

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

v.

6:13-CV-01178  
(GLS/TWD)

CLEARWATER INSURANCE COMPANY,

Defendant.

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APPEARANCES:

OF COUNSEL:

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THÉRÈSE WILEY DANCKS, United States Magistrate Judge

**DECISION and ORDER**

Before the Court is Utica Mutual Insurance Company's ("Utica") motion to compel: (1) responses to Document Request Nos. 12 and 13; and (2) a response to Interrogatory No. 4. (Dkt. No. 38.) Clearwater Insurance Company ("Clearwater") filed opposition to the motion. (Dkt. No. 47.) Also before the Court is Clearwater's motion to compel: (1) responses to Document Request Nos. 48, 60, 61, and 65; and (2) responses to Interrogatory Nos. 10 and 11. (Dkt. No.

40.) Plaintiff filed opposition to the motion. (Dkt. No. 46.) For the reasons stated herein, Plaintiff's motion is granted, in part, and denied, in part, in accordance with this decision. Defendant's motion is denied.

## **BACKGROUND**

The claims in this action involve facultative reinsurance certificates issued by Clearwater to Utica for umbrella policies Utica issued to the underlying insured, Goulds Pumps, Inc. ("Goulds") from 1979 to 1982. Utica seeks payment from Clearwater under these reinsurance policies. Plaintiff also issued direct policies of insurance to Goulds during the same time period. No aggregate limit was stated on some of these direct policies. However, in an underlying coverage dispute between Goulds and its insurers including Plaintiff concerning asbestos related claims, a settlement was reached in February of 2007 which acknowledged that each of Utica's primary policies during the relevant time period contained aggregate limits. Discovery has been ongoing at a reasonable pace until the current discovery disputes.

## **CURRENT DISCOVERY DISPUTES**

Plaintiff's motion seeks documents relating to losses by Goulds concerning the asbestos loss applicable to the 1978-1982 coverage period (which includes the year preceding the policy years at issue) that Defendant has from any source. (Dkt. No. 38.) The motion also seeks a response to an interrogatory which requested the basis for Defendant's counterclaim that the Plaintiff's invoices paid by Defendant in November 2012 were not properly due and payable. *Id.* Plaintiff argues these documents and the interrogatory are relevant to Defendant's defenses and counterclaim that Defendant was misled into paying amounts not properly due to or recoverable by Plaintiff because the documents will show the extent of Defendant's knowledge of the

Goulds' asbestos loss and surrounding coverage issues. *Id.* Defendant opposes the requested document production essentially on relevancy grounds and burdensomeness. (Dkt. No. 47.) Clearwater argues that such information about other policies is not germane to what information Clearwater used to determine coverage under the reinsurance policies. *Id.* Defendant also opposes responding to the disputed interrogatory because it is a premature contention interrogatory. *Id.*

Defendant's motion seeks documents concerning primary insurance policies issued by Plaintiff to other commercial insureds, including other pump manufacturers like Goulds, during the same time period at issue in this case; and documents concerning a loss portfolio transfer ("LPT") by Plaintiff to another insurance company of asbestos related exposures and recoverables. (Dkt. Nos. 40, 41-1.) Defendant also moves to compel responses to interrogatories which seek information regarding individuals at that other insurance company who were involved in negotiating the LPT agreement. *Id.* Defendant argues that this information is needed to determine damages, if any, and whether or not Plaintiff wrote other primary policies without aggregate limits during the relevant time period. Plaintiff opposes the requested document production and related interrogatories on relevancy grounds and burdensomeness. (Dkt. No. 46.) Plaintiff notes that all of the discovery sought relates to other policies of insurance or reinsurance agreements that are not at issue in this case, and which involve different contractual terms than the reinsurance agreements at issue in this claim. *Id.*

## **LEGAL PRINCIPALS**

Rule 26 of the Federal Rules of Civil Procedure sets forth the general provisions governing discovery for civil suits in the federal courts. Parties may, without a court order,

obtain discovery of any matter, not privileged, that is relevant<sup>1</sup> to “the claim or defense of any party.” Fed. R. Civ. P. 26(b)(1). Furthermore, parties may, with a court order, obtain discovery of not just any matter that is relevant to “the claim or defense of any party,” but any matter that is relevant to “the subject matter involved in the action.” *Id.* In both circumstances, discovery extends, not just to relevant evidence that is admissible at trial, but to relevant evidence that is *inadmissible* at trial if that evidence “appears reasonably calculated to lead to the discovery of admissible evidence.” *Id.*

## DISCUSSION

### 1. Plaintiff’s Motion

Utica argues the documents sought are relevant to Defendant’s claims that Plaintiff misled it into paying amounts not due under the facultative reinsurance contracts at issue, and the documents will show what Clearwater knew about the Gould’s asbestos loss and the related coverage issues. (Dkt. No. 38.) In other words, Plaintiff asserts that the documents will show that Defendant had information about Goulds’ asbestos loss and related coverage litigation from other insurers it likely reinsured and therefore Clearwater cannot claim it was misled by Utica.

Defendant argues the discovery of information and insurance contracts concerning other cedent insurers it reinsured are irrelevant to the information utilized by Clearwater to initially pay

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<sup>1</sup> “Relevant” means “having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Fed. R. Evid. 401. *See also Young v. Liberty Mut. Ins. Co.*, No. 3:96-CV-1189 (EBB), 1999 WL 301688, \*2-3, 1999 U.S. Dist. LEXIS 6987, at \*8 (D. Conn. Feb. 16, 1999) (citing Rule 401 in defining Rule 26[b]); *B.C.F. Oil Refining, Inc. v. Consolidated Edison Co. of New York*, 168 F.R.D. 161, 164 (S.D.N.Y. 1996) (using Rule 401 to determine what is discoverable under Rule 26[b]); *Bogan v. Northwestern Mut. Life Ins. Co.*, 144 F.R.D. 51, 53 (S.D.N.Y. 1992) (using Rule 401 to determine what is discoverable under Rule 26[b]).

the Plaintiff's claim under a reservation of rights, and then ultimately deny the claim. (Dkt. No. 47.) According to Defendant, the only relevant information is the information it relied on when determining whether to pay Utica's reinsurance claim or to deny it. *Id.* at 12.<sup>2</sup> Defendant further asserts that the discovery sought is burdensome and would potentially be limitless. *Id.* at 11.

The Court finds that the documents relied upon by Defendant in initially approving and paying Plaintiff's claim, and then denying it, under the reinsurance contracts at issue are relevant and discoverable. However, the Court agrees with the Defendant and finds the specific documents sought in this motion are irrelevant to the issues in this litigation and extremely burdensome. Plaintiff demands not only unrelated reinsurance contracts the Defendant may have had with other insurers regarding the Goulds asbestos litigation, Plaintiff also seeks other claim notices, claim files, claim billing information, and other documents concerning contractual relationships Defendant may have had with non-parties. Because Utica had to provide Clearwater with its underlying claim file materials, underwriting, and accounting files related to Utica's claim under the specific terms of the reinsurance contracts at issue, the information regarding what Defendant *may* have known either directly or constructively from other insurers of Goulds that Clearwater reinsured is irrelevant to Clearwater's claim that it was misled by Utica. Here, Defendant has submitted affidavits from relevant Clearwater claims employees which indicate Clearwater only relied on information provided by Utica to determine whether Utica's claim should initially be paid under a reservation of rights. (Dkt. No. 47-2 at 2; Dkt. No. 47-3 at 1-2.) Since Clearwater did not rely upon other insurance contracts and claim files in

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<sup>2</sup> Page numbers in docket entries refer to the numbers automatically inserted by the Court's electronic filing system.

making its determination to initially pay Plaintiff on the claim, and then ultimately rescind that decision, the discovery sought is completely irrelevant and thus not discoverable.

Moreover, this Court has discretion to preclude discovery where information sought is not germane or, at best, only faintly relevant, in order to avoid jury confusion and mini-trials on collateral issues. *Coudert v. Janney Montgomery Scott, LLC.*, 3:03-cv-324 (MRK), 2004 WL 2381552, at \*2-3, 2004 U.S. Dist. LEXIS 21135, at \*9-10 (D. Conn. Oct. 7, 2004). The issue here is whether or not reinsurance is due under the contracts between Utica and Clearwater, and whether or not Utica misled Clearwater into paying the reinsurance claim. Plaintiff's request for broad discovery involving reinsurance contracts between other non-party insurers of Goulds and Defendant is simply not relevant to the subject matter of this action. Defendant did not rely upon that information to make the determination to pay or deny the claims. In addition, it is likely that the discovery requested will require further discovery into entirely different contractual arrangements than the one at issue, and from different witnesses including non-party witnesses from other insurers. The Court finds that this would be an unnecessary, burdensome and confusing diversion into an area unlikely to result in relevant or admissible evidence.

Regarding Plaintiff's interrogatory requesting detail on the factual and legal bases for Defendant's assertions that the amounts it paid to Plaintiff were not due and payable, the Court finds Defendant should respond to the interrogatory. Notwithstanding that it may be a read as a contention interrogatory, it is not improper and it seeks relevant information. Therefore, Defendant must respond to Plaintiff's Interrogatory No. 4. Defendant may amend and/or supplement its response to Interrogatory No. 4 as necessary within 30 days after the close of fact discovery.

**2. Defendant's Motion**

Defendant's motion to compel requests information about primary commercial insurance policies issued by Utica to other pump manufacturers and other commercial enterprises during the time period related to the coverage dispute at issue. *See generally* Dkt. No. 41-1. Clearwater asserts that such policy information goes directly to the issue of whether or not Plaintiff always included aggregate limits in its primary policies, and if so how those limits were addressed in the other policies. *Id.* Notwithstanding the settlement terms of the underlying coverage dispute clearly established the aggregate limits, Defendant argues those other primary policies are relevant because Plaintiff claimed it was a mistake that aggregate limits were not included in the underlying policies at issue in the Utica-Goulds coverage dispute. *Id.* Defendant also seeks documents concerning a LPT agreement between Plaintiff and another insurance company of Plaintiff's asbestos related exposures and recoverables. *Id.* Clearwater asserts that such documents are relevant to damages to determine if potential claims were discounted, and the documents would show that the other party, a large insurer, is the real party in interest in this case. *Id.*

Plaintiff objects to the discovery arguing that the discovery sought is irrelevant since the Defendant, as a reinsurer, cannot re-litigate the underlying coverage dispute Plaintiff had with Goulds. (Dkt. No. 46.) Additionally, Plaintiff notes the discovery seeks other insurance policies that are unrelated to the interpretation of the underlying insurance policies Utica issued to Goulds. *Id.* Plaintiff also argues that Defendant's request for information about Plaintiff's LPT agreement involves an unrelated reinsurance agreement concerning a different insurance company and non-party management group with different contractual terms than the reinsurance

agreements at issue in this claim. *Id.*

The Court agrees with Plaintiff. The aggregate limit issue has been litigated and resolved in the underlying settlement such that Defendant's expansive discovery request for all other commercial policies Utica wrote in the relevant time period is not warranted. Additionally, the size of Plaintiff's reinsurer involved in the LPT agreement is not related to the issue of coverage or damages under the reinsurance contracts between Plaintiff and Defendant. Likewise, the value of any discount the in the LPT agreement is unrelated to the obligations between Utica and Clearwater for the reinsurance contracts at issue. The third party management company's actions regarding other insurers who may be involved in coverage issues with other carriers who insured or reinsured Goulds asbestos claims are likewise unrelated to the obligations between Plaintiff and Defendant for the reinsurance contracts at issue.

In short, the Court finds the subject documents sought and interrogatories propounded by Defendants are not relevant to the claims and defenses in this action involving specific facultative reinsurance contracts, and are not reasonably calculated to lead to the discovery of admissible evidence. Defendant's relevancy arguments are speculative and any purported probative value appears minimal, at best, and does not sufficiently justify the burdensome production requested. Similar to the Court's reasoning herein for denying Plaintiff's motion for documents, Defendant's motion must also be denied because the discovery requested by Clearwater will require other discovery of entirely different contracts that are not germane or are only faintly relevant, and would lead to an unnecessary, burdensome, and confusing diversion from the real issues in dispute.

Accordingly, it is

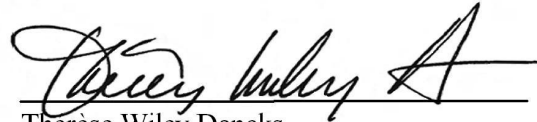


**ORDERED** that Plaintiff's motion (Dkt. No. 38) for discovery is **DENIED**, in part, and **GRANTED**, in part. Plaintiff's motion to compel responses to Document Request Nos. 12 and 13 is **DENIED**; and Plaintiff's motion to compel a response to Interrogatory No. 4 is **GRANTED**; a response shall be provided within 30 days of this Order; Defendant may amend and/or supplement its response to Interrogatory No. 4 as necessary within 30 days after the close of fact discovery; and it is further

**ORDERED** that Defendant's motion to compel discovery is **DENIED**.

**IT IS SO ORDERED.**

Dated: January 20, 2015  
Syracuse, New York

  
Therese Wiley Dancks  
United States Magistrate Judge