

STATE OF NEW YORK
SUPREME COURT COUNTY OF ULSTER

JOHN DOE and JOHN DOE II,

Plaintiffs,

DECISION and ORDER

-against-

Index #: EF2020-1189

WILLIAM J. DEDERICK and
KINGSTON CITY SCHOOL DISTRICT,

Defendants.

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Mackey, J.

By interim Decision and Order of May 19, 2023 (the “interim decision”), this Court granted a motion to compel brought by the plaintiffs to the extent that non-parties Graphic Arts Mutual Insurance, Utica Mutual Insurance Company, and Utica National Insurance Company (collectively referred to in the singular as “Utica National”) were directed to provide the Court, for an *in camera* inspection, complete, unredacted copies of certain documents which the plaintiffs demanded pursuant to a document subpoena issued by counsel for the plaintiffs,¹ but which Utica National withheld as privileged. Utica National subsequently submitted those records and the Court has completed its review.

By way of background, this action is one brought by the anonymous plaintiffs against defendants William J. Dederick (“Dederick”) and the Kingston City School District (the “School District”) pursuant to the New York State Child Victims Act, alleging that between 1982 and 1984, Dederick, a teacher (and later an administrator) at the School, engaged in sexual abuse of the plaintiffs both on and off school grounds; that Dederick sexually abused a number of other minor students of the School District; and that the School District knew or should have known between 1982 and 1984 both that Dederick had a propensity to engage in

¹Familiarity with the Court’s interim decision is presumed.

sexual abuse of children and that he was sexually abusing minor students, including the plaintiffs. The complaint asserts causes of action against the School District sounding in negligence, negligent hiring and retention and negligent supervision of Dederick and the plaintiffs.

On December 22, 2022, plaintiffs served Utica National² with a document subpoena seeking the production of, among other things:³

3. Your claim file for claim number 10215102.
4. All documents You relied on to determine coverage for claim number 10215102.
5. All communications You had with anyone related to claim number 10215102.

In the interim decision, this Court directed that Utica National provide documents responsive to these three items to the Court for purposes of conducting an *in camera* inspection. In response to the interim decision, Utica National has submitted ten individual email communications and a “Bill Analysis Report,” Bates stamped numbered 000004 through 000247, hereinafter referred to only by the last three digits of each document, for the Court’s review. Utica National has also provided a privilege log with respect to these documents, indicating the legal ground upon which the claim of privilege is asserted, a description of the document, the document’s subject matter, and the date of each document.

CPLR § 3101 provides for broad discovery of all documents which are “material and necessary” to the claims or defenses in an action (CPLR § 3101[a]). However, it also establishes three categories of protected materials: privileged materials, such as attorney-client communications under CPLR § 4503, are absolutely immune from discovery (CPLR § 3101[b]); attorneys’ work product, which is also absolutely immune (CPLR § 3101[c]); and materials prepared in anticipation of litigation, or trial preparation materials, which are subject to discovery only upon a showing of substantial need and undue hardship in obtaining the substantial equivalent of the materials by other means (CPLR § 3101[d]);

²Utica National is the School District’s liability insurer and is apparently defending the action on the School District’s behalf under a reservation of rights.

³The Court resolved the four remaining categories of documents requested in the subpoena in its interim decision.

Venture v Preferred Mut. Ins. Co., 153 AD3d 1155, 1158 [1st Dept. 2017]). Further, the burden of establishing the privilege is on the party asserting it and the protection must be narrowly construed (*Id.* at 1159).

Here, Utica National alleges the withheld documents are variously prepared in anticipation of litigation or subject to attorney-client privilege.

Based on the foregoing, the Court has reviewed the submitted documents to determine whether any privilege, privacy, or other concerns preclude disclosure and finds as follows:

004-013 The first document is email correspondence from June 2020 between Utica National's in house counsel, Kim Doremus-Green to "Home Office Claims Mailbox." The correspondence is between Utica National employees and counsel and is protected by the attorney-client privilege. In any event, the Court has reviewed the correspondence and finds that it does not contain any substantive or relevant information to this action.

027-035 The second document is email correspondence from January 2020 between the School District and Utica National employees. Upon review of the correspondence, Utica National has demonstrated that it was "primarily prepared in anticipation of litigation" and is thus privileged (*MBIA Ins. Corp. v Countrywide Home Loans*, 93 A.D.3d 574 [1st Dept. 2012]). In any event, the Court has reviewed the correspondence and finds that it does not contain any substantive or relevant information to this action.

039-040 The third document is email correspondence between Kim Doremus-Green to "Home Office Claims Mailbox." It contains communications between Utica National employees. The Court finds that this document may be withheld as it was prepared in anticipation of litigation. In any event, the Court has reviewed the correspondence and finds that it does not contain any substantive or relevant information.

045-046, 049-050, 053-054, 057-066 The fourth, fifth, sixth and seventh documents are email chains between Kim Doremus-Green to "Home Office Claims Mailbox." These documents contain correspondence between Utica National employees and counsel. The Court finds that these documents may be withheld as prepared in anticipation of litigation and attorney-client privilege. In any event, the Court has reviewed the correspondence and finds that there is no substantive or relevant information contained therein.

067-117 The eighth document is email correspondence with a date range of January 27, 2020 to February 21, 2020 between Kim Doremus-Green to “Home Office Claims Mailbox” and Joseph Sbardella (a Utica National claims representative) to “Home Office Claims Mailbox.” The document contains communications among Utica National personnel discussing coverage. The Court finds that this document may be withheld as prepared in anticipation of litigation. In any event, the Court has reviewed the correspondence and finds that it does not contain any substantive or relevant information.

120-166, 209-247 The ninth document is email correspondence with a date range of February 21, 2020 and June 15, 2020 between Kim Doremus-Green to “Home Office Claims Mailbox.” The eleventh document is email correspondence with a date range of February 2020 and May 13, 2020 between Kim Doremus-Green to “Home Office Claims Mailbox.” These email chains contain discussions between Utica National and its counsel concerning insurance coverage in anticipation of litigation. In any event, the Court has reviewed the correspondence and finds that it does not contain any substantive or relevant information.

201-208 The tenth document is a report concerning counsel’s fees for representing Utica National. This document is irrelevant to this action and need not be disclosed.

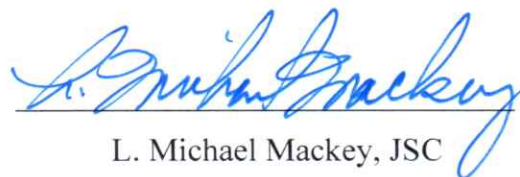
Utica National shall disclose to plaintiffs all of the remaining documents submitted for *in camera* review, within 20 days from the date hereof.

SO ORDERED.

ENTER.

Dated: July 5, 2023

Albany, New York



L. Michael Mackey, JSC

This memorandum constitutes the Decision and Order of the Court. The Court has uploaded the original Decision and Order to the case record in this matter maintained on the NYSCEF website, whereupon it is to be entered and filed by the Office of the County Clerk.

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