



Turning Over Another Rock:

Another Example of Discovery Disputes in the Reinsurance Context

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Following up on our recent article, *Between a Rock and a Hard Place: Insurers face hidden risks when defending claims and protecting confidential reinsurance information at the same time*, published in the August 2017 issue of Best's Review, another federal court has addressed the scope of permissible discovery in a reinsurance dispute.

In *R&Q Insurance Company v. St. Paul Fire and Marine Insurance Company*, No. 16-1473, the United States District Court for the Eastern District of Pennsylvania addressed a discovery dispute related to the reinsured's "proprietary information," historical loss reserves and reinsurance arrangements with other reinsurers. St. Paul issued insurance policies to the Walter E. Campbell Company and reinsured those contracts with R&Q and other reinsurers. Campbell faced two asbestos claims.

In the ensuing reinsurance dispute, R&Q argued that St. Paul did not provide timely notice of the loss. At St. Paul's request, the court entered a protective order with respect to proprietary information produced during the course of the litigation. During the discovery stage, however, St. Paul withheld documents, asserting that the documents contained proprietary information. St. Paul also redacted data on its historical loss reserves, and refused to provide information about the reinsurance arrangements St. Paul entered into with other reinsurers concerning the Campbell claims.

The court granted R&Q's motion to compel production of the documents containing St. Paul's proprietary information, finding that St. Paul had no justification to withhold the documents because they were covered by the protective order. The court also found that St. Paul's historical loss reserves for the Campbell claims were relevant to R&Q's assertion that St. Paul did not provide it timely notice of the loss. Observing that loss reserves may be protected by the attorney work-product doctrine or the attorney-client privilege in certain instances, the court found that those protections did not apply to St. Paul's historical loss information because the data were prepared by claims adjusters in the ordinary course of business, rather than attorneys in anticipation of litigation. Finally, the court found that information related to other reinsurance policies issued to St. Paul was relevant if St. Paul did give timely notice to other reinsurers, but not to R&Q.

St. Paul also filed a motion to compel more responsive interrogatory answers from R&Q concerning whether R&Q suffered prejudice as a result of St. Paul's allegedly dilatory notice. The court denied the request because R&Q had addressed the issue in its memorandum of law in response to St. Paul's motion for a protective order. The court also rejected St. Paul's assertion that R&Q's production of 135 documents was insufficient given St. Paul's production of nearly two hundred thousand pages, observing that R&Q would naturally have fewer documents given the timing of the notice to the reinsurer. As a side note, a reinsurer would typically have less information than the cedant regarding claims information.

The R&Q decision once again underscores the discovery issues that arise in the context of reinsurance disputes. Courts will continue to balance the needs of the parties to exchange documents and information with the need to protect proprietary information. Although protective orders are a useful tool to safeguard proprietary information, parties should be aware that if the information is potentially relevant to the dispute, it may well be subject to disclosure. Also, unlike disputes between the insurer and a policyholder regarding reinsurance discovery, reinsurance agreements between the parties



address the cedant's duty to keep the reinsurer informed. At issue in this case was the scope of that duty, and the court concluded that the information beneath the 'rock' was discoverable.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors.

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