

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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UTICA MUTUAL INSURANCE COMPANY,

No. 6:12-CV-196  
(BKS/ATB)

Plaintiff,

v.

MUNICH REINSURANCE AMERICA, INC.,

Defendant.

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MUNICH REINSURANCE AMERICA, INC.,

No. 6:13-CV-743  
(BKS/ATB)

Plaintiff,

v.

UTICA MUTUAL INSURANCE COMPANY,

Defendant.

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UTICA MUTUAL INSURANCE COMPANY,

No. 6:13-CV-995  
(DNH/ATB)

Plaintiff,

v.

CENTURY INDEMNITY COMPANY,

Defendant.

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SYED S. AHMAD, ESQ., for Utica Mutual Insurance Company (“Utica Mutual”)  
BRUCE M. FRIEDMAN, ESQ., for Munich Reinsurance America, Inc. (“Munich Re”)  
TANCRED V. SCHIAVONI, ESQ., for Century Indemnity Company (“Century”)

ANDREW T. BAXTER, U.S. MAGISTRATE JUDGE

### ORDER

The court conducted a stenographically-recorded conference on April 21, 2016, regarding unresolved discovery issues in the three above-captioned actions. The parties submitted letter briefs and/or substantive affidavits, all with supporting exhibits. (Case No. 6:12-CV-196, Dkt. Nos. 159, 161, 162, 169, 170, 171).<sup>1</sup> This court has considered the submissions of the parties and the supplemental arguments of counsel during the discovery conference. For the reasons stated on the record during the April 21, 2016 conference, as supported by my findings and rulings made during prior conferences on January 20 and February 29, 2016, and subject to the further guidance provided by the court during those conferences it is hereby

### ORDERED

1. Utica Mutual’s request to conduct further depositions regarding *Bellefonte* issues<sup>2</sup> is **GRANTED IN PART AND DENIED IN PART** notwithstanding Munich

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<sup>1</sup> The court will refer only to docket numbers of documents in 6:12-CV-196, although the same documents may have also been filed in one or both of the other cases. To the extent a document has been filed under seal, the court will refer to the docket number of the sealed, unredacted document.

<sup>2</sup> The court uses a reference to the seminal *Bellefonte* case as a shorthand for the issues the parties have most often referred to in terms of whether the “Item D” amount in the relevant Munich Re reinsurance certificates capped its liability for both “loss” and “expense” payments. See *Bellefonte Reins. Co. v. Aetna Cas. & Sur. Co.*, 903 F.2d 910, 914 (2d Cir. 1990).

Re's agreement, on the record, to withdraw with prejudice, defenses and claims based entirely on *Bellefonte*.

a. Utica Mutual's request for leave to conduct a Rule 30(b)(6) deposition of Munich Re's designated witness, with respect to the *Bellefonte* issues Munich Re agreed to prior to deciding to abandon related defenses and claims, is **GRANTED**.<sup>3</sup>

b. Utica Mutual request for leave to depose Michael McMonagle, Patricia Heller, John Crowell, and George Cavell is **DENIED**.

2. Utica Mutual's request for leave to depose Michael Frantz is **GRANTED**, but the deposition will be limited to 3 ½ hours, not including breaks.<sup>4</sup>

3. Munich Re and Century's motion for leave to conduct more than ten depositions in their respective actions is **GRANTED IN PART AND DENIED IN PART**, in that Munich Re will be allowed to notice and conduct 14 depositions (including those already taken), and Century will be allowed to notice, conduct, participate in, or share the transcript of 15 depositions (including those already taken),

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<sup>3</sup> Munich Re advised that court that it would likely designate Thomas O'Kane as its Rule 30(b)(6) witness regarding *Bellefonte* issues. Given that, the court need not address the issue of whether Mr. O'Kane's deposition as an individual fact witness should be re-opened. The court provided guidance to the parties during the April 21, 2016 conference regarding the privilege issues that arose during the deposition of Mr. O'Kane, as a fact witness, with respect to *Bellefonte* issues.

<sup>4</sup> With respect to Utica's desire to depose Richard Hill, counsel for Munich Re advised the court that, if the parties could not reach agreement on a stipulation that would apply if Mr. Hill is not deposed, they would make Mr. Hill available for a deposition. The court provided guidance to counsel during the April 21, 2016 conference regarding the disputed provisions of stipulation proposed by Utica Mutual.

subject to the guidance of the court during the April 21, 2016 conference as to how depositions shall be counted.<sup>5</sup>

4. The court approves the topics for Munich Re's Rule 30(b)(6) deposition of Utica Mutual's designee(s), as Utica Mutual articulated them in sub-paragraphs a) through f) of its April 15, 2016 letter brief. (Dkt. No. 170 at 2). Munich Re's motion to adopt its broader statement of the Rule 30(b)(6) topics is **DENIED**.

5. Munich Re's renewed motion to compel production of "internal accounting documents" by Utica Mutual is **DENIED**.

6. Munich Re's motion for reconsideration of my prior ruling upholding Utica Mutual's invocation of privilege with respect to enumerated documents on Utica Mutual's privilege log is **DENIED**.

7. With respect to Century and Munich Re's motion to compel Utica Mutual to produce documents described in sub-paragraphs 1 through 4 of Munich Re's April 11, 2016 letter brief (Dkt. No. 162 at 4-5):

a. Utica agreed to confirm that it does not have any other signature or

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<sup>5</sup> Depositions taken by one of the reinsurers without the other participating or being allowed to use the transcript, counts as one deposition only for the reinsurer who took the deposition. If Munich Re and Century jointly participate in a deposition or each is granted leave to use the transcript in their respective cases, that counts as one deposition for each. The joint or shared depositions, except for a Rule 30(b)(6) deposition, must be completed in one day of seven hours or less (without counting breaks). Utica did not object to Century participating in Munich Re's deposition of Utica's Rule 30(b)(6) designee(s), even though Century had already conducted a Rule 30(b)(6) deposition in its case. The Rule 30(b)(6) deposition, even with multiple designees, or even if exceeds one seven-hour day, counts only as one deposition for each reinsurer participating or sharing the transcript. Subject to the caution provided by the court during the April 21, 2016 conference, Utica Mutual has the discretion to designate a single Rule 30(b)(6) witness for all topics.

errata pages relating to the deposition and hearing transcripts it has produced from other proceedings.

b. Utica will supplement the appropriate discovery response to confirm that it has produced all responsive discovery with respect to Utica Mutual's 2005 engagement of PricewaterhouseCoopers.

c. Century and Munich Re's motion to compel Utica Mutual to produce documents relating to the anticipated modification of Utica Mutual/Goulds Pumps settlement agreement is **DENIED**, without prejudice to renewal if and when the terms of any such modification (or buy-back) are finalized and if appropriate information with respect to the transaction is not otherwise disclosed by Utica Mutual.

d. Pursuant to its agreement, Utica Mutual is **ORDERED** to disclose to Munich Re and Century unredacted copies of the January 20, 2016 Memorandum-Decision and Order of Judge Sharpe (Dkt. No. 106) and any related sealed or redacted briefs and exhibits in *Utica Mutual Insurance Company v. Clearwater Insurance Company*, NDNY Case No. 6:13-CV-01178 (GLS/TWD).<sup>6</sup>

8. Based on input from District Judge Sannes, this court will not extend the deadlines for dispositive motions or the trial dates in the Munich Re cases. However, the court will entertain proposals from the parties with respect to extending specific

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<sup>6</sup> During the April 21, 2016 conference, the court provided guidance with respect to the outstanding subpoenas duces tecum and other discovery demands that Munich Re has recently and that might lead to further discovery disputes. However, based on the record before the court, I could not make definitive rulings with respect to those outstanding subpoenas or discovery requests.

deadlines for fact and expert discovery to the extent they will not interfere with the schedule for dispositive motions and trial.

Dated: April 25, 2016

  
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**Hon. Andrew T. Baxter**  
**U.S. Magistrate Judge**