

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

KATHLEEN McHUGH and
DEANNA SCHNEIDER, individually
and on behalf of all persons similarly situated,

Plaintiffs,

v.

MADISON-KIPP CORPORATION,
CONTINENTAL CASUALTY COMPANY,
COLUMBIA CASUALTY COMPANY,
UNITED STATES FIRE INSURANCE COMPANY
and ABC INSURANCE COMPANIES 1 – 50,

Defendants,

v.

LUMBERMENS MUTUAL CASUALTY COMPANY,
AMERICAN MOTORISTS INSURANCE CO.
and JOHN DOE INSURANCE COMPANIES 1-20,

Third-party defendants.

In this case under the Resource Conservation and Recovery Act, 42 U.S.C. § 6972,
and state common law, plaintiffs Kathleen McHugh and Deanna Schneider allege that their
houses have been contaminated by toxic vapors released from a manufacturing facility
operated by defendant Madison-Kipp Corporation. Plaintiffs filed suit against Madison-
Kipp as well as three of Madison-Kipp's insurers, defendants Continental Casualty

Company, Columbia Casualty Company and United States Fire Insurance Company. In turn, the insurance companies filed a complaint against Lumbermens Mutual Casualty Company, American Motorists Insurance Company and John Doe Insurance Companies 1-20, contending that these third-party defendants also have a duty to defend or indemnify Madison-Kipp. Dkt. #50.

In an order dated April 16, 2012, I granted plaintiffs' motion for class certification under Fed. R. Civ. P. 23, and certified a class for the limited purposes of determining Madison-Kipp's responsibility for the alleged contamination, the geographical scope of the contamination and the propriety of classwide injunctive relief. Dkt. #72. In the same order, I granted a motion filed by defendants Continental Casualty Company, Columbia Casualty Company and United States Fire Insurance Company to bifurcate and stay insurance coverage issues until after the class issues have been resolved.

The order bifurcating and staying the insurance coverage issues has raised disputes between the parties regarding the proper procedure for conducting discovery in this case. In particular, the parties now dispute whether the various insurance companies involved in this case can participate in depositions and other discovery that is being conducted between plaintiffs and Madison-Kipp and the proper scope of any insurance company participation. On June 7, 2012, Magistrate Judge Crocker instructed the parties to submit a statement of their positions regarding discovery.

Plaintiffs and defendants Continental Casualty Company, Columbia Casualty Company and United States Fire Insurance Company take the position that all insurance

coverage discovery should be stayed until after plaintiffs' claims have been resolved on the merits, with a couple of exceptions. Dkt. ##86, 90. The insurance companies want to be able to conduct discovery regarding "missing" or additional insurance policies that may apply to plaintiffs' claims. The insurance companies also argue that it would be efficient and convenient for all of the parties and witnesses if the insurance companies were allowed to participate in some of the depositions that may be conducted by plaintiffs or Madison-Kipp.

For their part, the third-party defendants Lumbermens Mutual Casualty Company and American Motorists Insurance Company have asked the court to stay all discovery at this stage until the issue of "missing policies" is resolved. In other words, they contend that the only discovery that should be happening at this point is discovery on the issue whether they or other insurers have a duty to defend or indemnify Madison-Kipp. Dkt. #87. (Defendants Continental Casualty Company, Columbia Casualty Company and United States Fire Insurance Company filed a motion to file a brief in opposition to the third-party defendants' proposal. I am granting the motion.)

Finally, Madison-Kipp requests that the court permit full and complete discovery between all parties now. Dkt. #89. It contends that any other discovery plan will likely cause this case to drag out for years, will discourage settlement and will require significant court involvement in resolving discovery disputes.

After considering the parties' arguments, I conclude that Madison-Kipp is correct. Initially, I granted the insurance companies' motions to bifurcate and stay insurance coverage issues because I believed the issues would be sufficiently separate from the

underlying liability issues in this case. However, it has become clear that various liability issues overlap insurance coverage issues, such as the circumstances under which the pollutants were allegedly released by Madison-Kipp and the timing of the discharges. The insurance companies have stated that they intend to seek discovery from Madison-Kipp as well as class members on these issues, and it will be much more convenient and efficient to conduct this discovery all at once. By allowing full discovery now, witnesses can be deposed once and all parties can respond to and submit discovery requests during the same time period, rather than waiting until after a liability phase of trial. Thus, in order to avoid unnecessary inefficiencies and expense, all parties must conduct full discovery on all issues now. There will not be separate discovery phases for liability, damages and coverage disputes.

Additionally, all parties will be subject to the same deadlines for filing dispositive motions. In this way, the court can address dispositive motions on all issues during the same phase, rather than waiting until after disposition on the liability issues to consider addressing coverage issues. This will conserve party and court resources. The party that will be most affected by such a schedule is Madison-Kipp because it will be required to respond to both liability and coverage issues at the same time. However, Madison-Kipp has not objected.

Finally, I note that although the issues of insurance coverage and liability will move forward simultaneously on the same scheduling track, they will remain bifurcated for the purposes of consideration by the court or a jury. This simply means that if this case goes to trial, the case will be presented to one jury in multiple phases: liability (which may include

class and individual issues); damages; and insurance coverage (if necessary).

ORDER

IT IS ORDERED that

1. The motion to file a response, dkt. #91, filed by defendants Continental Casualty Company, Columbia Casualty Company and United States Fire Insurance Company is GRANTED.

2. The clerk of court is directed to set a telephone conference with Magistrate Judge Crocker for the purpose of setting a schedule for this case under which all parties in this case will proceed with discovery on all issues during the same time period. Additionally, the schedule should provide one deadline for all parties to file dispositive motions.

Entered this 5th day of July, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge