



O'Sullivan McCormack Jensen & Bliss^{PC}
Attorneys at Law

William J. O'Sullivan*
Michael T. McCormack**
Timothy P. Jensen**

* CT Bar
** CT & MA Bar
^ CT & CA Bar
^^ CT & NY Bar

Amy E. Markim^^
Michelle M. Seery^

August 25, 2020

The Honorable Michael P. Shea
c/o Amy_Constantine@ctd.uscourts.gov

Re: The Gunnery v. Graphic Arts Mutual Insurance Company, Civil Action No. 3:18-cv-01246-MJS

Dear Judge Shea:

This correspondence constitutes the written submission required pursuant to Paragraph 2 of Your Honor's Instructions for Discovery Disputes. This discovery dispute is twofold: (1) Graphic Arts' broad request for all documents provided to and created by McGuire Woods LLP ("McGuire Woods"), independent counsel retained by The Gunnery, related not only to this litigation but also to The Gunnery generally; and (2) Graphic Arts' dissatisfaction with the manner in which The Gunnery populated a privilege log. In compliance with the good faith conference obligations under the Federal Rules and Local Rules, the parties endeavored in good faith to eliminate or reduce the scope of these disputes before seeking the Court's involvement.

1. McGuire Woods's Work

This case arises out of Graphic Arts' wrongful failure to provide insurance coverage to The Gunnery under a commercial general liability insurance policy for a claim by a former student of The Gunnery (identified in the complaint as the "Student") who, in 2017, alleged she was sexually assaulted in 1998 by a then-current teacher of The Gunnery. It also involves alleged wrongful conduct by Graphic Arts in the handling of other claims involving sexual assaults. Graphic Arts denied coverage to the Gunnery on the grounds that the student's claim did not allege an occurrence which caused bodily injury to the student. Carmody Torrance Sandak & Hennessey LLP ("Carmody") defended The Gunnery in connection with the Student's claim which resolved at a mediation. Separately, The Gunnery hired McGuire Woods to conduct an investigation that included the Student's allegations and certain other topics. Notwithstanding this relatively narrow set of facts, Graphic Arts broadly and without good reason seeks "**All** Documents:"

- (a) The Student provided to McGuire Woods (Request No. 8);
- (b) The Gunnery provided to McGuire Woods concerning the Student, the subject teacher, and the Student's allegations of sexual assault (Request No. 9); and
- (c) created by McGuire Woods regarding not only the Student and the Allegation but also "The Gunnery" (Request No. 10).

The documents sought by Graphic Arts are neither relevant nor proportional to the needs of this insurance coverage case. In addition, the documents sought are protected by the attorney-client privilege, the attorney-work product doctrine, and/or as documents prepared in anticipation of litigation. Graphic Arts appears to be engaged in a fishing expedition designed perhaps to satisfy its business desire to understand the full universe of potential claims to which Graphic Arts may be exposed. Graphic Arts' mishandling of this claim and the quest for non-relevant discovery in order to research and perhaps set potential future reserves for claims is quintessentially an elevation of Graphic Arts' own interests over that of its insured.

Graphic Arts has not explained why the McGuire Woods privileged information is discoverable other than to claim it "is entitled to the same information" that The Gunnery has. That position is not true. Even though Graphic Arts denied coverage in 2017, Graphic Arts continued to communicate with The Gunnery about the claim. The Gunnery provided Graphic Arts with scores of information about the claim. In fact, Graphic Arts' first coverage letter to The Gunnery in November 2017 contained three-and-a-half single-spaced pages of detailed factual information about the Student's claim that The Gunnery provided to Graphic Arts. Throughout this litigation, Graphic Arts has never identified any specific document or documents it needs and how such a document is relevant to the issues in this litigation. Rather, it maintains a blanket claim of entitlement to the full McGuire Woods investigation, even though its scope is well beyond that of this case and protected from disclosure.

2. The Gunnery's Privilege Log

Each party produced privilege logs. Graphic Arts' privilege log contains approximately 250 entries while The Gunnery's privilege log contains approximately 3,000 entries. The Gunnery has more privileged communications due to the nature of the claims and issues which give rise to this insurance coverage dispute (a dispute within a dispute). Graphic Arts takes issue with the manner in which The Gunnery presented its privilege log, principally with The Gunnery's use of a document's email subject line as the document subject on the log. Given the very large volume of privileged documents, it was not reasonably feasible to subjectively characterize the content of each redaction or withheld document. The Gunnery estimates that the time required for such an endeavor would be many hundreds of hours. The Gunnery did separately provide detailed information to Graphic Arts to enable it to determine the general subject matter of the document. With due consideration for the Federal Rules' notions of proportionality and cost-shifting, The Gunnery asked Graphic Arts to bear the cost of any further review and supplementation of the privilege log. Graphic Arts declined.

Respectfully submitted,

Amy E. Markim

Amy E. Markim

cc: Michael T. McCormack
Rhonda Tobin
J. Tyler Butts

O'Sullivan McCormack Jensen & Bliss PC
Attorneys at Law

Putnam Park, Suite 100 • 100 Great Meadow Road • Wethersfield, CT 06109
Tel: 860.258.1993 • Fax: 860.258.1991 • www.omjblaw.com