

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

KATHLEEN McHUGH and
DEANNA SCHNEIDER, Individually
and on behalf of all persons similarly
situated ,

Plaintiffs,

v.

MADISON-KIPP CORPORATION,
CONTINENTAL CASUALTY COMPANY,
COLUMBIA CASUALTY COMPANY,
UNITED STATES FIRE INSURANCE
COMPANY and ABC INSURANCE
COMPANIES 1 - 50,

Defendants,

--and--

MADISON-KIPP CORPORATION,

Case No. 11-cv-00724-bbc

Cross-Claimant,

v.

CONTINENTAL CASUALTY COMPANY,
COLUMBIA CASUALTY COMPANY and
UNITED STATES FIRE INSURANCE
COMPANY,

Cross-Claim Defendants,

--and--

CONTINENTAL CASUALTY COMPANY and
COLUMBIA CASUALTY COMPANY,

Cross-Claimants/Third-Party Plaintiffs,

v.

MADISON-KIPP CORPORATION,

Cross-Claim Defendant,

and

LUUMBERMENS MUTUAL CASUALTY
COMPANY, AMERICAN MORTORISTS
INSURANCE COMPANY, and JOHN DOE
INSURANCE COMPANIES 1-20,

Third-Party Defendants.

SECOND AMENDED JOINT PRELIMINARY PRETRIAL REPORT

Pursuant to this Court's Notice of Scheduling Conference and Fed. R. Civ. P. 26(f), counsel for plaintiffs, Kathleen McHugh, Deanna Schneider and the class members ("Plaintiffs"), and for the defendant, Madison-Kipp Corporation ("Defendant"), as well as counsel for defendants Continental Casualty Company, Columbia Casualty Company and United States Fire Insurance Company (the "Defendant Insurers") and for third-party defendants Lumbermens Mutual Casualty Company and American Motorists Insurance Company ("Third-Party Defendant Insurers"), met and conferred via email regarding a discovery and case schedule. Below is the resulting Joint Preliminary Pretrial Report.

PROPOSED DISCOVERY PLAN

A. Case Schedule

The parties propose the following respective case schedules:

EVENT	PLAINTIFFS	DEFENDANT	DEFENDANT INSURERS
Rule 26 initial disclosures	Completed	Completed	Completed
Deadline for adding new parties - non-insurers	With Leave of Court	With Leave of Court	With Leave of Court
Deadline for adding new insurers	With Leave of Court	October 31, 2012	October 31, 2012
Deadline for amendments to pleading (w/o leave)	With Leave of Court	With Leave of Court	October 31, 2012
Disclosure of liability expert reports: Proponent	October 15, 2012	April 19, 2013	April 19, 2013
Disclosure of liability expert reports: Respondent	November 15, 2012	May 24, 2013	May 24, 2013
Dispositive motions deadline	December 15, 2012	August 30, 2013	November 15, 2013
Disclosure of damage expert reports: Proponent	October 15, 2012	June 14, 2013	June 14, 2013
Disclosure of damage expert reports: Respondent	November 15, 2012	July 19, 2013	July 19, 2013
Disclosure of expert reports for insurance coverage: Proponent	October 15, 2012	June 14, 2013	June 14, 2013
Disclosure of expert reports for insurance coverage: Respondent	November 15, 2012	July 19, 2013	September 15, 2013
Settlement letters	March 1, 2013	January 2, 2014	January 2, 2014
Discovery cutoff	December 31, 2012	January 8, 2014	January 8, 2014
Rule 26(a)(3) disclosures and all motions in limine	April 15, 2013	January 15, 2014	January 15, 2014

EVENT	PLAINTIFFS	DEFENDANT	DEFENDANT INSURERS
Final pretrial conference	April 15, 2013	January 30, 2014	January 30, 2014
Trial on Plaintiffs' claims	May 15, 2013	February 3, 2014	February 3, 2014
Trial on Insurance Coverage issues	Immediately after damages portion of trial on Plaintiffs' claims	Immediately after damages portion of trial on Plaintiffs' claims	February 24, 2014

B. Modifications to Limitations on Discovery Imposed by the Federal Rules

No changes in Federal Rules of Civil Procedure.

OTHER INFORMATION REQUESTED IN STANDING ORDER

1. Nature of the Case

This is a certified class action for injunctive relief under RCRA and for damages and injunctive relief under common law negligence, nuisance, and trespass. A claim for punitive damages is also asserted.

2. Related Cases Between the Parties

None.

3. Material Factual and Legal Issues to be Resolved

- A. Whether Defendant released solid or hazardous waste that constitute an imminent and substantial endangerment to health under RCRA, and if so the appropriate remedy;
- B. Whether Defendant's action in regard to PCE constituted negligence, private nuisance and/or trespass with respect to class member's property and if so the appropriate remedy;
- C. Are Plaintiffs barred from asserting any claims by reason of the statute of limitations or laches;

- D. The amount of damages, if any, that Plaintiffs and the class are entitled to recover.
- E. If Defendant is found liable for any of the Plaintiffs' alleged damages, whether the Defendant's Insurers are obligated to indemnify Defendant for said damages. According to Defendant Insurers, some of those coverage issues include, but are not limited to late notice of claim and prejudice, late notice of occurrence and prejudice, owned property exclusion, whether injunctive relief under RCRA constitutes "damages", expected or intended damage, coverage for punitive damages, sudden and accidental pollution exclusion, known loss, lost or incomplete policies, statute of limitations, allocation, exhaustion, and property damage during the policy period. Madison-Kipp disagrees with the Defendant Insurers' characterization of the insurance issues.
- F. Whether there are additional insurance companies, other than the Defendant Insurers, that provided Defendant with insurance coverage and thus, are obligated to indemnify Defendant for any damages recovered by the Plaintiffs in this case. Third Party Defendant Insurers have raised "lost policy" and "missing policy" issues that will need to be resolved.
- G. The impact of a July 2, 2012, Order of Rehabilitation filed by the State of Illinois regarding Third Party Defendant Lumbermens Mutual Casualty Company and American Manufacturers Mutual Insurance Company which could raise issues regarding dismissal, abstention and/or the court's jurisdiction over Third Party Defendant Insurers.

4. Possibility of Simplifying the Issues

The parties will work together to narrow factual issues in this litigation. The parties expect to file summary judgment motions in the manner and form required by the Court's standing order, which may narrow or eliminate certain issues.

5. Necessity and Desirability of Advance Rulings on Evidence

The parties will attempt to bring to the Court's attention, at the earliest possible time, any issues relating to the admissibility of evidence on which an advance ruling

would be helpful. The parties will seek rulings with respect to disputed evidence by motions in limine to the extent feasible and appropriate.

6. Need to Limit Use of Testimony under Fed. R. Evid. 702

It is not known at this time whether either party will seek to limit expert testimony under Rule 702. The parties may bring pretrial motions following the disclosure of expert opinions if appropriate.

7. Identity of Any New Parties

Since Plaintiffs added Defendant's insurers and the lawsuit was certified as a class action, there is likely no longer any new parties to be added by Plaintiffs or Defendant. Insurers may, however, seek to add additional insurers.

8. Estimated Length of Time Required for Trial

Plaintiff and Defendant estimate that their issues can be tried to the bench (on the RCRA and common law injunction issues) and to a jury (on the claims seeking damages) in a single trial lasting approximately two weeks. Any insurance coverage issues can be tried in an additional five days.

9. Settlement Discussion/ADR Plans

The parties intend to engage in settlement discussions.

10. Other Items

A. Electronic Service and Electronic Copies

The parties consent that service by electronic means shall be allowed as set forth in Fed. R. Civ. P. 5(b)(2)(D) and that such service shall be complete upon transmission,

provided that the sender does not receive any indication that such electronic transmission was unsuccessful.

Service on Plaintiffs will be made to at least the following counsel:

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Service on Third-Party Defendants will be made to at least the following counsel:

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B. Electronic Copies

The parties agree that copies of all written discovery requests shall be provided and/or served electronically in editable form and bates-numbered and that copies of all proposed findings of fact as required by the Court's standing order shall be provided and/or served electronically. Additionally, unless other arrangements are made, document production will be in a searchable format usable with summation and include a summation load file. Such searchable formatting should be in accordance with the following:

(i) Unstructured Data. The Parties agree to produce unstructured data (e.g., word processing documents, .PDF files, or email messages) in the form of single-page TIFF image files at a resolution of 300 DPI. The TIFF images will be provided in a black-and-white format utilizing Group IV compression unless color is required for interpretation or clarity; color images will utilize JPEG compression. Each TIFF image will be endorsed with a unique Bates number and all other appropriate designations; however, such designations should not cover or otherwise obscure any text, pictures, or other content of the TIFF image being endorsed. Each Party will make their unstructured data-based production materials searchable by producing the extractable text of each document in an associated multi-page text file.

(ii) Structured Data. The Parties acknowledge that the production of information contained in structured data formats (e.g., spreadsheets and relational databases) in the same manner as unstructured data is often counterproductive. Generally, such documents shall be produced in their native format with a TIFF image

placeholder. The Parties agree to work in good faith to ensure that the information contained within any potentially relevant Structured Data source is produced in a format that is not overly burdensome for the producing Party and is reasonably useful to the receiving Party.

(iii) Metadata. The Parties agree to provide an industry-standard loadfile that contains the following information for every electronically-stored record being produced, to the extent such information exists:

- Bates Number,
- Custodian,
- Confidentiality,
- File Path,
- Filename,
- File Extension,
- MD5 Hash,
- Author,
- Date Created,
- Date Modified,
- Subject,
- From,
- To,
- CC,
- BCC,

- Date Sent,
- Time Sent,
- Date Received,
- Time Received, and
- Attachment Range.

Finally, the parties reserve the right to request documents in their native format, to be addressed on a document-by-document basis.

C. Protective Order

The parties will promptly seek from the Court the entry of a Protective Order governing confidential information, in a form to be agreed upon by the parties.

Dated: July 24, 2012

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Dated: July 24, 2012

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