

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

In re: COPPER ANTITRUST LITIGATION

MDL Docket No. 1303

Cases Nos. 02-C-707-C, 03-C-314-C,
03-C-316-C, 03-C-317-C, 03-C-318-C,
03-C-368-C, and 06-C-160-C

Before the court is plaintiffs' (renewed) motion to compel production of documents by defendants J.P. Morgan Chase & Co. and Morgan Guaranty Trust Company of New York (collectively, "Morgan"). For the reasons stated below, I am denying the motion.

Plaintiffs initially filed a motion to compel in the above matter on October 9, 2003. In an order dated December 17, 2003, this court denied the motion, finding that additional discovery would not aid plaintiffs in opposing the then pending summary judgment motions. Plaintiffs complain that "despite participating in the meet and confer process in good faith," three issues remain: 1) Morgan simply has produced documents collected in other litigations and refuses to independently search for documents in response to plaintiffs' requests or identify the searches used; 2) Morgan has made general objections and not told plaintiffs the extent to which they have withheld documents on the basis of these objections; and 3) Morgan has designated every document that they have produced as confidential. *See* dkt. #738 at 2. Plaintiffs contend that Morgan's actions have significantly hindered plaintiffs' ability to prepare their case for trial.

Fed. R. Civ. P. 37(a)(2)(B) requires that before seeking a motion to compel, the party seeking discovery must certify that they have in "good faith conferred or attempted to confer

with the person or party failing to make the discovery in an effort to secure the information or material without court action.” Plaintiffs’ counsel avers that they have met in good faith with counsel for defendants in order to obtain the documents sought in their request for production of documents served on July 30, 2003. However, that meeting took place on September 15, 2003, over three years ago. *See* dkt. 739, ¶ 5. Since that time, the parties have only exchanged brief written correspondence related to this matter in May and June of 2006. *Id.* at ¶¶ 11-13. Although copies of the letters were not filed with the court, plaintiffs’ counsel apparently wrote Morgan on May 12 and June 6, 2006, asking whether Morgan’s position regarding its responses to the request for production of documents had changed since 2003. In letters dated May 23, 2006 and June 14, 2006, Morgan’s counsel generally confirmed that Morgan continues to rely on its earlier written responses and on the agreements reached during subsequent communications with plaintiffs. *Id.* at Exhs. E and F.

Plaintiffs have not met their burden under Rule 37(a)(2). Apart from their broad written inquiries last year, plaintiffs have not taken any further steps to meet and confer with Morgan on this matter since 2003. Further, plaintiffs do not identify any particular documents or even types of documents that defendants have failed to produce. Instead, plaintiffs make general claims that defendants *may* be withholding unknown documents based on general objections. Plaintiffs are correct that this court will not permit a party to designate every document that it produces as confidential. However, given the fast

approaching trial date in this case, this is a matter that the court will address at trial.

Accordingly, the motion is DENIED.

Entered this 15th day of February, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge