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

BRENDA MOMBOURQUETTE, By Her Guardian, TAMMY MOMBOURQUETTE, E.S. (A MINOR) and C.S. (A MINOR),

Plaintiffs,

v.

WISCONSIN COUNTIES MUTUAL INSURANCE CORPORATION; CHARLES AMUNDSON, Individually in his Supervisory Capacity; JEANNE REINART, Individually; CANDACE WARNER, Individually; DAVID SHALDACH, Individually; SANDIE WEGNER, Individually; ANNA JANUSHESKE, Individually; MIKE WILDES, Individually; JANITA LEIS, Individually; SUE WIEMAN, Individually; and PATRICIA FISH, Individually,

Defendants.

ORDER

05-C-748-C

On August 2, 2006, defendants filed a motion to compel plaintiffs to answer specified interrogatories. See dkt. 22. Pursuant to the preliminary pretrial conference order, plaintiffs' response was due by August 7, 2006; it now is August 14, 2006, and plaintiffs have not responded. Even so, the court will consider defendants' motion on its merits rather than grant it by default.

Formal discovery began in this case following the preliminary pretrial conference on April 4, 2006. On or about April 11, 2006, defendants served their first set of discovery requests on plaintiffs, including interrogatories. Plaintiffs responded on or about June 15, 2006.

Defendants were dissatisfied with the responses to Interrogatories 1(c), 2(a), 2(b) and 5, so they sought additional information from plaintiffs. Plaintiffs demurred. This motion followed.

Interrogatory 1©) asked plaintiffs to report whether the 19 people identified in their Rule 26(a)(1) had been interviewed by plaintiffs' attorneys, agents or investigators and, if so to provide background details such as the date and the identities of people present. Plaintiffs objected on the grounds of overbreadth, undue burden, this question was premature and it called for the disclosure of attorney work product. Most of plaintiffs' objections are ill-advised. It should be easy for plaintiffs to review their files to determine which of these 19 people were interviewed, on what dates, and who was present. It is not premature for defendants to seek information on interviews that already have occurred. Without a more detailed explanation from plaintiffs of their theory on work product, I will not protect from disclosure such background information such as the fact of an interview, when it occurred and who was present. It is relevant and useful for a party to learn whether its opponents have contacted potential trial witnesses. Therefore, plaintiffs must provide the requested information.

Interrogatories 2(a) and 2(b) are contention interrogatories that asked plaintiffs to describe each act and omission on the part of each defendant which plaintiffs contend caused harm to Brenda Mombourquette and which acts and omissions plaintiffs contend constitute deliberate indifference or are evidence of deliberate indifference by defendants. Plaintiffs responded by citing paragraphs 401-503 of their amended complaint (which actually involves Paragraphs 401-439 then skips to 501-503). Plaintiffs provided no additional information.

Contention interrogatories often cause a fitful discovery dance between parties. Early contention interrogatories rarely are fruitful because the parties still are developing their cases, but a responding party has an obligation to update its responses as discovery progresses. I assume that is plaintiff's situation here; therefore, I will not *order* further disclosures by plaintiffs in response to these two interrogatories at this time. In so doing, I note two points:

First, a complaint is not "evidence" and cannot be relied upon as such in response to any substantive motion subsequently filed this lawsuit. Second, plaintiffs have an ongoing obligation timely to supplement their responses to the contention interrogatories. Any failure to do so shall have consequences. The summary judgment motion deadline in this case is October 6, 2006. Plaintiffs shall not be permitted to use in any fashion during summary judgment proceedings any evidence responsive to these contention interrogatories that plaintiffs did not timely provide to defendants in a supplemental response. Put simply, there shall be no sandbagging, intentional or otherwise.

Defendants' Interrogatory 5 asked plaintiffs to report whether they or their agents have interviewed any current or former employees of the Monroe County Sheriff's Department regarding the events described in plaintiffs' complaint, and to provide foundational information regarding any such interviews. Plaintiffs objected, claiming this called for attorney work product, but noted that they had interviewed Mark Pressler and Cheryl Bettis. Plaintiffs did not provide any foundational information. As with Interrogatory 1©), although it is possible that such interviews might qualify as work product under certain circumstances, plaintiffs have not attempted to make any such showing. The fact and timing of such interviews otherwise is

relevant and discoverable as part of routine discovery in this case. Obviously, the contents of any such interviews are not discoverable at this time, but defendants are not seeking such substantive information. Accordingly, plaintiffs must provide the requested information.

Therefore, IT IS ORDERED that defendants' motion to compel is GRANTED IN PART AND DENIED IN PART in the fashion stated above. Plaintiffs shall have until August 21, 2006, within which to provide the information so ordered. Plaintiffs' obligation to supplement their responses to the contention interrogatories remains ongoing.

Pursuant to Rule 37(a)(4), defendants are entitled to partial payment of their costs in bringing this motion. Defendants may have until August 18, 2006, within which to provide an itemized explanation of their expenses. Plaintiffs may have until August 23, 2006, within which to object to the reasonableness of any requested cost-shifting.

Entered this 14th day of August, 2006.

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