

SUPREME COURT OF ALASKA

Tesoro Petroleum Corporation and Tesoro Alaska Company v. State of Alaska and Bruce M. Botelho, in his official capacity as Attorney General of the State of Alaska

42 P.3d 531 (Alaska 2002) · No. S-9379 · Decided February 15, 2002

SUMMARY

The Alaska Supreme Court affirmed orders permitting the Attorney General's outside counsel to inspect documents produced by Tesoro in response to a civil investigative demand concerning possible antitrust violations and finding the demand not unreasonable or oppressive. The court held that outside counsel could qualify as an authorized employee or designee under AS 45.50.592 and adopted a deferential reasonable-relevance standard for reviewing investigative demands. The court also upheld the superior court's substantial modifications to the demand.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Fabe, Chief Justice; Matthews, Justice; Bryner, Justice; Carpeneti, Justice
JURISDICTION	Alaska
DECIDED	February 15, 2002
DOCKET	S-9379
DISPOSITION	affirmed
PROCEDURAL POSTURE	Tesoro petitioned the Alaska superior court under AS 45.50.592(f) to modify or set aside a civil investigative demand issued by the attorney general and to prohibit disclosure of produced documents to the State's outside counsel. The superior court permitted disclosure to outside counsel, held that the CID was not unreasonable or oppressive, and modified the CID in several respects. Tesoro appealed.
STANDARD OF REVIEW	The court independently reviewed statutory-construction questions. It reviewed the superior court's review of the CID for abuse of discretion and applied a deferential reasonable-relevance standard to the CID's scope and demands.

PRECEDENTIAL VALUE	Published Alaska Supreme Court opinion; binding precedent in Alaska.
PARTIES	Tesoro Petroleum Corporation, Tesoro Alaska Company v. State of Alaska, Bruce M. Botelho, in his official capacity as Attorney General of the State of Alaska

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QUESTIONS PRESENTED

1. Whether outside counsel retained by the attorney general qualifies as an authorized employee, representative, or designee who may inspect CID materials under AS 45.50.592(e) without the respondent's consent or a good-cause order.
2. What standard a trial court must apply when reviewing the reasonableness, relevance, and scope of a CID issued under AS 45.50.592.
3. Whether the superior court abused its discretion by upholding the CID as not unreasonable, improper, or oppressive despite its temporal, geographic, personnel, and product breadth.

HOLDINGS

1. Outside counsel retained by the attorney general may qualify as an authorized employee of the state and a designee under AS 45.50.592(e), and may inspect CID materials without an additional disclosure or good-cause order.
2. A trial court reviewing a CID must determine whether it was issued pursuant to lawful authority, is relevant to the inquiry, and adequately specifies the documents to be produced; relevance is evaluated under a deferential reasonable-relevance standard.
3. The superior court did not abuse its discretion in finding that the CID was not unreasonable, improper, or oppressive, including its requests for documents covering ten years and multiple petroleum products.

KEY QUOTATIONS

"We therefore hold that when a trial court reviews a CID under AS 45.50.592, it should examine whether the subpoena is "[1] issued pursuant to lawful authority, [2] relevant to the inquiry for which it is issued and [3] contains adequate specification of the documents to be produced." (at 541)

"We adopt the federal courts' deferential reasonable relevance standard to determine whether the subpoena is relevant to the inquiry for which it is issued." (at 541)

“Because Hosie, as outside counsel to the State, should be considered “an authorized employee of the state” for purposes of AS 45.50.592(e), because the superior court reviewed the CID under the correct standard, and because the superior court was within its discretion in holding that the CID was not unreasonable, improper, or oppressive, we AFFIRM the superior court’s decision in all respects.” (at 545)

FACTUAL BACKGROUND

The Alaska attorney general issued Tesoro a civil investigative demand concerning possible price fixing, restraints of trade, and other anticompetitive practices involving fuel products in Alaska. The CID contained forty-six document demands covering approximately ten years and multiple petroleum products, markets, and business practices. The State retained Spencer Hosie and his law firm as outside counsel to assist with the investigation, and Tesoro objected both to the CID’s breadth and to disclosure of produced documents to Hosie.

PROCEDURAL HISTORY

The Alaska attorney general served Tesoro with a CID seeking documents concerning possible antitrust violations and gasoline pricing. Superior Court Judge Peter A. Michalski ruled that Spencer Hosie, outside counsel retained by the State, qualified as an employee or designee for purposes of receiving CID materials and that the CID was not unreasonable or oppressive, while limiting certain requests and permitting rolling production. The Alaska Supreme Court affirmed in all respects.

DISPOSITION

affirmed

CASES CITED

- In re Johnstone, 2 P.3d 1226, 1231 (Alaska 2000)
- Novak v. Orca Oil Co., 875 P.2d 756, 762-63 (Alaska 1994)
- Cockerham v. State, 933 P.2d 537, 539 n. 9 (Alaska 1997)
- Matanuska Maid, Inc. v. State, 620 P.2d 182, 189, 192 (Alaska 1980)
- In re Sealed Case, 42 F.3d 1412, 1415, 1417, 1419 (D.C. Cir. 1994)
- United States v. Markwood, 48 F.3d 969, 976-77 (6th Cir. 1995)
- Federal Trade Commission v. Invention Submission Corp., 965 F.2d 1086, 1089-90 (D.C. Cir. 1992)
- Kellam Energy, Inc. v. Duncan, 616 F. Supp. 215, 217-18 (D. Del. 1985)
- Covey Oil Co. v. Continental Oil Co., 340 F.2d 993, 996-97 (10th Cir. 1965)
- Federal Trade Commission v. Alaska Land Leasing, Inc., 778 F.2d 577, 578 (10th Cir. 1985)
- United States v. Ryan, 402 U.S. 530 (1971)
- Aluminum Co. of America v. United States Department of Justice, 444 F. Supp. 1342, 1344 (D.D.C. 1978)
- United States v. GAF Corp., 449 F. Supp. 351, 353 (S.D.N.Y. 1978), aff’d in relevant part, 596 F.2d 10, 12 (2d Cir. 1979)
- United States v. AT&T, 86 F.R.D. 603, 647 (D.D.C. 1979)

- City of Dillingham v. CH2M Hill Northwest, Inc., 873 P.2d 1271, 1276 (Alaska 1994)
- Konecky v. Camco Wireline, Inc., 920 P.2d 277, 281 (Alaska 1996)
- Atlantic Richfield Co. v. State, Department of Revenue, 723 P.2d 1249, 1252 (Alaska 1986)

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