that footnote, Mittapalli stated: "Plaintiff similarly asserts general negligence and products liability claims against Horizon Global Americas Inc., who is believed to be involved in the design, manufacturing, distributing and/or selling of the trailer coupler on the subject trailer." Opposition, p. 2, fn1. (emphasis added).

Notwithstanding that sparse record, Mittapalli now claims that Global Horizon is the "manufacturer" of the coupler to U-Haul. What is not clear is what Mittapalli means by "manufacturer." As he acknowledges, Louisiana law has a broad definition of the term, defining it as follows:



## “§2800.53. Definitions

The following terms have the following meanings for the purpose of this Chapter:

(1) "Manufacturer" means a person or entity who is in the business of manufacturing a product for placement into trade or commerce. "Manufacturing a product" means producing, making, fabricating, constructing, designing, remanufacturing, reconditioning or refurbishing a product. "Manufacturer" also means:

(a) A person or entity who labels a product as his own or who otherwise holds himself out to be the manufacturer of the product.

(b) A seller of a product who exercises control over or influences a characteristic of the design, construction or quality of the product that causes damage.

(c) A manufacturer of a product who incorporates into the product a component or part manufactured by another manufacturer.

(d) A seller of a product of an alien manufacturer if the seller is in the business of importing or distributing the product for resale and the seller is the alter ego of the alien manufacturer. The court shall take into consideration the following in determining whether the seller is the alien manufacturer's alter ego: whether the seller is affiliated with the alien manufacturer by way of common ownership or control; whether the seller assumes or administers product warranty obligations of the alien manufacturer; whether the seller prepares or modifies the product for distribution; or any other relevant evidence. A "product of an alien manufacturer" is a product that is manufactured outside the United States by a manufacturer who is a citizen of another country or who is organized under the laws of another country.”

Louisiana Revised Statutes Tit. 9, §2800.53.

Under this definition, Horizon Global could be anything from a reseller of a Chinese-made coupler to a company with a plant and a team of engineers who designed the product. One possibility is that U-Haul gave Horizon Global the design, perhaps by providing an exemplar, and asked Horizon Global for a price quote to duplicate it. In short, we do not know if Horizon Global had any control over the design, on this record. Further, we do not know if Horizon Global provides this product design to any other buyers. And we do not know if Horizon Global sells other styles of couplers which it offered to U-Haul and which may have prevented the decoupling in this case. This is significant information which has a bearing on what Mittapalli might need from Dethmers.

Mittapalli's Iowa subpoenas seek documents and Dethmers' corporate testimony dealing with the twenty-two broad topics. Mittapalli has conceded that some of those topics are no longer in play. The ones that are still in play, as identified in his brief, are:

- “1. The general scope of Dethmers/Demco's business as it relates to the design, development and manufacturing of trailer coupling devices.
2. Dethmers/Demco's history of designing manufacturing, and/or selling hand wheel couplers and/or lever latch couplers.

3. Facts and circumstances surrounding the design, development and manufacturing of the Demco EZ latch coupler.
4. The utility, function, benefits and/or purpose of the Demco EZ Latch coupler.
5. All patent applications and/or awards regarding the Demco EZ Latch coupler.
6. All engineering drawings, testing reports, schematics, diagrams, plans, blueprints, electronically stored information, video or other documents or tangible items that depict, describe, discuss, refer to, or relate to the design, assembly, testing and/or construction of the Demco EZ Latch coupler.
7. All safety and/or instruction manuals, documents, warning and/or electronic communication (i.e., computer or video links) regarding the Demco EZ Latch coupler including but not limited to engineering drawings, testing reports, schematics diagrams, plans, warnings, instructions, blueprints, electronically stored information, video, correspondence, electronic communication, etc.
9. The approximate date and/or time frame that Dethmers/Demco introduced the Demco EZ Latch coupler for sale to the public, including but not limited to customers such as U-Haul.
17. All documents, contracts, communications and/or agreements regarding the price and/or cost paid by U-Haul for Demco EZ Latch couplers (Purchase, retrofit, etc.)
18. All studies, testing, analysis, investigation and/or statistical data with respect to decoupling and/or detachment incidents involving the Demco EZ Latch coupler.
19. All studies, testing, analysis, investigation and/or statistical data with respect to decoupling and/or detachment incidents involving non-EZ Latch coupler design such as hand wheel coupler, lever latch couplers, etc.

21. Annual sales volume of new and/or replacement/retrofit EZ Latch Couplers from January 1, 2006 to the present.

See Appellee's Brief, pp. 22-30.

### ARGUMENT

1. Mittapalli's subpoena seeks documents he does not need and therefore violates Ia. R. Civ. P. 1.1701(4).

Mittapalli's basic justification for seeking information from Dethmers is that he needs proof of the existence and feasibility of an alternative design. However, no one has disputed or can dispute the feasibility and existence of the alternative EZ Latch coupler design. Exhibit P in this case, the patent of the EZ Latch, shows that Dethmers obtained a design patent in 2005. Appx. Vol. II pp. 148-156. The *Bramblett* case shows that Dethmers was selling the EZ Latch to a U-Haul competitor, Penske Truck Leasing, when that accident occurred in March of 2009. See Exhibit N (engineer report by same engineer employed by Mittapalli in his lawsuit), Appx. Vol. II pp. 108-141. Therefore, Mittapalli has no need for more information from Dethmers to prove that the alternative design existed and was commercially feasible long before Mittapalli's accident. In fact, U-Haul was already buying the EZ Latch coupler for its new trailers when the Mittapalli accident occurred. See Exhibit O, Appx. Vol. II pp. 142-147 (instructions for both coupler types). On this

record, existence of the alternative design and its commercial reasonableness cannot possibly be disputed.

Thus, categories 1-3 of Mittapalli's subpoena are superfluous. Mittapalli has an affirmative duty under Ia. R. Civ. P. 1.1701(4)(a) to take reasonable steps to avoid undue burden and expense to Dethmers. The Court is required by the rule to enforce that duty. Mittapalli's sole argument for categories 1-3 is that they provide information about the alternative design, its feasibility, and how long Dethmers has been producing the EZ Latch. See Appellee's Brief p. 23. Mittapalli already has that information.

Mittapalli's category 4 is documentation concerning "the utility, function, benefits and/or purposes of the EZ Latch coupler." This is clearly expert opinion testimony, as discussed below. Further, this description violates the reasonable particularity requirement of the rules, as previously argued. See Ia. R. Civ. P. 1.1707(5). But apart from those problems, Mittapalli has employed Eric Van Iderstine, an engineer who produced the report in *Bramblett* which is Exhibit N. See Appx. Vol. II pp. 108 et. seq. Exhibit N discusses the benefit of the EZ Latch style, which involves use of a bottom plate and a "hands-free" latching mechanism. Appx. Vol. II pp. 128-131. Here again, Mittapalli already has the information he is demanding from Dethmers.

Mittapalli's category 5, patent applications and awards, is a head scratcher because the patent is a public record which Dethmers produced as Exhibit P in the district court. Appx. Vol. II pp. 148-156. Mittapalli has only to make a FOIA request to the U.S. Patent and Trademark Office to obtain the patent records in an official, certified form for introduction into evidence. Imposing on Dethmers for this information violates Ia. R. Civ. P. 1.1701(4)(a).

Mittapalli's categories 6 and 7 seek all of Dethmers' records relating to the EZ Latch coupler from sometime before 2005, when the product was patented, until the present day. This would literally include all emails, correspondence, design records, production records, production drawings, advertising, and promotional materials for at least a 17-year period. The affidavits of Kevin Ten Haken establish that these are trade secrets under Iowa Code §550.2(4). See Appx. Vol. I pp. 32-35; Vol. II pp. 13-16. The statute defines a "trade secret" as "information, including but not limited to a formula, pattern, compilation, program, device, method, technique, or process that is both of the following: [a] Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by a person able to obtain economic value from its disclosure or use.[and] [b] Is the subject of efforts that are reasonable under

the circumstances to maintain its secrecy.” Iowa Code §550.2(4)(2021). Ten Haken’s affidavits show that these requirements are more than met. “A non-party should not suffer disclosure of confidential technology information “without a clear-cut need and a subpoena narrowly drawn to meet that need.” *Convolve, Inc. v. Dell, Inc.*, 2011 WL 1766486 (N.D. Cal.) at\*2.” *Am. Broad. Companies, Inc. v. Aereo, Inc.*, No. 13-MC-0059, 2013 WL 5276124, at \*5–7 (N.D. Iowa Sept. 17, 2013). No such need is shown here.

Moreover, Mittapalli asserts, without explaining, that this information is needed “for Plaintiff’s experts to weigh the utility of Dethmers’ coupler versus the Horizon Global coupler....” Appellee’s Brief p. 25. Yet Exhibit N, a report from the same expert Mittapalli is using, shows that the basis for his opinions about relative design functionality was laboratory and exemplar testing, as one would expect from a scientist. See Appx. Vol. II pp. 115-118. Seventeen years of Dethmers’ letters and emails with customers will add nothing to this knowledge. Nor, for that matter, will a design drawing add anything to what the engineer can see and test with exemplars. Notably, Dethmers produced design drawings under a confidentiality order in the *Bramblett* case, but they were never discussed as a basis for the expert’s opinion, as Exhibit N shows. See Appx. Vol. II pp. 108-141. Production of design drawings is not necessary.

Mittapalli's Topic 9 inquires about "the approximate date or time frame that Dethmers/Demco introduced the EZ Latch coupler for sale to the public..." Mittapalli already has that information from the patent issued in 2005, and the *Bramblett* litigation, where the evidence showed Dethmers offering and selling the EZ Latch to Penske no later than 2010. See Exhibit N, Appx. p. 124.

Mittapalli's Topic 17 seeks information about the price and cost paid by U-Haul for Demco EZ Latch couplers. This information could be relevant to commercial feasibility, if that issue were contested. But that issue cannot possibly be contested on these facts.

Finally, if Horizon Global is a seller of couplers to U-Haul, that makes it Dethmers' direct business competitor. Dethmers should not be forced to reveal information about its costs and pricing to a business competitor, especially for a large national customer like U-Haul. The risk of harm to Dethmers outweighs the marginal benefit to Mittapalli of knowing where the pricing falls below \$50 in a wholesale transaction. The fact of commercial feasibility is already established, and exact pricing is not significant.

Mittapalli's Items 18 and 19 seek reliable statistical data about decouplings of the EZ Latch coupler as compared to other coupler types. The affidavit of Kevin Ten Haken establishes that this information does not exist:



“12. Dethmers does not have possession of or access to any data concerning U-Haul's rentals, accidents with rentals, causes of accidents, or other information related to any casualties in which U-Haul equipment may have been involved.

13. Dethmers has never made an attempt to quantify decoupling incidents with respect to the type of coupler being used. Dethmers does not collect data on decoupling incidents for purposes of comparisons between types of couplers.

14. I am familiar with the Kentucky litigation being referenced in this case... In that case, Dethmers produced documents... showing that Penske tracked what it called "Cumulative Assists" for its equipment... These "assists" included a category of "vehicle coupling" which represents everything from a customer not comprehending how to do it and calling in, up to an actual detachment event. There were many other categories of "assists." The Penske records included notations by customer service representatives, which said what happened in whatever manner the representative thought best. Dethmers was furnished this information because it is a long-time whole good supplier to Penske, and the information might suggest product improvements for the next build. This was not a systematic study of different coupler types or statistics about them, nor has Dethmers ever conducted such a study for any reason.”

Appx. Vol. II p. 15, ¶¶ 12-14. As Mr. Ten Haken explains, the “data” produced in the Bramblett case was not part of any systematic study and the reports it received were for “assists,” not particular to a decoupling event. Dethmers has no reliable information and has not “engaged in this sort of analysis in the past” as is claimed. Mittapalli mischaracterizes and distorts the information produced in the *Bramblett* case.

In contrast to the situation with Penske in the *Bramblett* case, “Dethmers does not have possession of or access to any data concerning U-Haul’s rentals, accidents with rentals, causes of accidents, or other information related to any casualties in which U-Haul equipment may have been involved.” Ten Haken Affidavits, *supra*.

Lastly, Mittapalli continues to seek Item 21, which is Dethmers’ total annual sales volume of EZ Latch couplers from 2006 to the present. His argument is that it is “relevant to establish Horizon Global’s knowledge of a potentially better coupler.” Appellee’s Brief p. 29. Perhaps Mittapalli could first ask Horizon Global what it knew and when. But more to the point, Mittapalli already knows that a national consumer rental company, Penske Truck Leasing, was purchasing EZ Latch couplers in 2010. If Horizon Global is a player of any size in the industry, it almost certainly noticed what a major player like Penske was buying.

Mittapalli’s stated reasons for seeking documents from Dethmers do not hold up under scrutiny. Perhaps the Court can understand why Dethmers would be reluctant to share its sensitive, proprietary information to a party whose reasons are transparently unfounded and whose lawyers are well known plaintiff attorneys, who may be motivated to use information to seek more cases of this type. A common practice among plaintiff lawyers is to

obtain “other incident” evidence and then use it to solicit clients. Dethmers has experienced this before and has no desire to again be a target of such practices.

2. The District Court failed to correctly characterize the subpoena to testify as requiring expert testimony, and failed to apply the correct legal standards when determining whether Dethmers should be compelled to testify as an expert.

Mittapalli does not respond to Dethmers’ point that the testimony sought is opinion testimony. Testimony about “(3) The utility, function, benefits and/or purpose of the Demco EZ Latch coupler” is obviously opinion testimony of the kind normally obtained from a plaintiff’s engineering experts. See Exhibit N, Appx. Vol. II pp. 108-141. Mittapalli admits that he seeks “the deposition of a Dethmers corporate representative to determine their [sic] unique knowledge regarding the Dethmers EZ Latch coupler which Plaintiffs believe Dethmers developed, marketed, and sold as a superior, and safer, alternative design to the traditional couplers...” Appellee’s Brief pp. 31-32. Surely the point of seeking this testimony is not to prove how Dethmers developed and marketed its product, but to prove that the EZ Latch design should be deemed “safer” and “superior” to other designs. Safety and superiority of product designs are opinions which, as Mittapalli admits, are about weighing the gravity of potential harm versus the burden of adopting the design, under Louisiana law. See Appellee’s Brief p. 18.

Subpoena topics 1 through 7 seek Dethmers' entire history of decades of coupler development, and culminate with the overarching topic of "The utility, function, benefits and/or purpose of the Demco EZ Latch coupler." Topic 13 is "All documents and electronic communication between Dethmers and U-Haul regarding the utility, function, benefits, safety and/or purpose of the Demco EZ Latch coupler." Topic 18 is "All studies, testing, analysis, investigation and/or statistical data with respect to decoupling and/or detachment incidents involving the Demco EZ Latch coupler," and is correlated with Topic 19, which deals with similar statistics for non-EZ Latch couplers. Topic 20 asks for any communications with U-Haul in which comparisons are made between statistics of EZ latch versus non-EZ Latch couplers. These topics are clearly designed to elicit a factual basis for and opinions about the relative merits and safety of the EZ Latch design versus other couplers. The subpoena to testify is directly asking for expert opinions and the factual basis for them, and should be treated as such when considering whether Dethmers can be subpoenaed.

Mittapalli also misstates Dethmers' argument about the nature of expert testimony as defined in Ia. R. Evid. 5.701 and 5.702. Dethmers argued that "Ia. R. Evid. 5.702 states that "A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of

an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.”” Appellant’s Brief pp. 31-32. This rule says, first, that expert testimony is not always in the form of an opinion, because experts can testify “in the form of an opinion *or otherwise*” (emphasis added). Second, the rule says that a witness is “qualified as an expert by knowledge, skill, experience, training, or education.” Ia. R. Evid. 5.702. This means that persons may qualify as experts in several ways, not always involving formal education.

Third, Ia. R. Evid. 5.702 says that an expert is someone who offers “scientific, technical or other specialized knowledge [which] will help the trier of fact to understand the evidence or determine a fact in issue.” To consider just one hypothetical example that fits this description but is not “opinion,” a vehicle mechanic who has years of experience working on Porsche Boxsters might be able to explain the mechanical workings of various engines used in that model, and what mechanical problems were experienced with each in a given model year. These would be statements of fact, not opinion, but it would take someone qualified through technical or specialized knowledge and experience to know and explain them. The point here is that everything Mittapalli seeks is what he himself calls “unique knowledge” of Dethmers

about coupler design. Appellee's Brief p. 31. As such, it is specialized technical knowledge, which makes testimony about it expert in nature. This is not dependent on whether it is characterized as "fact" or "opinion."

The 1972 Advisory Committee Comments to Fed. R. Evid. 702 makes the point this way: "Most of the literature assumes that experts testify only in the form of opinions. The assumption is logically unfounded." Similarly, the Advisory Committee Comments to the 2000 Amendments to Fed. R. Evid. 701 (which added language at issue here, which was not added to Iowa's rules until 2017) say that "Under the amendment, a witness' testimony must be scrutinized under the rules regulating expert opinion to the extent that the witness is providing testimony based on scientific, technical, or other specialized knowledge." The district court erred when it ruled, first, that only factual information was sought and, second, that testimony to specialized factual information could not be expert testimony.

Mittapalli attempts to distinguish *Mason v. Robinson*, 349 N.W.2d 236, 242 (Iowa 1983), on the ground that he supposedly seeks only factual information. But Mittapalli is plainly seeking Dethmers' opinions about utility, function, and safety of the EZ Latch in comparison to other couplers, and the specialized knowledge to show the factual basis for such opinions. His characterization of what he is doing is disingenuous. In Iowa the rule is

that “an expert witness, absent some other connection with litigation, is free to decide whether or not he wishes to provide opinion testimony for a party.” *Mason v. Robinson*, 349 N.W.2d 236, 242 (Iowa 1983). The *Mason* Court further held that “the compelling party should affirmatively demonstrate some compelling necessity for an expert’s testimony that overcomes the expert’s and the public’s need for protection.” *Id.* The district court erred in not applying that burden of proof. Mittapalli has not met that heavy burden here.

3. Mittapalli incorrectly claims that the status of discovery in Louisiana was not raised in the district court.

At pages 33-34 of Appellee’s Brief, Mittapalli argues that Dethmers did not raise the issue of the status of discovery in Louisiana in the lower court, which is untrue. Dethmers specifically argued that “The plaintiff has failed to show need because he has not disclosed the status of his discovery with U-Haul.” Appx. Vol. I p. 28. In its Reply Memorandum, Dethmers argued that

“Routine discovery requests to U Haul can also establish when U Haul claims that it first became aware of this design’s availability in the market. Notably, the plaintiff does not tell the Court whether it has asked that question of U Haul, or the response given. There cannot be a showing of “substantial need” of information from Dethmers if the plaintiff has not exhausted his discovery from U Haul on this point.”

Appx. Vol. II p. 135. Dethmers actually devoted the last section of its Reply Memorandum to discussion of this topic. See Appx. Vol. II p. 137.

Under relevant case law, Mittapalli must demonstrate a “substantial need” for the testimony and materials he seeks. Until Mittapalli demonstrates that he has exhausted his efforts in the Louisiana court, he “cannot even begin to argue that [he] has a substantial need to obtain the materials from non-parties.” *Echostar Commc'ns Corp. v. News Corp.*, 180 F.R.D. 391, 395 (D. Colo. 1998).

4. The district court failed to properly consider whether Mittapalli fulfilled his duty to avoid placing an undue burden on Dethmers.

Mittapalli cites pages 4-6 of the district court’s order of July 9, 2021, for the proposition that the district court properly considered the issue of whether the subpoena places an undue burden on Dethmers within the meaning of Ia. R. Civ. P. 1.1701(4). The rule states: “A party or attorney responsible for issuing and serving a subpoena ***must take reasonable steps*** to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction, which may include lost earnings and reasonable attorney’s fees, on a party or attorney who fails to comply.” Ia. R. Civ. P. 1.1701(4)(a) (emphasis added). This is an affirmative duty on Mittapalli to “take reasonable steps.” One would expect from this wording that, at a minimum, Mittapalli’s requests should be narrowly tailored, e.g. by time frames and limited topics. Instead, Mittapalli’s requests are broad, unlimited in time, and encompass decades of all types of information that is in any way related to



Dethmers' coupler business. On its face, the subpoena fails to comply with the rule.

Another problem with the district court's opinion is that it applied criteria for "undue burden" which come out of case law on what the Iowa Supreme Court itself characterized as "garden-variety discovery" setting. See *State ex rel Miller v. Publishers Clearing House*, 633 N.W.2d 732, 738 (Iowa 2001). *Publishers Clearing House* involved an investigatory subpoena issued by the Iowa Attorney General to the target of the investigation. See *id.* An investigatory subpoena directed to a probable wrongdoer, is not the same situation as a subpoena being issued to a non-party which has nothing to do with an underlying case. The articulated standard in *Publishers Clearing House* recognized that "the legislature has granted plenary investigative powers to the attorney general." *Id.* There is no such grant involved in the present case. There are sound public policy reasons, such as the need for public protection, to give the Iowa Attorney General leeway for broad investigative subpoenas, as in the *Publishers Clearing House* case. *Id.* There are no similar public policy reasons applicable to this case.

The district court failed to consider any factor involving the actual burden placed on Dethmers in responding to these broad subpoenas. It first required Dethmers to prove a negative, viz. that the requests were not relevant to Mittapalli's case. Appx. Vol. II p. 270. The court then considered the

*Publishers Clearing House* “garden variety discovery” factors which are “(1) the needs of the case; (2) the amount in controversy; (3) limitations on the parties’ resources; and (4) the importance of the issues at stake in the litigation.” *Id.* These are factors intended to implement the generally broad scope of pretrial discovery between parties. These factors necessarily weigh in favor of disclosure, and do not account for the cost and effort imposed on a non-party by a litigant on a fishing expedition.

Dethmers cited to *Am. Broad. Companies, Inc. v. Aereo, Inc.*, No. 13-MC-0059, 2013 WL 5276124 (N.D. Iowa Sept. 17, 2013), which involved Fed. R. Civ. P. 45(d). That rule, as we have seen, is identical in all material respects to Ia. R. Civ. P. 1.1701(4). The *Am. Broad Companies* case posited an accepted set of criteria for “undue burden” which recognize the expense and difficulty for the subpoenaed party, unlike the criteria used in the district court. The criteria for weighing the burden of a subpoena on a non-party are:

“(1) relevance of the information requested; (2) the need of the party for the documents; (3) the breadth of the discovery request; (4) the time period covered by the request; (5) the particularity with which the party describes the requested documents; and (6) the burden imposed... When a non-party is subpoenaed, however, the Court is “particularly mindful” of Rule 45's undue burden and expense cautions. *Id.* See also *Miscellaneous Docket Matter No. 1*, 197 F.3d at 927 (“concern for the unwanted burden thrust upon non-parties is a factor entitled to special weight in evaluating the balance of competing needs”).”

In *Am. Broad. Companies, Inc. v. Aereo, Inc.*, No. 13-MC-0059, 2013 WL

5276124 (N.D. Iowa Sept. 17, 2013).

Not even mentioned in the district court's analysis was the affidavit of Kevin Ten Haken of Dethmers. Mr. Ten Haken stated:

“12. To the extent that we can understand what is being asked of us, the information in the above categories would require substantial expense and man-hours to gather. Gathering this information would involve examination of many physical files and computer files. Dethmers' business records are not kept in a way that corresponds with these categories. Gathering these records would adversely impact Dethmers' business operations and affect Dethmers' income by devoting man-hours to useless activity instead of profitable activity.”

Appx. Vol. I p. 35, ¶12. As Mittapalli admits, Dethmers' responsive documents were over 18,000 pages in the *Bramblett* litigation a decade ago. Appellee's Brief p. 28. The *Bramblett* event in 2009 was less than five years after the EZ Latch was patented, so it would be reasonable to project several times that volume now. It is not reasonable to ask Dethmers to search for and produce voluminous records, most of which are not probative, in a case to which it is not even a party.

Moreover, as Mr. Ten Haken's affidavit shows, Dethmers employs 300 people. It is not a two-man operation out of a garage. It is a sophisticated manufacturing company selling to national and international markets, a jewel in the crown of home-grown Iowa businesses. Is it sound public policy for the State of Iowa to send the message to manufacturing companies like

Dethmers that if they have records and personnel in Iowa, they may be hauled into court to produce all of their business records and offer expert testimony in their fields whenever a plaintiff's lawyer has a whim to issue a subpoena? This is not sound economic policy and should not be the policy of this state.

The district court abused its discretion in failing to consider the actual burden and expense of producing tens of thousands of documents which it was requiring from Dethmers. The court also abused its discretion in not requiring the subpoena to meet a clear-cut need and to be narrowly drawn to meet that need. See *Echostar Commc'ns Corp. v. News Corp.*, 180 F.R.D. 391, 395 (D. Colo. 1998).

5. The district court abused its discretion in failing to apply criteria and burdens of proof applicable to the production of trade secrets.

Dethmers submitted two affidavits from Kevin Ten Haken, which showed the information sought to be confidential and proprietary trade secrets. In his first affidavit, Mr. Ten Haken stated:

“10. Most of the categories of topics and documents described in the applications are addressed to trade secret, proprietary and confidential information of Dethmers. The following categories seek information which Dethmers keeps in confidence and does not allow to be disseminated to persons outside of its business operations ... [reciting the many topics which concern proprietary matters].

11. The trailer parts business is highly competitive and involves margins that are easily affected by changes in sales. The information described in the categories listed above would, in my

opinion, provide our competitors with an undue advantage if disseminated to them, and could affect our sales of couplers.

“

Appx. Vol. I pp. 33-35, ¶¶ 10-11. In his second affidavit, he stated:

“5. Dethmers is of course in competition with other manufacturing companies which could supply couplers to companies like U Haul. Like other American manufacturing companies, Dethmers is concerned about competition from other countries where labor is cheaper. Dethmers has outsourced some limited manufacturing of parts to other countries but maintains control and confidentiality of its design documents. Dethmers also does not share the overall design of a single product (e.g., a coupler) with any single company. Rather, Dethmers outsources individual parts of an item such as a coupler to different companies, then assembles the various parts in the United States.

6. In connection with its EZ Latch coupler, Dethmers has developed custom design drawings using its personnel, its equipment, and its licensed CAD software. Dethmers has invested significant time and money in developing these drawings which form the basis for production of the coupler. Dethmers does not disclose those documents to outside persons. They are confidential and proprietary.

7. Dethmers maintains the confidentiality of its financial information, business methods, corporate records, design drawings, records of contact with customers, customer lists, emails, correspondence, price lists, costing information, production records, and other internal information and does not disclose those to persons outside the company unless compelled to do so.

8. Dethmers' financial information, business methods, corporate records, design drawings, records of contact with customers, customer lists, emails, correspondence, price lists, costing information, production records, and other internal information is of independent economic value to potential competitors of Dethmers and to competitors of Dethmers' customers, such as U Haul.

9. Companies with knowledge of U Haul's costs and coupler specifications could gain an advantage in setting prices to compete with U-Haul. In addition, knowledge of dealings between U Haul and Dethmers derived from emails or correspondence could allow a Dethmers competitor to discern U Haul's business needs and practices, knowledge which Dethmers has gained only through business contact and dealings and significant time and expense. The timing of existing orders and delivery dates, for example, would allow a competitor to know when to contact U Haul to work on a new order.

10. It is reasonable and in keeping with the practice of virtually every industry to keep in confidence a company's information such as Dethmers' financial information, business methods, corporate records, design drawings, records of contact with customers, customer lists, emails, correspondence, price lists, costing information, production records, and other internal information.

11. Dethmers currently employs over 300 persons at its plant in Boyden, Iowa. Public availability of Dethmers' financial information, business methods, corporate records, design drawings, records of contact with customers, customer lists, emails, correspondence, price lists, costing information, production records, and other internal information, could endanger those jobs.”

Appx. Vol. II pp. 14-15, ¶¶ 5-11. In the face of this record, the district court stated that protections for trade secrets do not “apply to Dethmers.” Appx. Vol. II p. 192.

Unlike the district court, Mittapalli at least recognizes that Dethmers made a record on this point, but argues that it contains “only...stereotyped and conclusory statements” which should be ignored under applicable case

law. Appellee's Brief p. 40. This claim is untrue. The Ten Haken affidavits are particular to the circumstances. Dethmers' custom design drawings, to take one example, are valuable because they show how to produce its coupler, as Mr. Ten Haken says. Information about dealings with Dethmers' customers is valuable to competitors, as he points out, because it could give them an advantage in knowing pricing and timing of orders. He explains that there are tight profit margins in this industry which are affected by loss of sales through making confidential information generally available.

Mittapalli also argues that a protective order by the Iowa court will suffice to protect Dethmers from disclosures to third parties. Appellee's Brief p. 43. However, Mittapalli's argument is now focusing on Global Horizon, which apparently is a coupler manufacturer directly competing with Dethmers for U-Haul as a major customer. Any knowledge gained by Global Horizon of Dethmers' component sourcing, pricing, production methods, production volume, and orders will necessarily do harm. It is not plausible that Global Horizon would just ignore or forget what it learns about Dethmers in this case. Knowledge of Dethmers' business operations will give it a direct business advantage over Dethmers. Dethmers should not be compelled to reveal its trade secrets to Mittapalli and, thereby, to Horizon Global.

6. The district court abused its discretion when it failed to require the topics to be narrowed to reasonable particularity, as the rules and case law require.

Mittapalli claims that he has met the test of “reasonable particularity” because he is now seeking testimony and documents on fewer topics. Appellee’s Brief p. 42. But the number of topics has nothing to do with whether the remaining topics are narrow or broad. The remaining topics literally require Dethmers to produce every item of information, in physical or digital form, which it has ever generated with respect to its coupler business over its entire history. The remaining requests are unlimited in time and scope. Dethmers is being ordered to search all of its files, digital and physical, for any mention of couplers and in particular, EZ Latch couplers. This is not a “reasonable” document request under any definition of that term.

Nor do the topics comply with the requirement of Ia. R. Civ. P. 1.707(5) that corporate deposition topics be identified with “reasonable particularity.” Relevant federal case law states this as a requirement that “the requesting party must take care to designate, *with painstaking specificity*, the particular subject areas that are intended to be questioned, and that are relevant to the issues in dispute.” *Memory Integrity, LLC v. Intel Corp.*, 308 F.R.D. 656, 661 (D. Or. 2015). Telling a witness to appear and testify about any document ever produced by Dethmers relating to EZ Latch couplers requires knowledge



of at least 17 years of records, even without the pre-patent stage included. Mittapalli's "topics" do not identify what types of information in these documents will be the subject of interrogation, let alone identify a subset of documents that a human being could be expected to digest for deposition preparation. "A deposing party may not demand that a corporate designee be prepared to speak with encyclopedic authority. See generally *Murphy v. Kmart Corp.*, 255 F.R.D. 497, 506 (D.S.D. 2009)." *CMI Roadbuilding, Inc. v. Iowa Parts, Inc.*, 322 F.R.D. 350, 361 (N.D. Iowa 2017).

The district court abused its discretion by not requiring the deposition topics to be described in accordance with the rules.

#### 7. Conclusion and Relief Requested.

The District Court should be reversed on all issues raised and the case remanded for entry of judgment quashing both subpoenas. However, if the Court does not entirely quash the subpoenas, Dethmers requests that the district court be instructed to receive additional evidence on the need for Dethmers' testimony and records in light of the current status of the Louisiana litigation.

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