

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

---

EMPLOYERS INSURANCE COMPANY  
OF WAUSAU,

Plaintiff,

v.

THE MARLEY COMPANY, LLC,  
successor to The Marley Company, to  
Engineers and Fabricators Company, and  
to Layne and Bowler, Inc., LAYNE  
CHRISTENSEN COMPANY, f/k/a Layne-  
Western Company, Inc., SPX COOLING  
TECHNOLOGIES, INC., f/k/a Marley  
Cooling Technologies, Inc., f/k/a The  
Marley Cooling Tower Company,

Defendants.

---

ORDER

05-C-695-C

On November 14, 2006, this court held a telephonic hearing on the defendants' two pending discovery motions (dockets 40 and 43). All interested parties were represented by counsel.

At the outset Layne Christensen indicated that after it filed its motion, Wausau provided the requested insurance policies. Layne Christensen asked for cost shifting under Rule 37(a)(4). In this circuit, cost shifting is virtually automatic under the circumstances, although the amount of costs to be shifted is a reasonableness determination to be made by

the court. Layne Christensen may have until November 20, 2006 within which to submit its itemized bill to the court; Wausau may have until November 28, 2006 within which to contest the reasonableness of the amount claimed.

We spent substantially more time discussing Marley's motion to compel. The only issue still disputed by the parties is whether Wausau must provide information responsive to Interrogatories 7, 8 and 9. The parties have taken diametrically opposed views on the relevance and availability of the requested information. No one disputes that it will be extraordinarily time consuming for Wausau to generate the requested data. On the information available to the court at this time, it is impossible to determine which side is correct. Given the dollar amounts contested in this lawsuit, the extraordinary burden of data generation is justified so long as the parties split the costs, at least initially. Accordingly, I ordered Wausau to begin the three-week process of running the numbers to obtain the data requested by Marley. The lawyers are to remain in close contact to ensure that the data generated is actually the data Marley seeks. Nobody wants a three-week long mistake. For now, the parties will split the cost of generating this data 50/50. Upon conclusion of this case following a successful summary judgment motion or a jury verdict, either side may move for reimbursement of its half of the costs. After entertaining a response, the court will shift costs if justice requires.

It is ORDERED that defendant Marley's motion to compel (dkt. 40) is granted in part and denied in part in the fashion stated above, and that defendant Layne Christensen's

motion to compel is DENIED as moot, although costs shall be shifted in Layne Christensen's favor.

Entered this 14<sup>th</sup> day of November, 2006.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge