

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CROELL REDI-MIX, INC.,

Plaintiff,

v.

JACK A. ELDER,

Defendant.

ORDER

05-C-294-C

Before the court is defendant's motion for a protective order quashing plaintiff's request for discovery of the gross amount of fees defendant paid his attorneys in the preceding nuisance lawsuit that led to the alleged slander fueling the instant lawsuit. For the reasons stated below, I am denying the motion.

Information regarding a client's fees is not protected by the attorney-client privilege because the payment of fees is not a confidential communication. *In re: Subpoenaed Grand Jury Witness*, 171 F.3d 511, 513 (7th Cir. 1999). In this case, the requested information has the potential to be relevant at trial. After plaintiff settled the nuisance lawsuit with defendant by ceasing operations of the plant near defendant's property and paying \$100,000, defendant was quoted in the local newspaper saying "They wouldn't have given us \$100,000 and agreed to move out if they hadn't broken any laws." This statement implies that the amount of money paid is so large that plaintiff would not have paid it if plaintiff had not done something illegal. While this premise *could* be true, it is not *necessarily*

true because civil litigation can be so expensive that parties often settle based on the cost, not the equities. Knowing how much defendant and plaintiff each spent on legal fees in the nuisance lawsuit would provide context that would assist the jury determine whether the payment was so large as to be a de facto admission of culpability as opposed to a business decision to cut costs and move on.

Therefore, plaintiff is entitled to discover plaintiff's gross litigation costs incurred during the nuisance lawsuit.

It is ORDERED that defendant's motion for a protective order is DENIED.

Entered this 12th day of October, 2005.

BY THE COURT:
/s/
STEPHEN L. CROCKER
Magistrate Judge