IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

TIG INSURANCE COMPANY, Plaintiff,	)	
ROYAL INSURANCE COMPANY OF AMERICA, Intervenor Plaintiff,	)	
v.	)	C.A. No. 02C-04-126 PLA
PREMIER PARKS, INC. (n/k/a SIX FLAGS, Inc.) Defendants.	)	

Submitted: January 31, 2005
Decided: March 1, 2005

UPON DEFENDANTS' MOTION
FOR REARGUMENT
GRANTED IN PART

Peter G. Thompson, Thompson, Loss & Judge, Washington, D.C., and Carmella P. Keener, Rosenthal, Monhait, Gross & Goddess, P.C., Wilmington, Delaware, Attorneys for Plaintiff

Frank E. Noyes, II, White & Williams LLP, Wilmington, Delaware, Attorney for Intervenor

Richard L. Horwitz, Potter Anderson & Corroon LLP, Wilmington, DE, Attorney for Defendant.

ABLEMAN, JUDGE

ORDER

Upon consideration, Plaintiff TIG Insurance Company's ("TIG") Motion For Reargument must be **GRANTED IN PART**. It appears to the Court that:

1. In an August 2, 2004 bench ruling, this Court ordered TIG to produce discovery regarding law firms it had chosen to defend class action lawsuits against its other insureds, over the last five years. This ruling represented a substantial denial of Defendant Premier Parks, Inc. ("Six Flags") Motion To Compel Discovery, which had sought, in essence, information regarding all "major" cases that, Six Flags argued, would be any case where TIG had estimated exposure at more than $250,000. TIG objected at the time, claiming that such discovery would be extremely burdensome, in that it would encompass over 50,000 files scattered across the country, which then would have to be screened and redacted by Plaintiff's counsel. The Court attempted compromise by limiting discovery to just class action cases, which the parties concede are exceedingly rare.

2. Upon attempting to comply with this ruling, TIG realized that it has no electronic mechanism to retrieve case files based on whether a class was certified. However, TIG could sort files by amount expended. TIG therefore offered to manually review all of its files with expenditures greater than $750,000. TIG's reasoning was that, since Six Flags had already expended more than $3 million on the class action suit that underlies this dispute, class action cases that might lead to relevant discovery would have similarly large expenditures. TIG conducted this

manual review of approximately 50 files, and discovered only one class action. Moreover, that single class action did not involve a fact circumstance requiring TIG to hire counsel, and therefore was totally irrelevant to this case.

3. Six Flags informed TIG that this process was inadequate, and that, according to the Court's August 2, 2004 Order, TIG must produce all class action case information regardless of the size of the expenditure. TIG again advised Six Flags that there is no way to make its computer system do so, and offered to manually search all case files with expenditures greater than $500,000. This encompassed several hundred more files, and TIG has not yet completed the task. Six Flags again refused to compromise, and suggested that TIG allow Six Flags' computer experts to search TIG's database for the files. TIG flatly rejected granting Six Flags access to its systems, which contain a plethora of confidential and privileged information.

4. Instead, TIG filed the present Motion For Reargument. The Motion argues that the Court "misapprehended the facts" in the August 2, 2004 order. Specifically, TIG points out that the Court was attempting to limit discovery to a small amount of readily available information, i.e. the one or two class action lawsuits likely to have been filed against TIG clients. Language in the August 2, 2004 order suggests that the Court only meant to force TIG to turn over a file or two, not to embark on an onerous and enormously costly manual review of 50,000

files. Six Flags disagrees, arguing that the order speaks for itself, that the Court was aware of the possibility that searching for the files may be difficult, and that TIG may not use its inadequate computer system as an excuse to avoid valid discovery obligations.

5. Upon reconsideration, the Court is satisfied that I indeed "misapprehended the facts" within the meaning of Superior Court Civil Rule 59(e), and that the August 2, 2004 order is overbroad.

This case is about whether TIG met its contractual obligation to provide adequate counsel for Six Flags to defend a class action discrimination suit. That question entirely depends upon the merits of the underlying suit, i.e. any law firm would be capable of defending an uncomplicated, frivolous lawsuit, while an especially good firm may be called in for a high-exposure case with complex facts. TIG's counsel-hiring decisions in other class actions are highly unlikely to be relevant to this case because the specific facts implicit in those determinations cannot be replicated.

6. The August 2, 2004 order therefore inflicts a substantial burden upon TIG in order to grant Six Flags discovery that is almost certain to be irrelevant. That was not my intention, and was based on an erroneous belief that class action files would be easy for TIG to retrieve and disclose. I have now more carefully considered what class action information may be relevant to this case, and determined that

only large expenditure cases are similar enough to have any likelihood of leading to relevant information. The discovery that TIG has proposed is therefore adequate.

7. Accordingly, Plaintiff's Motion For Reargument is **GRANTED**, and this Court's discovery order of August 2, 2004 is hereby **MODIFIED**. Plaintiff shall complete its review of its case files involving expenditures of over $500,000, and turn over any class action files, properly redacted, to Defendant. Plaintiff shall not be required to review files involving expenditures of less than $500,000.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

cc: Prothonotary
Richard L. Horwitz, Esquire
Frank E. Noyez, II, Esquire
Anthony Miscioscia, Esquire