

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

SENTINEL INSURANCE COMPANY, as
subrogee of Taro Systems, Inc.; and TARO
SYSTEMS, INC.,

Plaintiffs,

vs.

THE CITY OF GRAND RAPIDS,

Defendant.

Case No. 16-02295-NZB

HON. CHRISTOPHER P. YATES

ORDER GRANTING IN PART, AND DENYING IN PART, DEFENDANT'S
MOTION TO COMPEL PRODUCTION OF UNREDACTED DOCUMENTS

As a general rule, discovery disputes that ripen into motions to compel generate much more heat than light. This tempest in a teapot is no exception. Defendant City of Grand Rapids fears that documents redacted by the plaintiffs under the attorney-client privilege hold the key to this dispute. Now that the Court has reviewed the unredacted documents *in camera*, the Court can pronounce with absolute confidence that the redacted portions of those documents could not possibly have a bearing on the outcome of this case. Moreover, the Court believes that some of the redactions do not meet the requirements of the attorney-client privilege, so the Court shall provide the unredacted version of most of the pages to the defendant. But because the Court concludes that the plaintiffs can assert the attorney-client privilege to justify some of the redactions, the Court shall not provide a complete set of unredacted pages to the defendant.

“It is well settled that Michigan follows an open, broad discovery policy that permits liberal discovery of any matter, not privileged, that is relevant to the subject matter involved in the pending

case.” Augustine v Allstate Ins Co, 292 Mich App 408, 419 (2011). But “MCR 2.302(B)(1) limits discovery to matters that are not privileged.” Id. at 420. ““The attorney-client privilege is the oldest of the privileges for confidential communications known to the common law[,]” Leibel v General Motors Corp, 250 Mich App 229, 237 (2002), and it “attaches to direct communication between a client and his attorney as well as communications made through their respective agents.” Reed Dairy Farm v Consumers Power Co, 227 Mich App 614, 618 (1998). “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.” Id. at 618-619. “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.” Id. at 619.

In the instant case, the only communications shielded from discovery by the attorney-client privilege occurred between representatives of Plaintiff Sentinel Insurance Company (“Sentinel”) and Sentinel’s retained attorneys, including Attorney Stephen Whelan. To the extent that Sentinel’s files include notations of comments made by Attorney Whelan, those notations – and nothing more – are protected from discovery by the attorney-client privilege. Beyond that, direct communications either in written or oral form by Attorney Whelan to Sentinel’s employees are shielded from discovery by virtue of the attorney-client privilege. The Court’s *in camera* review of the unredacted versions of the pertinent e-mail correspondence and the pages from Sentinel’s files convinces the Court that only a portion of the redactions can be justified under the attorney-client privilege. The Court finds, for example, that the attorney-client privilege does not apply to notations that simply reflect that contact between Sentinel and its attorneys occurred on specific dates. Therefore, the Court shall provide to

the defendant several pages containing fewer redactions than those made by Sentinel and its counsel,* largely because the challenged redactions do not involve the substance of any communications.

In contrast, the Court concludes that Plaintiff Sentinel and its counsel have properly redacted the letter dated August 15, 2014, and e-mail correspondence exchanged by Sentinel's representatives and the law firm retained by Sentinel. The contents of those written and electronic communications strike the Court as relatively innocuous, but the attorney-client privilege cannot be diminished by the Court's conclusion that the privileged materials would not assist the defendant in presenting its case. Accordingly, the Court must permit the plaintiffs to shield those communications from discovery. See MCR 2.302(B)(1). To facilitate appellate review of the Court's approval of the redactions, the Court hereby orders the plaintiffs to maintain a complete set of the unredacted materials submitted for the purpose of *in camera* review.

IT IS SO ORDERED.

Dated: June 22, 2017



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

* The Court shall transmit those materials *via* e-mail to the defendant and the plaintiffs alike in order to prevent unnecessary delay in the discovery process.