

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

CUNA MUTUAL INSURANCE SOCIETY,

Plaintiff,

ORDER
07-C-057-S

v.

O.M. FINANCIAL ASSOCIATES, L.L.P.,

Defendant/Third-Party Plaintiff,

v.

CUNA MUTUAL LIFE INSURANCE COMPANY,

Third-Party Defendant.

Motion of defendant O.M. Financial Associates for protective order concerning the production of discovery documents came on to be heard by telephone in the above entitled matter on June 13, 2007, the plaintiff/third-party defendant having appeared by Stafford Rosenbaum by Joseph P. Wright and Jon Evenson; defendant/third-party plaintiff by Brennen, Steil, Basting & MacDougall by Michael R. Fitzpatrick and Duffy Dillon and Burns & Levinson by Andrew F. Caplan. Honorable John C. Shabaz, District Judge, presided.

Specifically, O.M. Financial Associates requests the entry of a protective order requiring CUNA to return the inadvertently disclosed documents at issue, forbidding CUNA from using said inadvertently disclosed documents for any purpose whatsoever and forbidding CUNA and it's counsel from disclosing the information to anyone.

The Court in applying the balancing test found in Snap-On Inc. et al. v. Hunter Engineering Co., 29 F. Supp.2d 965, finds that O.M. Financial Associates inadvertently produced four documents consisting of 15 pages that were protected from disclosure under attorney-client privilege and work product doctrines. There was no intention to disclose said documents. As aforesaid, they were inadvertently produced. Immediately upon receiving notice from CUNA that these documents had been produced, O.M. Financial Associates demanded their return by telephone and email.

There is no question the documents are the subject of privilege, both attorney-client and work product which was not waived by O.M. Financial Associates through this inadvertent act. Of 2,172 documents, 15 pages were inadvertently produced in spite of reasonable precautions to protect these communications. As soon as O.M. Financial Associates realized the documents were inadvertently produced, not only did they make repeated demands for their return but entered into a stipulation and protective order as well as the filing and service of this motion. O.M. Financial Associates requested a timely return of the documents. Fairness and justice dictates that the documents should be returned. Certainly, CUNA has not in any way been misled nor is it unjust to compel the return. Fairness and justice requires that these inadvertent disclosures do not constitute a waiver.

Accordingly,

ORDER

IT IS ORDERED that said motion for protective order is GRANTED. CUNA shall return the inadvertently disclosed documents forthwith and abide by the protective order which is now in place.

IT IS FURTHER ORDERED that CUNA is ENJOINED from using said inadvertently disclosed information for any purpose where it is the sole basis for said use.

Entered this 13th day of June, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge