

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Elite Performance LLC, an Arizona limited
10 liability company,

11 Plaintiff,

12 v.

13 Echelon Property & Casualty Insurance
14 Company, an Illinois corporation,

15 Defendant.

CV-20-00552-TUC-RM (LAB)

ORDER

16 Pending before the court is the defendant's motion to compel filed on January 28,
17 2022. (Doc. 41) The plaintiff filed a response on February 11, 2022. (Doc. 45) The
18 defendant filed a reply on February 16, 2022. (Doc. 47)

19 The court finds this motion suitable for determination without oral argument. LRCiv
20 7.2(f).

21
22 Background

23 This suit arises out of an underlying action brought by the plaintiff, Elite
24 Performance, against the defendant's insured, AC/DC. Following a small fire at Elite's
25 commercial property, Elite hired AC/DC to make repairs. (Doc. 1-3, p. 2) These repairs
26 were apparently unsatisfactory, and Elite sued AC/DC in Maricopa County Superior Court
27 for negligence. *Id.* at pp. 2-3. The defendant in this action, Echelon, issued an insurance
28 policy to AC/DC, which was in effect at the time of the repairs. *Id.* at 2. AC/DC tendered

1 the suit to Echelon for a defense. *Id.* at 3. Echelon ultimately determined that the claims
2 were not covered and refused to defend or indemnify AC/DC. *Id.* Elite and AC/DC
3 subsequently entered into a “*Damron Agreement*,” whereby AC/DC assigned to Elite all
4 claims it had against Echelon for denial of coverage. *Id.* at 4-5.

5 Elite now brings claims against Echelon for breach of contract and breach of the
6 duty of good faith. (Doc. 1-3)

7
8 Pending Motion to Compel

9 In the underlying action, AC/DC sought a defense from Echelon under its general
10 liability insurance policy. (Doc. 41, p. 2) After some back and forth, Echelon issued a
11 coverage position letter stating that there was no coverage for the claims asserted against
12 AC/DC. *Id.* AC/DC, left to defend itself, entered into a *Damron Agreement* with Elite,
13 assigning to Elite any and all claims it might have against Echelon for failure to defend or
14 indemnify AC/DC. *Id.*

15 Meanwhile, Elite also submitted a claim for damage to its own insurer. (Doc. 47, p.
16 2) Echelon asserts that Elite admits to “receiv[ing] payments from that carrier as part of
17 this underlying claim.” *Id.* However, it is not clear that Elite has specifically admitted to
18 the existence of these payments. (Doc. 45)

19 On December 1, 2021, Echelon served Elite with discovery requests, including
20 Request for Production No. 4: “Please produce any and all documents relating to any claim
21 made to any other insurance carrier . . . related to the fire at the Property” (Doc. 41-1,
22 pp. 5-6) The discovery requests also included Non-Uniform Interrogatories Nos. 1 and 2,
23 which ask Elite to identify the name and contact information for Elite’s property insurance
24 agent and insurance company. (*Id.* at 13-14) Elite objected to these requests, claiming that
25 they were not relevant, not proportional, and were barred by the collateral source rule.
26 Echelon claims that defense counsel in the underlying suit attempted to obtain this same
27 information, but Plaintiff objected to it in that suit as well. (Doc. 47, p. 3 n.2)

28 Discovery for this case officially closed on January 28, 2022. (Doc. 26, p. 2)

1 Echelon now seeks to compel Elite to provide responses to the above discovery requests.
2 (Doc. 41, p. 1) Echelon also requests leave to issue a subpoena to Plaintiff's insurance
3 agent and/or property insurance company, or alternatively, an Order re-opening discovery.
4 *Id.* at 8.

5
6 Discussion: Relevance of Discovery Requests

7 In general, “[p]arties may obtain discovery regarding any nonprivileged matter that
8 is relevant to any party’s claim or defense and proportional to the needs of the case,
9 considering the importance of the issues at stake in the action, the amount in controversy,
10 the parties’ relative access to relevant information, the parties’ resources, the importance
11 of the discovery in resolving the issues, and whether the burden or expense of the proposed
12 discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).

13 Echelon argues that the information and documents relating to Elite’s property
14 insurance claim “are plainly relevant to this case.” (Doc. 41, p. 4) The information
15 contained in the insurance company’s file is unknown, but it may include documents
16 pertaining to an investigation of the fire, photographs of the property, estimates of the
17 damage, documents regarding payment of the claim, and whether there was an assignment
18 of rights or claims related to the underlying incident. *Id.* Elite argues that this evidence is
19 “not remotely relevant” to Elite’s claims against Echelon and that Echelon is attempting to
20 relitigate the underlying the case. (Doc. 45, pp. 1-2) However, whether evidence was
21 relevant to the underlying case does not necessarily affect its relevance to the current case.

22 The disclosure sought by Echelon could produce evidence that points to fraud or
23 collusion, a valid defense to a *Damron* Agreement. *See State Farm Mut. Auto. Ins. Co. v.*
24 *Paynter*, 122 Ariz. 198, 201, 593 P.2d 948, 951 (Ct. App. 1979) (“In the absence of fraud
25 or collusion, [an insurer] is not entitled to relitigate the merits of the claim.”) For instance,
26 if Elite made inconsistent claims to its insurer regarding damage to the property, then that
27 could be relevant to a defense of fraud or collusion. Similarly, photographs and
28 investigation of the damages might shed light on the extent and nature of property damage,

1 which could be relevant to the issue of insurance coverage. Lastly, if Elite assigned its
2 rights and claims against AC/DC to its property insurer, then that too could be relevant.
3 Thus, the court is persuaded that Echelon’s discovery requests are sufficiently relevant to
4 this case. Echelon further argues that disclosure is not permitted under the collateral source
5 rule.

6
7 Discussion: Collateral Source Rule

8 “The collateral source rule is a doctrine, usually applied in personal injury cases,
9 which provides ‘that benefits received by the plaintiff from a source collateral to the
10 defendant may not be used to reduce that defendant's liability for damages.’” *John Munic*
11 *Enters. v. Laos*, 235 Ariz. 12, 17, 326 P.3d 279, 284 (Ct. App. 2014) (citing Dan B. Dobbs,
12 *Dobbs Law of Remedies* § 3.8(1) (2d ed. 1993)). In effect, this “excludes at trial evidence of
13 any benefits received by the injured party from sources other than the tortfeasor and
14 prohibits any reduction of damages recovered because of such benefits.” *Eastin v.*
15 *Broomfield*, 116 Ariz. 576, 583, 570 P.2d 744, 751 (1977). The rule allows for full recovery
16 “from a defendant for an injury even when the plaintiff has recovered from a source other
17 than the defendant for the same injury.” *Lopez v. Safeway Stores, Inc.*, 212 Ariz. 198, 202-
18 03, 129 P.3d 487, 491-92 (Ct. App. 2006).

19 Here, the collateral source rule does not apply because the damages alleged in this
20 case are wholly separate from the damages for which Elite’s insurer would have paid. In
21 the underlying *Damron* Agreement, AC/DC assigned to Elite its potential claims against
22 Echelon for failure to defend or indemnify AC/DC. Elite, now standing in AC/DC’s shoes,
23 subsequently brought breach of contract and bad faith claims against Echelon. By contrast,
24 Elite’s claims to its insurer would likely have been for property damage, not breach of
25 contract or bad faith claims. The collateral source rule allows a plaintiff to recover fully
26 from a tortfeasor even if he has already been compensated for the same injury, but Elite’s
27 insurer did not compensate Elite for the same injury that Elite now alleges against Echelon.
28 Therefore, the collateral source rule does not apply.

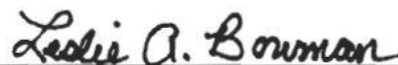
1 Furthermore, the collateral source rule operates to exclude evidence at trial, not to
2 limit pre-trial discovery. Elite argues that the discovery requests are improper because the
3 evidence would be barred by the collateral source rule at trial. (Doc. 45, p. 2) Echelon
4 argues that, for discovery purposes, the evidence need not necessarily be admissible at trial.
5 (Doc. 47, p. 4) The court agrees with Echelon. Elite is welcome to challenge the
6 admissibility of this evidence once the discovery phase is concluded, but it may not simply
7 refuse to cooperate with a discovery request on the grounds that the evidence may
8 eventually be deemed inadmissible.

9 The court will order Elite to provide the documents requested in Request for
10 Production No. 4 and provide responses to Interrogatories Nos. 1 and 2. Elite asserts that
11 it has done a search and that, "other than with regard to payment issues," it has no
12 responsive documents. (Doc. 45, p. 4) Assuming this is still the case, Elite's duty to comply
13 with this request for documents is discharged.

14
15 IT IS ORDERED that Defendant's motion to compel, filed on January 28, 2022, is
16 GRANTED. (Doc. 41) Within 15 days of service of this order, Elite must (1) produce all
17 documents related to the claim made by Plaintiff under its own property insurance policy,
18 including correspondence, payments and/or any documentation related to that insurance
19 carrier's own investigation; (2) disclose the name and address of Plaintiff's insurance
20 agent; and (3) disclose the name of the insurance company that issued Plaintiff's property
21 insurance policy.

22 IT IS FURTHER ORDERED that the discovery deadline will be extended to allow
23 enough time for Defendant to issue subpoenas and receive responses from the insurer.

24 Dated this 11th day of August, 2022.

25
26 

27 _____
28 Leslie A. Bowman
United States Magistrate Judge