

**COMMONWEALTH OF KENTUCKY
JEFFERSON CIRCUIT COURT
CIVIL ACTION NO. 19-CI-01365
DIVISION 6**

**MERCER TRANSPORTATION COMPANY INCORPORATED,
PLAINTIFF/COUNTERCLAIM DEFENDANT**

VS

**COREY MORRELL,
DEFENDANT/COUNTERCLAIM PLAINTIFF**

COUNTERCLAIM PLAINTIFF'S AMENDED MOTION TO COMPEL

FACTS

1. On May 28, 2019 Morrell served his first Request for Production to Mercer. Attached as Exhibit "A" is a copy of that Request.
2. On June 27th Mercer served its Response to the Request. Attached as Exhibit "B" is a copy of that Response.
3. On September 9th Mercer submitted to Morrell it's Amended Response and supplied Morrell with more of the discovery he requested that it had before refused to give him. Attached as Exhibit "C" is a copy of that Response minus requested documents.
4. On September 10th Morrell filed his original Motion to Compel because Mercer still refused to comply with a large portion of the discovery request despite more than three months of waiting. Since September 10th Mercer has supplied Morrell with more discovery but still refuses to comply with all of the discovery request making this amendment necessary. It has now been more than six months since Morrell made his discovery request and Mercer still refuses to comply.
5. On September 28th Mercer filed its Response to the Motion to Compel. Attached as exhibit "D" is a copy of that Response. Morrell would draw the Court's attention to the most relevant section of this Exhibit regarding the present motion. Specifically the last paragraph of page 4 of the Exhibit. In that paragraph Mercer makes the ridiculous statement that it does not have contracts with many of its shippers and in

many cases has nothing but an oral agreement regarding payments. This is a blatant lie and it is shocking that Mercer would state such an easily disprovable lie. In fact it is a violation of federal and state law to haul freight for profit without a written agreement in the form of a contract, waybill, or rate confirmation. The court must not be tricked into believing that Mercer does not have some sort of written instrument for every single load it has ever hauled that clearly states the rate for which Mercer will be compensated for the load. In Mercer's case it is a carrier comprised entirely of leased contract truckers. It does not own any of its own equipment. Mercer is required under federal law, specifically 49 CFR 376.12(g) (*see paragraph 7 below*), to have written documents proving compensation for every single load they haul. This does not count all of the similar laws in all 48 contiguous states and provinces of Canada in which Mercer is licensed to operate that are similar to 49 CFR 376.12(g). If what Mercer is stating about not having written documentation for all of its loads is true then it is in fact admitting to this Court to violating federal and state law on an absolutely massive scale. In addition to all of the federal and state laws that require signed contracts between the parties, there are all of the insurance underwriting requirements that must be met for every load hauled. No insurance underwriter would allow a load to be hauled on the public roadways without the appropriate signed written contracts. But setting all of this aside the lie becomes easily apparent when you apply a little common sense and realize that the entire trucking system across the United States and Canada does not operate on the "honor system". If Mercer persists with their assertion regarding "oral agreements" on many of their loads then Morrell would ask that the Court to order Mercer to produce a list of loads hauled by Morrell for Mercer that were completed under only an oral agreement and provide that list to Morrell and the Court for review. But realistically this blatant lie is just further evidence of Mercer's desperation to keep their rate skimming hidden from this Court.

6. As to REQUEST 2 and 3, Mercer supplied Morrell with a thumb drive that appears to have some of the documents requested but not all of them. In addition, in an obvious attempt to harass, Mercer has buried the few pages Morrell can use in thousands of pages of emails, bills of lading, weight tickets, customs forms, and many other forms of minutia that have nothing to do with payment amounts or the actual documents Morrell requested. Of the 1,272 pages on the thumb drive, only a few dozen pages of billing statements are of any use. The billing statements must be matched to and verified against each corresponding contract, waybill, or rate confirmation to validate accuracy of the invoices. Mercer still refuses to provide any contracts, waybills, or rate confirmations between Mercer and its shippers for the loads he hauled. Additionally, many of the pages on the thumb drive are not legible because they are so poorly sized and scanned.
7. Under federal law Morrell's right to view contracts, waybills, rate confirmations and other documents related to the loads he hauled are clear and unambiguous. Mercer may not cite "trade secrets" as an excuse for not turning over the requested documents. 49 CFR 376.12(g) reads as follows:

"Copies of freight bill or other form of freight documentation. When a lessor's revenue is based on a percentage of the gross revenue for a shipment, the lease must specify that the authorized carrier will give the lessor, before or at the time of settlement, a copy of the rated freight bill, or, in the case of contract carriers, any other form of documentation actually used for a shipment containing the same information that would appear on a rated freight bill. Regardless of the method of compensation, the lease must permit lessor to examine copies of the carrier's tariff or, in the case of contract carriers, other documents from which rates and charges are computed, provided that where rates and charges are computed from a contract of a contract carrier, only those portions of the contract containing the same information that would appear on a rated freight bill need be disclosed. The authorized carrier may delete the names of shippers and consignees shown on the freight bill or other form of documentation."

Nowhere in the statute does it permit Mercer to withhold these documents as "trade secrets".

PRAYER

8. Morrell prays the Court compel Mercer to produce;
- (a) A copy of each contract, waybill, or rate confirmation for each load hauled for Mercer by Morrell from September 2016 through February 2019.
 - (b) A copy of all billing invoices sent from Mercer to each shipper for each load hauled by Morrell for Mercer since September 2016 through February 2019.

RESPECTFULLY submitted this 25th day of November 2019.

/s/ Corey Morrell
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RULE 402 CERTIFICATION

After conferring with opposing counsel Defendant/Counterplaintiff certifies that the parties are unable to reconcile their differences and have exhausted all extrajudicial means in an effort to reconcile their differences regarding discovery in this matter.

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CERTIFICATE OF SERVICE

This is to certify that this document was served upon opposing party via electronic means on November 25th, 2019 in accordance with CR 5.02(2) at cegan@ackersonlegal.com

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