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

JEREMY WICKE, *et al*,

Plaintiffs,

v.

L&C INSULATIONS, INC.,

Defendant.

ORDER

12-cv-638-wmc

Before the court is defendant's motion to compel plaintiffs to disclose certain documents in response to defendant's discovery demands. *See* dkt. 74. In opposing the motion, plaintiff has claimed work product or attorney client privilege for some of these documents, but for the most part, simply contends that the information is irrelevant. *See* dkt. 89. At a May 8, 2013 telephonic hearing, the court directed plaintiff to submit the disputed documents ex parte for in camera review (dkt. 90), which plaintiff did the next day *see* dkt. 92, ex parte.

On June 16, 2013, I reviewed the retainer agreement between Jeremy Wicke and the Previant Law Firm s.c. (Dkt. 92-2, ex parte) and made hard copies of the redacted daily logs (dkt. 75-12) and the unredacted daily logs (dkt. 92-3) and compared them one page at a time to determine whether the redactions were appropriate. The bottom line is that they are not, but at this juncture the court is going to limit tightly the scope of disclosure because the potential relevance of the redacted information to this lawsuit is low.

Although the court does not yet have a complete view of the legal and factual issues at play in this lawsuit, it seems clear enough that not all of the redacted sections are relevant to the directly contested issues in this lawsuit, or that all of this information ultimately will be useful to defendant or admissible at trial. Plaintiffs' characterization of the redactions, recaptured in its opposition brief, dkt. 89 at 3, is fairly accurate. But the redactions are too broad, they are inconsistent between documents, and most saliently, they do not encompass any privileged material. Where, as here, Wicke has agreed to be the lead plaintiff in an attempted class action involving employment issues, his statements about matters within the scope of his employment while being

paid by the defendant are sufficiently relevant to his claims and to defendant's defenses–or at least reasonably calculated to lead to the discovery of admissible evidence–to be discoverable. *See* F.R. Civ. Pro. 26(b)(1).

Therefore, it is not the prerogative of plaintiffs' attorneys or the unions who are supporting this lawsuit to **x**-out Wicke's candid statements about the daily grind at the work sites. Perhaps if the censors had redacted with a lighter touch and greater consistency then possibly they might have persuaded this court to allow a handful of the redactions to stand. But they didn't, and this court is not sufficiently familiar with the facts that are directly relevant or potentially relevant to this dispute to start drawing its own lines of demarcation.

Even so, plaintiffs' lack of restraint with their blackouts does not create a *carte blanche* for defendant. Some of the redacted material has the potential to cause annoyance, embarrassment or oppression to plaintiffs and to the unions. It would be improper and vexatious for defendant to take advantage of Wicke's frank reports in any venue other than this court for any purpose other than to prepare a proper defense to plaintiffs' class action. To avoid this possibility, the disclosure of the unredacted reports is limited to the attorneys for the defendant for them to determine which portions of Wicke's reports actually are useful and useable in the defense of this lawsuit. At that point, defendant's attorneys may seek leave (in a sealed motion) to use the material in this lawsuit, with plaintiffs being allowed to respond before the court rules on any such request. It may be that defendant's attorneys will determine that there is nothing worth using, but they are entitled to review the reports for themselves and run their plan past the court.

Next, there is no need at the discovery stage for defendant's attorneys to see the actual retainer agreement between Wicke, Previant and the unions. The summaries of those agreements, *see* Exh. N to defendant's memorandum, dkt. 75-14 , accurately capture the material provisions. Defendant complains that "that summary raises more questions than it answers." Dkt. 75 at 4. The answers to defendant's questions are not found anywhere in the terse retainer agreement. Frankly, Previant's claim that there is material in the retainer agreement that is covered by the

attorney-client privilege[1] has served primarily to whet defendant's curiosity about what role the unions are playing in this lawsuit. To the extent that there might be some scraps of privileged information in the retainer agreement, I will honor plaintiffs' invocation of the privilege, while noting that this decision does not deprive defendant of any information that it is seeking.

ORDER

It is ORDERED that defendant's motion to compel discovery, dkt. 74, is GRANTED IN PART and DENIED IN PART:

(1) Plaintiffs must provide unredacted copies of the daily logs under Attorney's Eyes Only protection. Any use of the previously-redacted material in this lawsuit by either side must be pre-approved by the court. Any other use of the previously-redacted material is forbidden.

(2) Plaintiffs' retainer agreement with counsel need not be disclosed.

(3) Each side will bear its own costs on this motion.

Entered this 18th day of June, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

[1] *See United States v. Evans*, 113 F.3d 1457, 1461 (7th Cir. 1997), employing the Wigmore formulation of the privilege; *see also United States v. BDO Seidman, LLP*, 492 F.3d 806, 815-16 (7th Cir. 2007) for a parsing of the common interest doctrine, which would apply to the communications between Wicke, Previant and the unions about this lawsuit