

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: May 28, 2014)

RHODE ISLAND ECONOMIC  
DEVELOPMENT CORPORATION

VS.

WELLS FARGO SECURITIES, LLC,  
ET AL.

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C.A. No. PB 12-5616

DECISION

SILVERSTEIN, J. Before the Court for decision is Plaintiff’s motion seeking to overrule objections by and to compel Defendant Stolzman to answer Plaintiff’s Interrogatory No. 1. The present motion seeks to require Defendant to disclose the amount of coverage presently available under Defendant’s insurance policy. This Defendant in his original response stated:

“The policy limits of coverage available for the claim are \$20,000,000. Defense fees and costs incurred beyond the applicable self-insured retention reduce the available policy limits. The amount of coverage currently remaining and the balance of unpaid defense costs are not subject to disclosure per the attorney-client privilege and pursuant to the protections afforded attorney work-product.”

Having reviewed the arguments advanced by Plaintiff and by Defendant, this Court fails to find that either of the well-recognized privileges referred to in the response by Defendant Stolzman are implicated. Plaintiff here seeks information as to: (1) the amount of coverage currently remaining under the applicable insurance policy; and (2) the gross amount of unpaid costs including legal fees which would further reduce the remaining amount of coverage and also the name of the insurer.

Plaintiff does not seek protected attorney-client communications, work-product incident to the litigation, or copies of any bills representing work performed by counsel or otherwise.

This determination, however, is not the end of the inquiry. Rule 26(b)(2) of our Rules of Civil Procedure dealing with the scope of discovery provides that “a party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment . . .” Here, Plaintiff has received the response from Defendant Stolzman quoted above. Defendant’s answer discloses that the policy is of a nature sometimes described as a wasting policy or a cannibalizing policy. That is to say that, whatever the policy limits were when issued, they are subject to reduction predicated on other claims asserted with respect to the policy and/or the costs incurred in defending claims made under the policy. The Court is not unaware of a controversy with respect to the interpretation of rules in effect in other jurisdictions with respect to the subject matter herein implicated. Our Court heretofore has not been called upon to rule directly on the issue at bar. The Court notes that in their book, Rhode Island’s Civil and Appellate Practice, Section 26.4, the authors Kent, Simpson, Flanders and Wollin state that the purpose of the rule is “. . . to enable a party to evaluate the advisability of making or accepting an offer of settlement.” In many instances, a party would make, accept or reject a settlement proposal only if the party were aware of the magnitude of available proceeds from an insurer. Lack of that information, this Court holds, would inhibit the likelihood of settlement and thwart the purpose for the rule suggested by the authors.

As indicated above, our Court has not directly had occasion to rule in connection with this issue; however, this Court does note that State v. Lead Indus., Ass’n, 64 A.3d 1183, 1198-99 (R.I. 2013) seems to suggest that had the specific information as to the existing remaining amount of insurance coverage been the subject of discovery, it might have been an appropriate inquiry.

In any event, and in order to effectuate the purpose of the rule as suggested by Messrs. Kent, et al., information as to the present magnitude of available insurance coverage is, in the opinion of this Court, critical and is within the contemplation of the rule. The argument advanced by Defendants to the effect that the cases that permit and require the disclosure of such information invariably are limited to instances where third-party claims are involved as to the same policy, and that this is not such a case, are rejected by this Court. The question is what difference does it make as to whether the policy is being depleted by claims of others or if the depletion is occurring as a result of the costs of defending against the claim asserted by Plaintiff. In either event, the amount of insurance coverage available to a defendant would assist a plaintiff in determining whether to make or to accept a settlement offer/demand is the same.

Predicated on the foregoing, Defendant Stolzman is ordered, within ten days of the entry of an order consistent herewith, to provide a further response to Interrogatory No. 1.

Prevailing counsel shall present an order which will require inter alia that whatever information is provided by Defendant Stolzman is subject to the March 2013 confidentiality order heretofore entered by this Court. Further, Defendant Stolzman is not required, except in compliance with further orders of this Court, to further update his answer to Interrogatory No. 1.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** Rhode Island Economic Development Corporation v. Wells Fargo Securities, LLC, et al.

**CASE NO:** PB 12-5616

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** May 28, 2014

**JUSTICE/MAGISTRATE:** Silverstein, J.

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