

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

ILLINOIS NATIONAL INSURANCE COMPANY,

Plaintiff,

v

Case No. 14-141526-CK  
Hon. Wendy Potts

ALIXPARTNERS, LLP,

Defendant.

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**OPINION AND ORDER RE: DISCOVERY MOTIONS**

At a session of Court  
Held in Pontiac, Michigan

On  
MAR 10 2016

This matter is before the Court on the following motions:

- 1) Plaintiff's Hand-Filed Motion Under Seal to Compel Production of Documents That Defendant Improperly Labeled Privileged;
- 2) Defendant's Motion to Compel Responses to AlixPartners' First and Second Requests for Admission; and
- 3) Defendant's Motion to Compel Complete Responses to Its (A) Interrogatories, (B) Requests for Production of Documents, and to (C) Produce a Corporate Designee to Respond to Various Corporate Deposition Topics.

The parties appeared before the Court on the aforementioned discovery motions on November 4, 2015, at which time the Court entered an Order Regarding Results of Facilitation of Discovery Issues to memorialize the parties' partial resolution of the motions and to identify the

remaining issues to be decided by this Court. Accordingly, the Court shall determine the parties' outstanding discovery issues<sup>1</sup> herein.

*Plaintiff's Hand-Filed Motion Under Seal to Compel Production of Documents  
That Defendant Improperly Labeled Privileged*

In its motion, Plaintiff is seeking a declaration from the Court that the attorney-client privilege does not protect the Christiansen email and the other documents attached as Plaintiff's Exhibits B through Q in its motion. Plaintiff argues that these documents are devoid of any request for legal advice. In response, Defendant contends that these documents were sent to and from John Collins, AlixPartners' General Counsel, as well as to and from Helena Samaha, AlixPartners' former General Counsel in Europe. Defendant maintains further that the communications concerned fee complaints from Marklin Holdings as well as other legal issues.

"The attorney-client privilege attaches to direct communication between a client and his attorney as well as communications made through their respective agents. The scope of the attorney-client privilege is narrow, attaching only to confidential communications by the client to his advisor that are made for the purpose of obtaining legal advice. Where an attorney's client is an organization, the privilege extends to those communications between attorneys and all agents or employees of the organization authorized to speak on its behalf in relation to the subject matter of the communication." *Reed Dairy Farm v Consumers Power Co.*, 227 Mich App 614, 618-19; 576 NW2d 709 (1998).

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<sup>1</sup> Plaintiff recently filed a Supplemental Memorandum in Support of Motion to Compel Production of Documents Improperly Labeled Privileged without seeking leave from the Court. The Court will not consider Plaintiff's Supplemental Memorandum in this Opinion and Order, but shall only address the three motions as identified in the November 4, 2015 Order Regarding Results of Facilitation of Discovery Issues. Plaintiff may wish to file a motion in order to address the issues raised in its Supplemental Memorandum.

“The attorney-client privilege is designed to permit a client to confide in his attorney, knowing that his communications are safe from disclosure.” *McCartney v Attorney Gen.*, 231 Mich App 722, 730-31; 587 NW2d 824 (1998). “Confidential client communications, along with opinions, conclusions, and recommendations based on those communications, are protected by the attorney-client privilege because they ‘are at the core of what is covered by the privilege.’” *Id.* at 735.

With regard to the Christiansen email, bate stamped ALIX00003967 – ALIX00003968, Plaintiff contends that Defendant waived any privilege over the email when it was disclosed in Defendant’s first set of document production. Plaintiff acknowledges, however, that Defendant subsequently asserted privilege<sup>2</sup> over the Christiansen email just six days prior to Mel Christiansen’s deposition.

“The attorney-client privilege protects a communication intended to be confidential, regardless of whether that confidentiality has been unknowingly compromised. Though inadvertent or involuntary disclosure has eliminated any security against publication, whether the attorney-client privilege has been destroyed by this disclosure depends on whether the privilege has been waived.” *Leibel v Gen. Motors Corp.*, 250 Mich App 229, 243; 646 NW2d 179 (2002). The Court observes that a true waiver requires “an intentional, voluntary act and cannot arise by implication,” or “the voluntary relinquishment of a known right.” *Franzel v Kerr Mfg. Co.*, 234 Mich App 600, 616; 600 NW2d 66 (1999). In this case, Defendant inadvertently produced the Christiansen email and subsequently asserted the attorney-client privilege over that document once the inadvertent disclosure was discovered. The Court finds that Defendant did not provide a true waiver of its alleged privilege over the Christiansen email.

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<sup>2</sup> Plaintiff’s Exhibit A.

Plaintiff next argues that Defendant waived its privilege over the relevant fact in the Christiansen email when it voluntarily disclosed the fact that Kingsbridge made a claim against AlixPartners in February 2008 in an arbitration proceeding. Defendant provides an excerpt of what is purported to be an arbitration answer, submitted as Plaintiff's Exhibit D, to support its contention that Defendant already disclosed this fact. The Court observes that Plaintiff's Exhibit D is a one page document that is neither dated nor specifically identified. The Court cannot make a determination that Defendant waived its attorney-client privilege years prior during arbitration based solely on Plaintiff's Exhibit D. Therefore, the Court will not consider Plaintiff's waiver argument for purposes of this motion.

The Court has reviewed the Christiansen email<sup>3</sup> and notes that the recipients include John Collins, Helena Samaha, Defendant's outside lawyers, namely Stefan Ruetzel (Geiss Lutz) and Elmar Schnitzer (Freshfields), and three AlixPartners executives.

Even though the Christiansen email includes non-legal personnel, "[t]he mere fact that a document is sent to many non-legal and few legal personnel is not determinative of whether it is privileged. Indeed, as a logical matter, it makes no sense that the mere sending of a copy of a privileged document to corporate personnel indicates that a document has not been prepared for a predominately legal purpose. Because a corporation can act only through its agents, a large corporation may have a number of individuals who should properly be kept informed of communications to and from counsel on a particular subject matter. Where a document is being provided to such individuals for the purpose of informing them that legal advice has been sought or obtained, that act is not inconsistent with the underlying communication being for the purpose of obtaining legal advice." *In re Buspirone Antitrust Litig.*, 211 F.R.D. 249, 253 (S.D.N.Y. 2002).

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<sup>3</sup> Plaintiff's Exhibit B.

The Court is aware of Plaintiff's position that the email reported on facts relating to business negotiations and administrative matters and was not created for the primary purpose of obtaining legal advice. While the Christiansen email does contain business-related information regarding a departing employee, the Court also finds that the email includes relevant legal information regarding the Marklin situation. It is clear that Mel Christiansen, the author of the Christiansen email, sent the informative email in preparation for a call with the attorneys at which time the Marklin situation would be discussed. "While the documents do not explicitly solicit legal advice from the attorneys, they qualify as privileged because they consist of information [sent] to corporate counsel in order to keep them apprised of ongoing business developments, with the expectation that the attorney will respond in the event that the matter raises important legal issues." *In re Pfizer, Inc. Sec. Litig.*, 1993 WL 561125, at \*6 (S.D.N.Y. Dec.23, 1993); *In re Buspirone Antitrust Litig., supra* at 254. Here, Mel Christiansen's email communication shared relevant information with Defendant's attorneys with the expectation of receiving legal advice in return. Therefore, the Court finds that the Christiansen email is protected by the attorney-client privilege.

With respect to documents ALIX00006642 – ALIX00006643<sup>4</sup>, the Court finds that the Risk Management Committee/May 12, 20018/Action Items Agenda and the Net Investment > \$1,000,000/Amount > 60 Days/June 16, 2008 Spreadsheet do not qualify as communications made for the purpose of obtaining legal advice. As such, the agenda and spreadsheet are not subject to the attorney-client privilege. To the extent that General Counsel John Collins made notations on the Net Investment > \$1,000,000/Amount > 60 Days/June 16, 2008 Spreadsheet, the Court will allow Plaintiff access to that Spreadsheet following the redaction of John Collins' notations. The Court observes that documents ALIX00006640 and ALIX00006641 have been blacked out or wholly redacted and consequently, those documents were not considered for purposes of this motion.

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<sup>4</sup> Plaintiff's Exhibit E.

Regarding documents ALIX00003601 – ALIX00003603<sup>5</sup>, the Court observes that attorneys John Collins and Helena Samaha are cc'd on the emails. In the original email, Jan Kantowsky reported on his discussions with a Goldman Sachs executive regarding the Marklin situation. Certainly, the email communications were intended to keep AlixPartners executives and counsel apprised of the Marklin situation with the expectation that John Collins and/or Helena Samaha would respond in their legal capacity. As such, these documents shall be considered protected under the attorney-client privilege.

In relation to documents ALIX00003812 – ALIX00003815 and documents ALIX00003829 – ALIX00003835<sup>6</sup>, Defendant has asserted in its Brief in Support of Defendant AlixPartners, LLP's Opposition to Plaintiff Illinois National Insurance Company's Hand-Filed Motion that it has agreed to produce these documents. With regard to documents ALIX00003871 – ALIX00003872<sup>7</sup>, Defendant has also agreed to produce these documents as represented in its Brief in Support. Thus, the Court will not consider the privileged nature of Plaintiff's Exhibits G and H.

Concerning documents ALIX00007182 – ALIX00007184<sup>8</sup>, the Court notes that the content of ALIX00007182 is wholly redacted and therefore, its content cannot be considered. The documents bates stamped as ALIX00007183 and ALIX00007184 consist of an email by Ulrich Wlecke to John Collins and Helena Samaha regarding his conversation with a Marklin representative. Ulrich Wlecke suggested that he and counsel discuss this conversation via a telephone call. The Court clearly finds that this email constitutes an attorney-client privilege as Ulrich Wlecke sought to discuss the specifics of that conversation and consequential legalities with counsel.

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<sup>5</sup> Plaintiff's Exhibit F.

<sup>6</sup> Plaintiff's Exhibit G.

<sup>7</sup> Plaintiff's Exhibit H.

<sup>8</sup> Plaintiff's Exhibit I.

With respect to documents ALIX00003880 – ALIX00003881<sup>9</sup>, David Lovett sent an email to John Collins and Helena Samaha in order to update them on his conversation with a Kingsbridge executive, in which the two individuals discussed an anticipated meeting without counsel. The Court finds that David Lovett was not seeking legal advice from counsel nor was he apprising counsel of ongoing issues related to the potential litigation. As such, the Court finds that these documents are not protected under the attorney-client privilege.

Regarding documents ALIX00007134 – ALIX00007136<sup>10</sup>, the Court observes that the original email was written by Jan Kantowsky to John Collins and others, while Helena Samaha was cc'd on the communication. Within the text of the email, Jan Kantowsky provides an update on the Marklin situation. As such, the email communications qualify for protection under the attorney-client privilege as they were written for the purpose of apprising counsel of the Marklin situation with the expectation of receiving legal advice in response. The Court observes that ALIX00007134 contains redacted portions that cannot be considered for purposes of this motion.

In relation to documents ALIX00003857 – ALIX00003870<sup>11</sup>, David Lovett is seeking feedback and/or legal advice from John Collins and Helena Samaha, among others, regarding a proposed letter. The Court finds that David Lovett's email is clearly seeking legal advice regarding the letter from counsel and therefore, is protected under the attorney-client privilege.

Concerning documents ALIX00004299 – ALIX00004300<sup>12</sup>, Michael Bauer sent an email correspondence to individuals including John Collins and Helena Samaha regarding his conversation with the Marklin administrator. The Court finds that Michael Bauer's email was

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<sup>9</sup> Plaintiff's Exhibit J.

<sup>10</sup> Plaintiff's Exhibit K.

<sup>11</sup> Plaintiff's Exhibit L.

<sup>12</sup> Plaintiff's Exhibit M.

intended to apprise counsel of his conversation with the Marklin administrator with the expectation of obtaining legal advice. Thus, the documents fall within the attorney-client privilege.

With respect to documents ALIX00001284 – ALIX00001297<sup>13</sup>, the Court finds that documents ALIX00001284 – ALIX00001288 are privileged to the extent that the handwritten notes belong to John Collins as suggested by Plaintiff. Additionally, certain documents include notes on Kingsbridge and Marklin. The remaining documents in Exhibit N encompass a business document and a general management liability primary coverage proposal, both of which were not offered for the purpose of obtaining legal advice. The Court will allow Defendant to redact counsel's notation on document ALIX00001289. Otherwise, the Court finds that documents ALIX00001289 – ALIX00001297 are not protected under the attorney-client privilege.

Regarding documents ALIX00003248 – ALIX00003249<sup>14</sup>, the Court observes that the email is written by Jan Kantowsky to which John Collins and Helena Samaha are cc'd. The email was intended to apprise counsel and others of the Marklin situation with the expectation that John Collins and/or Helena Samaha would respond in their capacity as General Counsel. Thus, the Court finds that the subject email is protected under the attorney-client privilege.

In relation to documents ALIX00003850 – ALIX00003855<sup>15</sup>, David Lovett sent the initial email to John Collins, Helena Samaha, and other individuals in which he seeks consideration or advice on a draft letter. In his email, David Lovett requested a conference call to discuss the letter. Clearly, David Lovett was seeking legal advice from John Collins and Helena Samaha, which would qualify the original email and subsequent email chain as protected communications under the attorney-client privilege.

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<sup>13</sup> Plaintiff's Exhibit N.

<sup>14</sup> Plaintiff's Exhibit O.

<sup>15</sup> Plaintiff's Exhibit P.

Concerning documents ALIX00003916 – ALIX00003917, ALIX00004043 – ALIX00004044, ALIX00003542 – ALIX00003548, ALIX00007137 – ALIX00007154, ALIX00007155 – ALIX00007159, and ALIX00007191 – ALIX00007193<sup>16</sup>, the Court finds that the emails generally include John Collins and/or Helena Samaha as recipients or were forwarded on to them for review. The overall subject matter of the emails concerns Defendant’s public relations strategy. The Court finds that these emails are protected under the attorney-client privilege as they were intended to apprise counsel of the current public relations situation in relation to Kingsbridge. All redacted portions of Plaintiff’s Composite Exhibit Q were not considered by this Court for purposes of this motion.

*Defendant’s Motion to Compel Responses to AlixPartners’  
First and Second Requests for Admission*

In its motion, Defendant contends that it properly issued Requests for Admissions under MCR 2.312. According to Defendant, Plaintiff’s responses include statements that certain documents<sup>17</sup> “speak for themselves.” Defendant argues that these statements are inappropriate and in violation of MCR 2.312(B)(2). As such, Defendant requests the Court to enter an order admitting Defendant’s first and second requests for admission or requiring Plaintiff to provide amended answers to the requests. In opposition, Plaintiff argues that it is entitled to respond that a document “speaks for itself” when asked to characterize the contents of a particular document.

Defendant also maintains that Plaintiff provided improper responses to Defendant’s First Requests for Admission Nos. 11 – 13 and 15. Conversely, Plaintiff asserts that MCR 2.312(B)(2) permits a party to qualify an answer as long as that party specifies the parts that are admitted and denied.

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<sup>16</sup> Plaintiff’s Composite Exhibit Q.

<sup>17</sup> Defendant’s First Requests Nos. 1, 8, 16, 18, and 20; Defendant’s Second Requests Nos. 2 – 9.

Pursuant to MCR 2.312(B)(2), an “answer must specifically deny the matter or state in detail the reasons why the answering party cannot truthfully admit or deny it. A denial must fairly meet the substance of the request, and when good faith requires that a party qualify an answer or deny only part of the matter of which an admission is requested, the party must specify the parts that are admitted and denied.”

The Court agrees with Defendant’s position that Plaintiff’s response that a document “speaks for itself” does not comply with MCR 2.312(B)(2). “The tautological ‘objection’ that the finder of fact can read the document for itself to see if the quote is accurate is not a legitimate objection but an evasion of the responsibility to either admit or deny a request for admission, unless a legitimate objection can be made or the responding party explains in detail why it can neither admit or deny the request. It is also a waste of time, since the “objection” that the document speaks for itself does not move the ball an inch down the field and defeats the narrowing of issues in dispute that is the purpose of the rule permitting requests for admission.” *Miller v Holzmann*, 240 F.R.D. 1, 4 (D.D.C. 2006).

With respect to Defendant’s First Requests for Admission No. 11 – 13 and 15, the Court finds that Plaintiff’s responses do not comport with the requirements set forth in MCR 2.312(B)(2) wherein a denial must fairly meet the substance of the request. Here, Plaintiff’s responses do not deny or admit the substance of the requests. Rather, Plaintiff defers to other information or documents to suggest that those texts hold the answers to Defendant’s requests. Thus, the Court finds that Plaintiff’s responses are in violation of MCR 2.312(B)(2).

For the reasons stated above, Defendant’s Motion to Compel Responses to AlixPartners’ First and Second Requests for Admission is granted. Plaintiff shall amend its answers to

Defendant's First Requests Nos. 1, 8, 11-13, 15, 16, 18, and 20 and Defendant's Second Requests Nos. 2 – 9 within seven (7) days of this Opinion and Order.

*Defendant's Motion to Compel Complete Responses to Its (A) Interrogatories, (B) Requests for Production of Documents, and to (C) Produce a Corporate Designee to Respond to Various Corporate Deposition Topics*

In its motion, Defendant is seeking an order to compel Plaintiff's production of complete responses to Defendant's First Set of Interrogatories, First Request for Production of Documents, and Second Request for Production of Documents. Defendant is also requesting that Plaintiff provide a corporate designee to testify on topics requested by Defendant to which Plaintiff objected and/or refused to provide a witness.

With respect to the production of documents, Defendant is requesting discovery of certain documents involving the law firm of D'Amato & Lynch that Plaintiff claims are protected under the attorney client privilege.<sup>18</sup> According to Defendant, D'Amato & Lynch operated as Plaintiff's claims handler and claims investigator after Plaintiff was notified of the Kingsbridge arbitration. Defendant asserts further that D'Amato & Lynch offered advice and counsel at all times to AlixPartners. Defendant cites to the United States District Court's opinion in *7 Mile & Keystone, LLC v Travelers Cas. Ins. Co. of Am.*, No. 11-12930, 2012 WL 6553585, at \*3 (E.D. Mich. Dec. 14, 2012), in which the Court held that "[i]n the context of an insurance claim, communications by attorneys acting as insurance claims investigators, rather than as attorneys, are not protected by the attorney client privilege."

In contrast, Plaintiff characterizes D'Amato & Lynch as the law firm engaged to provide legal advice to Plaintiff regarding its liability for the Kingsbridge Claim. Plaintiff submits as Exhibit A the deposition testimony of Eric Lidman, Plaintiff's complex claim director assigned to

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<sup>18</sup> See generally, Defendant's Exhibit Q "Plaintiff's Privilege and Redaction Log."

the Kingsbridge Claim, who testified that D'Amato & Lynch were hired to assist Plaintiff and not Defendant. Eric Lidman stated, “[c]ertainly, D’Amato & Lynch were not retained to represent the interests of AlixPartners. It should have been clear, and I believe we made it clear that we retained them to look out for AIG.”<sup>19</sup> Plaintiff asserts further that by February 2011, it disclosed the fact to Defendant via email<sup>20</sup> that D’Amato & Lynch were the insurance company’s coverage counsel. Additionally, Plaintiff offers as Exhibit D its August 10, 2010 letter, reserving its rights to evaluate ongoing coverage issues and to assert additional defenses to any claims for coverage if warranted.

As such, Plaintiff argues that its communications with its counsel, D’Amato & Lynch, are protected by the attorney-client privilege. In support of this position, Plaintiff defers to the United States District Court’s opinion in *U.S. Fire Ins. Co. v City of Warren*, No. 2:10-CV-13128, 2012 WL 1454008, at \*5 (E.D. Mich. Apr. 26, 2012), which provided in pertinent part: “although there is not Michigan law directly on point, the courts uniformly hold that communications between an insurance company and outside counsel retained to provide legal advice regarding coverage, rather than to perform routine claims adjustment, remain protected by the attorney-client privilege.”

In consideration of the parties’ arguments and Plaintiff’s supporting exhibits, the Court is persuaded that D’Amato & Lynch operated in the capacity of “coverage counsel” on behalf of Plaintiff. There appears to be an attorney/client relationship between Plaintiff and D’Amato & Lynch, wherein Plaintiff would seek legal advice from D’Amato & Lynch regarding coverage. As such, Plaintiff may certainly raise the attorney-client privilege with regard to any confidential communications by Plaintiff to D’Amato & Lynch that were made for the purpose of obtaining legal advice.

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<sup>19</sup> Plaintiff’s Exhibit A in its Memorandum in Opposition.

<sup>20</sup> Plaintiff’s Exhibit C in its Memorandum in Opposition.

Next, Defendant seeks the discovery of forms or endorsements from 2006 to 2010 that Plaintiff could have, but did not use, to attempt to limit coverage for “Related Wrongful Acts” or “Related Claims.” Defendant notes that the insurance policies at issue in this litigation do not limit coverage for “Related Wrongful Acts” or “Related Claims.”

In response, Plaintiff argues that this case does not involve any “Related Claims” or “Related Wrongful Acts” provisions and therefore, the forms sought by Defendant are irrelevant and not discoverable. The Court agrees with Plaintiff’s position that such forms are irrelevant when it is undisputed that the insurance policies at issue in this case do not limit coverage for “Related Wrongful Acts” or “Related Claims.”

Further, Defendant has not alleged that the policy terms are ambiguous to allow for the introduction of extraneous forms or endorsements that Plaintiff could have used to limit coverage. Relevant extrinsic evidence may be utilized to aid in the interpretation of a contract only if the language of that contract is ambiguous. *Klapp v United Ins. Grp. Agency, Inc.*, 468 Mich. 459, 470; 663 NW2d 447 (2003). Thus, Defendant is not entitled to discovery of Plaintiff’s forms and endorsements that provided or limited coverage for “Related Wrongful Acts” or “Related Claims.”

Defendant is also seeking underwriting manuals and underwriting checklists used for the policies or miscellaneous professional liability policies such as the ones at issue. In response, Plaintiff points out that the underwriting materials are discoverable when they may lead to admissible extrinsic evidence relating to the proper construction of the insurance policies’ terms. *U.S. Fire Ins. Co. v City of Warren*, supra at \*9. The Plaintiff asserts that Defendant has never alleged that any policy terms were ambiguous to warrant discovery of the underwriting materials as extrinsic evidence. The Court agrees with Plaintiff’s argument and finds that Defendant is not entitled to discovery of the requested underwriting materials.

Defendant next requests discovery of documents regarding applications for insurance by Defendant from 2006 – 2010 in addition to documents related to the purchase or renewal of the insurance policies. Plaintiff responds by stating that it has already produced its underwriting file for the 2008-2009 policy as well as the two other policies at issue in this case. The Court concurs with Defendant that the documents are discoverable and hereby orders Plaintiff to produce any other existing applications by Defendant for insurance for the years 2006 – 2010 and any other existing documents related to Defendant’s purchase or renewal of the insurance policies within seven (7) days of this Opinion and Order.

With respect to Defendant’s request for documents regarding interactions with Kingsbridge and Marklin within Plaintiff’s possession, the Court observes that the parties have come to an agreement on this particular request as noted in the November 4, 2015 Order Regarding Results of Facilitation of Discovery Issues.

Defendant’s final document request concerns documents regarding Plaintiff’s interpretation of its own policies. Specifically, Defendant requests documents or positions that Plaintiff has taken in court in other cases with regard to the meaning of these specific provisions, which are directly relevant to this litigation. In opposition, Plaintiff argues that any legal arguments made in other proceedings have no relevance to the facts of this case. Plaintiff contends that an insurance contract is given its plain and ordinary meaning. “Further, the construction and interpretation of an insurance contract is a question of law for a court to determine...de novo.” *Henderson v State Farm Fire & Cas. Co.*, 460 Mich 348, 353; 596 NW2d 190 (1999).

Moreover, Plaintiff argues that Defendant’s request concerns the work product of attorneys retained to represent Plaintiff in coverage litigation and therefore, those documents are protected under the attorney-client or work product privilege. Finally, Plaintiff asserts that Defendant can

access any court filings as they are public records. In light of the parties' arguments, the Court denies Defendant's request for documents regarding Plaintiff's interpretation of its own policies for the reasons that the requested documents are immaterial in relation to the unambiguous contracts involved in this lawsuit and/or they are potentially privileged or readily obtainable through public databases.

Defendant has also requested responses to interrogatories regarding Plaintiff's procedure for which a claim is submitted under a policy like Policy 1 or Policy 2, similar to Defendant's claim for coverage in this case, and how that claim is investigated and handled. Additionally, Defendant's next interrogatory request concerns Plaintiff's identification and description of all steps, communications, and documents that made up the investigation that preceded the follow-up investigation referred to in paragraph 97 of the Complaint.

In response, Plaintiff contends that it has provided its claims file and e-mail box from Plaintiff's complex claims director with responsibility for the Kingsbridge Claim. Plaintiff refers to MCR 2.309(E), which provides that "it is sufficient to answer the interrogatory to specify the [business] records from which the answer may be derived to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect the records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail to permit the interrogating party to identify, as readily as can the party served, the records from which the answer may be derived."

Here, Plaintiff provided records that are germane to the subject claim and how it was investigated and handled. Based upon Plaintiff's representation, the Court finds that Plaintiff is in compliance with MCR 2.309(E) and is not obligated to produce any further information with

respect to these specific interrogatories regarding Plaintiff's procedure for investigation and handling a claim.

With respect to Defendant's request for corporate designee deposition testimony, the Court observes from the November 4, 2015 Order Regarding Results of Facilitation of Discovery Issues that the parties have come to an agreement on the following Topic Nos. 17-18, 20-21, 24-25, 38-40, and 43-44.

Nevertheless, Defendant is still seeking corporate designee deposition testimony regarding the drafting of policies 1 and 2 and the meaning of the policy exclusions.<sup>21</sup> In opposition, Plaintiff defers to section II of its response to argue that Defendant is not entitled to corporate designee deposition testimony regarding the meaning of the policy exclusions for the reason that Defendant has not alleged that the policy terms are ambiguous. Relevant extrinsic evidence may be utilized to aid in the interpretation of a contract only if the language of that contract is ambiguous. *Klapp, supra* at 470.

The Court agrees with Plaintiff's position and denies Defendant's request for corporate designee deposition testimony regarding the meaning of the policy exclusions. The Court notes that Plaintiff has not specifically responded to Defendant's request for corporate designee deposition testimony regarding the drafting of policies 1 and 2. As such, the Court hereby compels Plaintiff to produce a witness on the topic of the drafting of policies 1 and 2 upon Defendant's reasonable request.

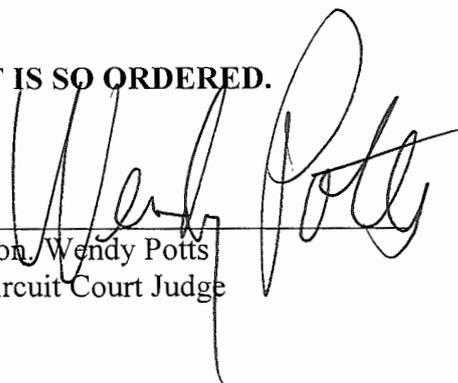
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<sup>21</sup> Topic Nos. 3-5 and 12.

Next, Defendant requests corporate designee deposition testimony concerning the use of underwriting manuals.<sup>22</sup> Plaintiff defers to section VII of its response to assert its position that Defendant has never alleged that any policy terms were ambiguous to warrant the discovery of underwriting manuals as extrinsic evidence. The Court finds that corporate designee deposition testimony concerning the use of underwriting manuals would only be relevant had Defendant argued that the policy terms are ambiguous. Thus, Defendant is not entitled to corporate designee deposition testimony concerning the use of underwriting manuals.

As a final matter, Defendant's request for attorney fees and costs in its Motion to Compel Responses to AlixPartners' First and Second Requests for Admission and its Motion to Compel Complete Responses to Its (A) Interrogatories, (B) Requests for Production of Documents, and to (C) Produce a Corporate Designee to Respond to Various Corporate Deposition Topics is hereby denied.

**IT IS SO ORDERED.**



Hon. Wendy Potts  
Circuit Court Judge

Dated: **MAR 10 2016**

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<sup>22</sup> Topic Nos. 15 and 23.