

Federal Court



Cour fédérale

**Date: 20120131**

**Docket: T-2139-10**

**Citation: 2012 FC 115**

**Montreal, Quebec, January 31, 2012**

**In the presence of Mr. Richard Morneau, Prothonotary**

**BETWEEN:**

**AK STEEL CORPORATION**

**Plaintiff**

**and**

**ARCELORMITTAL MINES CANADA INC.**

**Defendant**

**REASONS FOR ORDER AND ORDER**

[1] **GIVEN** the reading of the parties' motion records and the hearing of their attorneys regarding a motion from the Defendant Arcelormittal for obtaining an order compelling the Plaintiff (AK Steel) to obtain from a non-party to the action, namely Canada Steamship Lines (CSL), answers to three undertakings that AK Steel's representative committed to during its examination for discovery to seek from CSL;

[2] **GIVEN** that, despite AK Steel's efforts, CSL has still not provided answers to the three undertakings;

[3] **GIVEN** that the document that the Defendant Arcelormittal is relying on for considering that AK Steel can, by and large, compel CSL to cooperate and provide answers to the three undertakings happens to be a "*Subrogation Receipt*" from December 23, 2009 (the subrogation document);

[4] **GIVEN** that it is clear to the Court that this subrogation document is a document from AK Steel's insurers, namely the Travelers corporation (Travelers) that AK Steel was required to fill out and return to Travelers, in order to subrogate Travelers in AK Steel's rights and authorize Travelers to take any action, on behalf of AK Steel, as a result of previous payment by Travelers, for the benefit of AK Steel, CSL's initial claim further to damages to one of CSL's ships;

[5] **GIVEN** that, the subrogation document is therefore an agreement between AK Steel and Travelers and that CSL is in no way a party to that agreement. Thus, the undertaking to cooperate in any litigation in the future that is mentioned in that document belongs to AK Steel on behalf of Travelers, and there cannot be read or seen in it any obligation by CSL being able to help the Defendant Arcelormittal in the motion under review;

[6] **GIVEN** that, by and large, the Court agrees with the following submissions from AK Steel regarding the characterization of its action, of the subrogation document and of the "*Receipt and Release Agreement*" also found in the Defendant Arcelormittal's motion record:

1. It is evident from the Plaintiff's Claim that this is an action by AK Steel in respect of damages paid by AK Steel (*via* its charterer's legal liability insurers, Travelers) to CSL. It is equally evident that neither Travelers nor CSL are parties to this action. AK Steel is the only party Plaintiff.
2. The basis for the Defendant's motion to compel is that somehow this is a claim belonging to CSL. However, it is obvious from the Travelers' Subrogation Receipt that it is in respect of the AK Steel insurance policy. The caption clearly states that AK Steel Corporation is the assured and, the "undersigned" is described as having received a release from CSL, to wit, AK Steel. Hence, the Subrogation Receipt was and could only have been executed by the assured, namely AK Steel. This is self-evident and, in any event, the fact is that the signatory of the Subrogation Receipt is the V.P. and C.F.O. of AK Steel. Therefore, the Defendant has completely misconstrued both the nature of this action and the relationship between Travelers and AK Steel. We add in this regard that, in any event, insurance and subrogation are simply irrelevant to the action as there are no pleadings either in the Claim or in the Defence which put insurance or subrogation at issue.
3. Moreover, it is clear from the Receipt and Release Agreement (annexed as Exhibit "D" to the Affidavit of Me Sterling) that it was CSL which released AK Steel in respect of any damages to the M.V. RT. HON. PAUL J. MARTIN. Hence, the only document signed by CSL in this matter cannot in any way, shape or form, give rise to AK Steel having a right to force CSL to provide answers to undertakings.
4. Fundamentally, CSL is not party to this action and AK Steel has no means, contractually or otherwise, to force CSL to satisfy the three undertakings in question.

[My underlining.]

[7] **MOREOVER**, I am also satisfied, from J. Kenrick Sproule's affidavit produced by AK Steel opposing the motion under review that, as stated at paragraph 6 of AK Steel's written submissions, the latter deployed:

... all reasonable efforts (...) to obtain the information from CSL but no response has been received, notwithstanding many direct requests for the information and asking AK Steel to ask CSL for the answers.

**ORDER**

**THUS**, Arcelormittal's motion is dismissed, with costs that the Court sets at seven hundred and fifty dollars (\$750.00).

**MOREOVER**, the Court finds that otherwise waiting for or seeking answers to the three undertakings must not delay the progress of this matter and, as such, the Defendant Arcelormittal is required to serve and file its pre-hearing conference memorandum on or before March 2, 2012.

**“Richard Morneau”**  
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Prothonotary

**FEDERAL COURT**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** T-2139-10

**STYLE OF CAUSE:** AK STEEL CORPORATION  
v.  
ARCELORMITTAL MINES CANADA INC.

**PLACE OF HEARING:** Montreal, Quebec

**DATE OF HEARING:** January 30, 2012

**REASONS FOR ORDER:** PROTHONOTARY MORNEAU

**DATE OF REASONS:** January 31, 2012

**APPEARANCES:**

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