

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

STATE OF CONNECTICUT :
DEPARTMENT OF TRANSPORTATION :
v. : CIV. NO. 3:00CV2422 (AHN)
ELECTRICAL CONTRACTORS, INC. :
and MAJOR ELECTRIC SUPPLY CO. :
INC. :

RULING ON CROSS MOTIONS FOR PROTECTIVE ORDER

William R. Smith, president of defendant Major Electric Supply Company (MES), moves to quash a Subpoena Duces Tecum served by plaintiff and for a protective order. **[Doc. #11]**. Defendant Electrical Contractors, Inc. (ECI) also seeks a protective order as "the Commissioner has issued . . . ex parte subpoenas and deposition notices, in complete derogation for either the state or federal rules of practice governing discovery, under his perceived authority per Connecticut General Statute §13b-18.¹ Specifically, ECI argues that "[n]othing in

¹Section 13b-18, entitled "Investigations, inquiries and hearing," states

The commissioner may hold investigations, inquiries and hearings concerning all matters within the jurisdiction of the department. The commissioner may administer oaths and affirmations, certify to all official acts, issue subpoenas and compel the attendance and testimony of witnesses attend, testify or produce papers, records, books or documents as ordered, a judge of the Superior Court, upon application of the commissioner, may

the statute implies, let alone expressly confers upon the Commissioner, the power to conduct an ex parte deposition of a defendant in a lawsuit initiated by the Commissioner, completely outside the rules of discovery, as to material matters involved in that lawsuit." [Doc. #20 at 3].

Plaintiff argues that "this matter was improperly removed to Federal Court . . . and the Court is without authority to issue a protective order because the State has not consented to suit and thus this matter is barred by the Eleventh Amendment to the United States Constitution." [Doc. #14 at 1]. A Motion to Remand the case to state court is pending before Judge Nevas. [Doc. #19]. No decision has been filed on the motion to remand as of this date.

Even though plaintiff argues that discovery should be stayed in federal court until there is a decision on the motion to remand, defendants argued that plaintiff had not suspended its investigation under §13b-18. They contend that, if plaintiff seeks discovery material to this case, discovery should be conducted pursuant to the Federal Rules of Civil Procedure. At oral argument, defendants offered no authority for the proposition that the filing of a lawsuit divests the Commissioner of his authority to conduct an investigation under §13b-18.

make such order as may be appropriate to aid
in the enforcement of this section.

Conn. Gen. Stat. §13b-18.

After oral argument on February 15, 2001, the parties submitted letter briefs on this issue. [Pl. Let. dated Feb. 15, 2001 and Def. Let. Dated Feb. 21, 2001]. Plaintiff provided copies of In Re: Stantley Printing Co., Inc., 637 F. Supp. 71 (D. Conn. 1986)(PCD), and Securities and Exchange Commission v. F.N. Wolf & Co., Inc., 93 Civ 0379, 1993 U.S. Dist. LEXIS 18851 (S.D.N.Y. Dec. 15, 1993) in support. Defendants offered no authority in support of their position. Upon review and careful consideration of the arguments and cases, the Court finds that the powers of Commissioner of the Department of Transportation set forth in Conn. Gen. Stat. §13b-18 are not limited by the initiation of a civil action or subject to the discovery limitations set forth in the Federal Rules of Civil Procedure.

Accordingly, defendants' Motions to Quash Subpoena and Motions for Protective Order [**Doc. ##11-1, 11-2, 19**] are **DENIED**.

This is not a recommended ruling. This is a discovery ruling and order which is reviewable pursuant to the "clearly erroneous" statutory standard of review. 28 U.S.C. § 636 (b)(1)(A); Fed. R. Civ. P. 6(a), 6(e) and 72(a); and Rule 2 of the Local Rules for United States Magistrate Judges. As such, it is an order of the Court unless reversed or modified by the district judge upon motion timely made.

ENTERED at Bridgeport this ___ day of February 2001.

HOLLY B. FITZSIMMONS
UNITED STATES MAGISTRATE JUDGE