

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

WISCONSIN ELECTRIC POWER COMPANY,

Plaintiff,

v.

ORDER

07-C-277-S

THE NORTHERN ASSURANCE COMPANY OF AMERICA
as successor to EMPLOYERS SURPLUS LINES INSURANCE COMPANY,

Defendants.

WISCONSIN ELECTRIC POWER COMPANY,

Plaintiff,

v.

07-C-299-S

CENTURY INDEMNITY COMPANY as successor to
CALIFORNIA UNION INSURANCE COMPANY, INDEMNITY
INSURANCE COMPANY OF NORTH AMERICA and INSURANCE
COMPANY OF NORTH AMERICA, CONTINENTAL INSURANCE
COMPANY as successor to HARBOR INSURANCE COMPANY
and GENERAL REINSURANCE COMPANY,

Defendants.

Defendants' motions for protective order came on to be heard by telephone in the above entitled matters on August 1, 2007, the plaintiff having appeared by Heller Ehrman by David L. Anstaett, Eric Barber and Mark J. Plumer; defendant Northern Assurance Company of America by Litchfield Cavo by Joseph B. Royster; defendant Century Indemnity Company by Meissner, Tierney, Fischer & Nichols by Michael J. Cohen and Pamela Tillman and Cohn, Baughman & Martin by William M. Cohn and Brian Coffey; defendant Continental Insurance Company by Michael & May by Steven Schulwolf and Brennan,

Steil & Basting by Michael R. Fitzpatrick; defendant General Reinsurance Company by Ellen L. Green. Honorable John C. Shabaz, District Judge, presided.

The parties addressed the motions in four categories. The first is defendants' claims and underwriting and related documents that might shed light on defendants' interpretations of their policies. This material is potentially relevant to the interpretation of the policies. Defendants' main argument is that these will never become relevant because the Court will find the contracts unambiguous. It is impossible to know this until summary judgment and by then the time for discovery is past. Since these are documents of defendants' own producing, it is not likely to be overly burdensome to produce.

Second is evidence of other similar claims. This evidence is potentially relevant to defendants' claims that they were prejudiced by a lack of earlier notice of claim. Proof that no action was taken in other cases would certainly undermine the defense. Furthermore, the requests are expressly limited to MGP and Ash Landfill claims, to Wisconsin claims and to non-privileged material so that they appear to be fairly narrowly drawn to the issue. Defendants' argument concerning the cost to produce these is an exaggeration. Furthermore, the total amount at stake in this litigation is sufficiently large to warrant the discovery investment.

The final category is reinsurance and reserves which argument against production is relevance and privilege. Certainly, the

existence of and additional insurance is relevant, discoverable and would seem to impose no burden. Reserves are evidence of a business decision concerning likely liability. To the extent that defendants believe this information to reveal trade secret information it can be protected by order.

Defendants exaggerate the extent of the burden which may be placed upon them to produce documents which are already available to them.

Accordingly,

ORDER

IT IS ORDERED that defendants' motions are DENIED and discovery is to begin forthwith.

Entered this 1st day of August, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge