UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

v.

6:14-CV-00700
(GTS/TWD)

R & Q REINSURANCE COMPANY,

Defendant.

APPEARANCES:

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OF COUNSEL:

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ALLISON GOLDMAN GOLD, ESQ.

THÉRÈSE WILEY DANCKS, United States Magistrate Judge

DECISION and ORDER

Before the Court is R & Q Reinsurance Company's ("R & Q") motion to compel responses to Document Request Nos. 1, 15, and 26. (Dkt. No. 29.[1]) Utica Mutual Insurance Company ("Utica") filed opposition to the motion. (Dkt. No. 31.[2]) For the reasons stated herein, Defendant's motion is granted, in part, and denied, in part, in accordance with this decision.

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[1] The Court has reviewed and considered R & Q's unredacted and sealed copy of the motion to compel found at Dkt. No. 30.

[2] The Court has reviewed and considered Utica's unredacted and sealed copy of the opposition papers to the motion to compel found at Dkt. No. 32.

BACKGROUND

The claims in this action involve facultative reinsurance certificates issued by R & Q to Utica for umbrella policies Utica issued to the underlying insured, Goulds Pumps, Inc. ("Goulds") from 1979 to 1981. Utica seeks payment from R & Q 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.

CURRENT DISCOVERY DISPUTE

Defendant's motion seeks (1) documents concerning primary insurance policies issued by Plaintiff to two other commercial pump manufacturers like Goulds, during the same time period at issue in this case; (2) documents concerning correspondence between Utica and another of its reinsurers regarding the existence of aggregate limits; and (3) deposition and hearing transcripts from a prior arbitration between Utica and R & Q. (Dkt. No. 29.) Defendant argues that documents concerning other primary policies and correspondence between Utica and another reinsurer are needed to determine whether or not Plaintiff wrote other primary policies without aggregate limits during the relevant time period and to cross examine Utica's witnesses regarding the aggregate limits of the underlying policies. *Id.* Defendant also argues that transcripts of the arbitration hearing and related depositions are needed to ensure Utica witnesses testify consistently and to streamline discovery. *Id.* Plaintiff opposes the requested document production on relevancy grounds, as well as burdensomeness. (Dkt. No. 31.) Plaintiff also

contends that disclosure of testimony from arbitration proceedings would be inappropriate because procedures and evidentiary rules in such proceedings differ from court proceedings. *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[3] 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

Defendant's motion to compel requests information about primary commercial insurance policies issued by Utica to other commercial pump manufacturers and other commercial enterprises during the time period related to the coverage dispute at issue. *See generally* Dkt. No. 29. R & Q asserts that such policy information goes directly to the issue of whether or not

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[3] "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]).

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.*

Plaintiff objects to the discovery arguing that it is irrelevant since the Defendant, as a reinsurer, cannot re-litigate the underlying coverage dispute Plaintiff had with Goulds. (Dkt. No. 31.) Additionally, Plaintiff argues that Defendant's request for information about Plaintiff's coverage agreements with other commercial insureds involve unrelated insurance and reinsurance agreements concerning different manufacturing and insurance companies 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 discovery request for information about other commercial policies Utica wrote in the relevant time period is not warranted. Such policy information is not relevant to whether Utica's settlement and allocation in the 1979-1981 Goulds policies was objectively reasonable. The documents sought in Defendant's motion pertaining to policies issued to other pump manufacturers, and correspondence between Utica and another insurer, are not relevant to the issues in dispute here between Utica and R & Q. Defendant's motion is denied because the discovery requested by R & Q 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.

Regarding that part of Defendant's motion pertaining to deposition and hearing

transcripts from the prior arbitration between Utica and R & Q, I find that the transcripts should be disclosed notwithstanding Plaintiff's arguments that different procedural and evidentiary rules apply in arbitration proceedings, and that circumstances between the parties may have changed after the arbitration testimony was taken because of the ruling of the California court on aggregate limits. (*See* Dkt. No. 32 at 10.) The arbitration transcripts at issue are from proceedings between the parties to this action and are therefore relevant. Plaintiff will still have all objections, if warranted, to the arbitration testimony based upon the applicable standards and rules governing the present proceeding, and conceivably based upon the changed circumstances referenced by Plaintiff. (Dkt. No. 31 at 7.) For this reason, Plaintiff's suggestion that the parties attempt to agree about the use of certain testimony is valid, and the Court recommends the parties attempt to make such an agreement. However, because I find that the transcripts sought are relevant to the subject matter involved in this action, they are entirely discoverable, and that part of Defendant's motion seeking copies of the arbitration hearing transcript and the arbitration deposition transcripts is granted.

Accordingly, it is

ORDERED that Defendant's motion (Dkt. No. 29) for discovery is **GRANTED**, in part, and **DENIED**, in part, consistent with this decision; and it is further

ORDERED that Plaintiff is to provide copies of the transcripts of the arbitration hearing and the deposition transcripts related to the arbitration to Defendant within 20 days of the date of this Order; and it is further

ORDERED that all discovery deadlines are held in abeyance and will be reset at the Court's next discovery conference.

IT IS SO ORDERED.

Dated: June 2, 2015
Syracuse, New York

Therèse Wiley Dancks
United States Magistrate Judge