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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FAY AVENUE PROPERTIES, LLC, LA JOLLA SPA MD, INC.,)	Civil No.11-2389-GPC(WVG)
)	
Plaintiffs,)	ORDER REGARDING JOINT STATEMENT FOR DETERMINATION OF DISCOVERY DISPUTE
v.)	
)	
TRAVELERS PROPERTY AND CASUALTY COMPANY OF AMERICA,)	
Defendant.)	
_____)	

I

INTRODUCTION

On December 2, 2013, the Court ordered that by December 6, 2013, Defendant produce documents and serve answers to interrogatories to which the parties agreed, and file a Joint Statement For Determination of Discovery Dispute ("Joint Statement") regarding interrogatories and Requests for Production of Documents to which the parties did not agree.

1 On December 6 and 9, 2013, the parties filed Joint
2 Statements.^{1/} The Joint Statements addressed whether
3 Plaintiff was entitled to discover Defendant's reserves in
4 this action, Defendant's standards and training manuals
5 regarding the administration of claims, and Defendant's
6 communications with its coverage counsel. A privilege log
7 is attached to Plaintiff's (La Jolla Spa MD, Inc.'s) Joint
8 Statement. (See Plaintiff's Index of Exhibits In Support
9 of Joint Statement, filed 12/6/13, Exh. D, hereafter
10 "December 6, 2013 Privilege Log").

11 Thereafter, the Court requested from Defendant
12 supplemental briefing on the propriety of Plaintiff's
13 requests to discover the communications noted above.

14 On February 3, 2014, Defendant filed a Supplemental
15 Brief. A revised privilege log is attached to Defendant's
16 Supplemental Brief. (See Declaration of Patricia A. Daza-
17 Luu, Exh. 44, filed February 3, 2014, hereafter "February
18 3, 2014 Privilege Log."). On February 10, 2014, Plaintiff
19 filed a Supplemental Brief.

20 The Court, having reviewed the Joint Statements, the
21 Supplemental Briefing, the authorities cited therein, and
22 the declarations and documents attached thereto, HEREBY
23 GRANTS in part and DENIES in part Plaintiff's Application
24 to compel Defendant's reserve information, DENIES Plain-
25 tiff's Application to compel production of Defendants'
26 standards and training manuals regarding the administra-

28 ^{1/}Counsel informed the Court that disputes regarding interrogatories were resolved. (Joint Statement, December 6, 2013, Exh. A at 1).

1 tion of claims, and DENIES Defendant's Application to
2 compel Defendant's communications with its coverage
3 counsel.

4 II

5 REQUESTS FOR PRODUCTION OF DOCUMENTS

6 Plaintiff served on Defendant Requests for Produc-
7 tion of Documents. Defendant served on Plaintiff objec-
8 tions to the Requests for Production of Documents. The
9 objections address Defendant's redacted reserve informa-
10 tion, Defendant's internal claims procedures and training
11 information, and communications between Defendant and its
12 coverage counsel contained in Defendant's claim file.

13 A. Reserve Information

14 Plaintiff seeks to compel the production of Defen-
15 dant's reserve information as noted on the December 6,
16 2013 Privilege Log. Plaintiff identifies the following
17 documents on the Privilege Log for which it seeks produc-
18 tion: p. 86, nos. 1-5; p. 87, nos. 7, 9; pages 88-89, nos.
19 15, 16, p. 98 no. 51.

20 Plaintiff claims that it is entitled to discover
21 Defendants' reserve information pertaining to its claim.
22 Plaintiff asserts that reserve information is discoverable
23 because it might be admissible at trial or in pretrial
24 motions to assist Plaintiff in proving its theories that
25 Defendant intentionally delayed payments to Plaintiff for
26 which it knew Plaintiff was entitled, Defendant knew from
27 the inception of the claim that its payments to Plaintiff
28 were likely to be large, that Defendant made unjustified

1 demands for proof of loss and other documentation, and
2 Defendants delayed payment to gain a settlement advantage.
3 Plaintiff cites Lipton v. Superior Court, 48 Cal. App. 4th
4 1519, 1614-1615 (1996) and Bernstein v. Travelers, 447 F.
5 Supp. 2d 1100 (N.D. Cal. 2006) to support its position.

6 Defendant argues that there are two different types
7 of reserve information for the claim at issue in this
8 case: **expense reserves** and **loss reserves**, and that neither
9 is relevant to any claim or defense in this action.
10 Therefore, it argues that the Court should not order
11 Defendant to produce this information.

12 **Expense reserves** are the amount of the insurer's
13 expected expenses likely to be incurred in the adjustment
14 of claims, such as expert and consultant costs. Lipton, 48
15 Cal. App. 4th at 1613.

16 **Loss reserves** represent the amount anticipated
17 to be sufficient to pay all obligations for
18 which the insurer may be responsible under the
19 policy with respect to a particular claim.
20 That amount necessarily includes expenses that
21 are likely to be incurred in connection with
the settlement or adjustment of the claim, as
well as legal fees and other costs required to
defend the insured. (These) estimates... are
likely to be frequently adjusted during the
course of the litigation.

22 ... The main purpose of a loss reserve is...
to reflect, as accurately as possible, the
insured's *potential* liability.

23 ... (I)n a case where the insurer has denied
24 coverage and refused a defense, the *fact* that
25 a reserve has been set by the insurer might
well be relevant to show that the insurer must
have had some knowledge that a potential for
coverage existed....

26 Lipton, 48 Cal. App. 4th at 1613-1614. (empha-
27 sis in original, citations omitted).

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1. Expense Reserves

Defendant argues that its **expense reserves** are not relevant to any claim or defense in this action. Further, it argues that there is no authority that supports Plaintiff's argument that the amounts Defendant paid consultants and experts in adjustment of Plaintiff's claim are relevant to its alleged bad faith with respect to the handling of Plaintiff's claim. In fact, the contrary is true. The fact that Defendant paid consultants and experts with respect to Plaintiff's claim shows that Defendant made a good faith distinct effort to analyze and evaluate Plaintiff's claim. Moreover, Defendants have agreed to produce to Plaintiff correspondence by and with consultants used by the law firm hired by it to assist in administration of, and provide a coverage opinion regarding, Plaintiff's claim.^{2/}

The Court agrees with Defendant regarding discovery of its **expense reserves**. Plaintiff does not offer any authority, and the Court has not found any authority, to suggest that an insurer's **expense reserves** information is discoverable. Further, since Defendants produced the consultants' correspondence by and with Defendant's counsel in the administration of Plaintiff's claim, and the fact that Plaintiff's claim was denied due to its alleged failure to cooperate with Defendant and its alleged misrepresentations made to Defendant during the

^{2/}These consultants are Chris Money, Shannon Green, Robert Underwood, William Reid, Cynde Chaffin, Bob Jackson and Kate Humphries. (Declaration of Patricia A. Daza-Luu, filed February 3, 2014, at paras. 2-3)

1 claims administration process, the Court does not see how
2 Defendant's **expense reserves** information, other than what
3 Defendants have agreed to produce, would be relevant to
4 any claim or defense in this bad faith action. As a
5 result, the Court DENIES Plaintiff' Application to compel
6 production of Defendant's **expense reserves** information.

7 2. Loss Reserves

8 As to Defendant's **loss reserves**, Defendant acknowl-
9 edged that in liability cases, the fact that an insurer
10 has established a **loss reserve** for an insured's claim may
11 be relevant to show the insurer's awareness that a poten-
12 tial for coverage existed. However, in this case, Defen-
13 dant argues that **loss reserves** are not relevant because
14 the insurer's good faith or bad faith in investigating and
15 evaluating a claim is determined by the manner in which
16 the insurer conducted an investigation of the claim, the
17 depth of its investigation and a determination of whether
18 there was a good faith factual or legal question as to
19 whether the loss was covered under the policy. American
20 Protection Ins. v. Helm Concentrates, Inc., 140 F.R.D.
21 448, 450 (E.D. Cal. 1991).

22 Here, the Court disagrees with Defendant. In Lipton,
23 the court held that information related to an insurer's
24 **loss** (or claim) **reserves** may be discoverable in a bad
25 faith case. Lipton, 48 Cal. App. 4th at 1614. In this case,
26 Plaintiff's claim of bad faith is that Defendant inten-
27 tionally and unjustifiably delayed making payments to
28 Plaintiff for which it knew (or should have known) Plain-

1 tiff was entitled, in an attempt to avoid reimbursing
2 Plaintiff for all the losses covered by the policy. To
3 this end, Plaintiff seeks Defendant's **loss reserve** infor-
4 mation because it theorizes that Defendant knew from the
5 outset that Plaintiff's claim was likely to be for a large
6 sum of money, that Defendant employed a strategy of making
7 unjustifiable demands for proof of loss, and delayed
8 payments to Plaintiff for which entitlement had been
9 established, in order to induce Plaintiff to accept a low
10 settlement offer. (See Bernstein, 447 F.Supp. 2d at 1108).

11 Therefore, Defendant's **loss reserves** information is
12 relevant to Plaintiff's inquiry into its claims of Defen-
13 dant's bad faith in this case. Consequently, Plaintiff's
14 Application to compel Defendant to produce information
15 pertaining to its **loss reserves** is GRANTED.

16 On or before April 16, 2014, Defendants shall
17 produce to Plaintiff document nos. 1-5, 7, 9, 15, 16 and
18 51 as noted on the December 6, 2013 Privilege Log,^{3/}
19 subject to a protective order to be entered into by the
20 parties.

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26 ^{3/}The Court notes that the document nos. on the December 6, 2013 Privilege
27 Log noted above contain descriptions such as "Claim Notes re: Reserves," "Claim
28 Notes" and "SIU Report." To the extent that any of the documents noted above
pertain to Defendant's **loss reserves** information, they shall be produced. To the
extent that any of the documents noted above pertain to Defendant's **expense**
reserves information, they shall not be produced.

1 B. Claims Handling and Employee Training Standards

2 Plaintiff seeks to compel Defendants to produce
3 Defendant's written standards regarding the prompt inves-
4 tigation and processing of claims, training of claims
5 personnel, and the identification and adjustment of
6 suspected fraudulent claims from 2010 through 2013. These
7 Requests for Production of Documents are identified as
8 Requests for Production of Documents nos. 10-29.

9 Defendant objected to these Requests for Production
10 of Documents as being vague, ambiguous, compound, unintel-
11 ligible, overbroad, burdensome and oppressive because the
12 Requests for Production of Documents are unlimited in
13 scope, not relevant to any claim or defense in this
14 action, and any responsive documents contain trade secrets
15 and proprietary information.

16 Plaintiff asserts that Defendant's objections should
17 be overruled because Defendant is required by California
18 law to maintain the requested information. Plaintiff
19 contends that the Requests for Production of Documents
20 seek relevant information regarding an insurer's written
21 standards and are discoverable because they can provide
22 admissible evidence regarding an insurer's initial inter-
23 pretation of key policy provisions, the structure of an
24 insurer's claims process, and internal guidelines that the
25 insurer requires its claims personnel to abide by with
26 respect to the investigation, adjustment and management of
27 insurance claims.

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1 Defendant argues that Plaintiff's Requests for
2 Production of Documents fail to provide any distinguishing
3 or limiting language. Therefore, Plaintiff asks Defendant
4 to produce a wide variety of documents, written standards,
5 procedures, training manuals, and internal communications
6 and documents related to *any* type of claim issue for four
7 calendar years. Nevertheless, Defendant agreed to produce
8 to Plaintiff its claims handling manuals in effect in 2010
9 and 2011.

10 The Court has reviewed Plaintiff's Requests for
11 Production of Documents nos. 10-29, and agrees with
12 Defendant that the Requests for Production of Documents
13 are vague, ambiguous, and overbroad because they are
14 unlimited in scope such that it would be burdensome and
15 oppressive for Defendants to fully respond. While some of
16 the Requests for Production of Documents may seek informa-
17 tion that is relevant to claims and defenses in this
18 action, Plaintiff has failed to limit the Requests for
19 Production of Documents to the type of insurance claim for
20 which it seeks standards, procedures, training manuals and
21 internal communications and documents. Further, Plaintiff
22 vaguely seeks documents regarding *any* type of insurance
23 claim for a time span of four years. Plaintiff fails to
24 explain why it has not limited the types of insurance
25 claims for which it seeks information, why such a time
26 span is appropriate for the documents it seeks, and why it
27 is entitled to invade Defendant's trade secrets and
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1 proprietary information. Consequently, Defendant's objec-
2 tions to Requests for Production of Documents nos. 10-29
3 are SUSTAINED.

4 C. Attorney-Client Privileged Documents

5 Plaintiff has requested that Defendant produce its
6 entire claim file. Defendant produced to Plaintiff all
7 relevant, non-privileged documents in the claim file, but
8 redacted and withheld from production documents it be-
9 lieved were protected by the attorney-client privilege and
10 work product doctrine. As previously noted, Defendant
11 produced to Plaintiff the December 6, 2013 Privilege Log
12 for the redacted and withheld documents. On February 3,
13 2014, Defendant produced to Plaintiff and filed a revised
14 privilege log.

15 Also, on February 3, 2014 Defendant filed the
16 Declaration of Patricia Daza-Luu (to which the February 3,
17 2014 Privilege Log is attached), which states in pertinent
18 part that Defendant "has agreed to produce all correspon-
19 dence between Steven Turner (Defendant's coverage counsel)
20 and his retained consultants at Hagen, Streiff, Newton &
21 Oshiro Accountants... Werlinger & Associates, and ACS
22 Consultants... This includes correspondence with the
23 following persons identified in Defendant's (December 6,
24 2013) privilege log..." as identified in footnote 2 of
25 this Order.

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1 1. Factual Background

2 Plaintiff occupied the first floor of 7630 Fay
3 Avenue, La Jolla, California ("Fay Ave Property"), where
4 it operated a spa and retail shop. Dianne York ("York") is
5 the president of Plaintiff. The second floor of the Fay
6 Ave Property was occupied by the medical practice of
7 York's former husband, Dr. Mitchell Goldman ("Goldman").

8 On or about September 18, 2009, Goldman vacated the
9 Fay Ave Property, and moved his medical practice and
10 equipment to another location, in accordance with the
11 terms of York's and Goldman's divorce judgment. Plaintiff
12 contends that Goldman, and/or persons acting on his
13 behalf, stole medical and office equipment from the Fay
14 Ave Property.

15 On or about January 26, 2010, Defendant received
16 notice of the alleged September 18, 2009 theft. [Declara-
17 tion of Erin Farley ("Farley"), February 3, 2014, Exh. 2,
18 hereafter "Farley Dec. "). On February 22, 2010, Farley,
19 Defendant's insurance adjuster assigned to Plaintiff's
20 claim, sent York a letter that requested documents and
21 information to substantiate Plaintiff's claim.

22 By March 29, 2010, Plaintiff produced documentation
23 to Defendant, including the York-Goldman divorce judgment
24 and a claim spreadsheet of Plaintiff's claimed inventory
25 that allegedly had been stolen. (Farley Dec., paras. 7-
26 10). The divorce judgment specifically stated that Goldman
27 could "take... the equipment on the second floor of
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1 Plaintiff..." (Farley Dec., paras. 7-10). However, the
2 claim spreadsheet submitted by Plaintiff included items
3 from the second floor of the Fay Ave Property. (Farley
4 Dec., paras. 10-11, Exh. 5). According to the York-Goldman
5 divorce judgment, the items taken from the second floor of
6 the Fay Ave Property appeared to belong to Goldman, and if
7 so, were not wrongfully taken. (Farley Dec., para. 11).

8 The Farley Dec. also states in pertinent part:

9 (1) In late March 2010, Defendant retained the law
10 firm of Jones Turner, LLP, to assist it by taking the
11 Examinations Under Oath ("EUO") of Plaintiff and to
12 *provide coverage advice*. (Farley Dec., para. 12, emphasis
13 added).

14 (2) Farley intended that all communications between
15 Defendant and Jones Turner, LLP would be privileged and
16 confidential. (Farley Dec., para. 13).

17 (3) The attorneys at Jones Turner, LLP, Alan Jones
18 and Steven Turner ("Turner") were not, and are not,
19 employees of Defendant. Throughout the course of the
20 administration of Plaintiff's claim, *Farley sought cover-*
21 *age advice from Turner*. (Farley Dec., para. 14, 39,
22 emphasis added).

23 (4) On August 25, 2010 and January 25, 2011, Farley
24 attended York's EUO. At the August 25, 2010 and January
25 25, 2011 EUOs, York testified that she would provide many
26 of the documents requested by Turner and Defendant, but
27 that had not yet been provided, to support Plaintiff's
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1 claim. At the conclusion of the January 25, 2011, York
2 requested an advance payment from Defendant. (Farley Dec.,
3 para. 16).

4 (5) On January 31, 2011, Defendant made an advance
5 payment of \$250,000 to Plaintiff Fay Ave Properties. The
6 payment was conditioned upon York's representations, which
7 Defendant assumed to be true for the purposes of the
8 payment. On January 31, 2011, Farley sent York a letter
9 that detailed the reasoning and conditions on which
10 Defendant's advance payment was made. (Farley Dec., para.
11 18, Exh. 6).

12 (6) Jones Turner, LLP did not have the authority to
13 grant or deny advance payment requests made to Defendant,
14 and did not make the decision to make the \$250,000 advance
15 payment. (Farley Dec., para. 19).

16 (7) On February 7, 2011, Plaintiff's attorney sent
17 an email to Turner that requested an additional advance
18 payment from Defendant. On February 9, 2011, Farley
19 responded to the February 7, 2011 email by highlighting
20 that Plaintiff had failed to provide to Defendant many
21 documents to substantiate its claim that Plaintiff had
22 previously agreed to provide to Defendant. The request for
23 the additional advance payment was denied. (Farley Dec.,
24 paras. 20-21, Exh. 7).

25 (8) On April 22, 2011, Farley attended another
26 session of York's EUO. At the EUO, York produced a box of
27 documents that purportedly substantiated Plaintiff's
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1 claim. The EUO was suspended to allow York to produce
2 additional documents to Defendant. (Farley Dec., para.
3 23).

4 (9) After the April 22, 2011 EUO, Farley learned
5 from Turner that Plaintiff's attorney requested an advance
6 payment from Defendant. On April 27, 2011, Farley sent a
7 letter to Plaintiff's attorney which states, *inter alia*,
8 that Plaintiff had failed to provide to Defendant many
9 documents to substantiate its claim that Plaintiff had
10 previously agreed to provide, that Plaintiff had added new
11 items to its claim that had not been previously identi-
12 fied, that during the April 22, 2011 EUO, York was unable
13 to provide basic information regarding Plaintiff's claim,
14 and that it was Plaintiff's duty and responsibility to
15 provide correct information in support of the claim. The
16 request for an advance payment was denied. (Farley Dec.,
17 para. 24, Exh. 8).

18 (10) On April 29, 2011, Plaintiff's attorney sent
19 Turner a revised inventory of allegedly stolen items. The
20 revised inventory increased the number of stolen items
21 from approximately 200 to over 1,000 items, and had
22 increased the claim by millions of dollars. (Farley Dec.,
23 para. 25).

24 (11) On May 23, 2011, York sent Farley and Turner an
25 email that requested another advance payment. On May 27,
26 2011, Farley sent a letter to York which provided a
27 detailed account of Plaintiff's claim history, and noted
28

1 that Plaintiff's failure to provide to Defendant requested
2 information about its claim had prevented Defendant from
3 completing its investigation. The request for advance
4 payment was denied. (Farley Dec., para. 28-29, Exh. 10).

5 (12) On June 2, 2011, Plaintiff's attorney sent
6 Turner another updated claim inventory. Turner sent the
7 updated claim inventory to Farley. The updated claim
8 inventory had over 1000 line items and was valued at over
9 \$13 million. (Farley Dec., para. 32).

10 (13) On July 19, 2011, Farley received an email from
11 Plaintiff's attorney which asked for a \$1 million advance
12 payment. On July 20, 2011, Farley responded that Defendant
13 could not fully respond to Plaintiff's claim, and that it
14 would not pay another advance without completing York's
15 EUO. (Farley Dec., para. 34, Exh. 13).

16 (14) In late October/early November 2011, Turner
17 forwarded to Farley an email from Plaintiff's attorney
18 that requested an advance payment from Defendant. On
19 November 11, 2011, Farley responded that Defendant's
20 investigation of Plaintiff's claim was still ongoing and
21 that Defendant continues to assess Plaintiff's claim. The
22 request for the advance payment was denied. (Farley Dec.,
23 para. 37, Exh. 14).

24 (15) By November 2011, it became clear to Farley,
25 based on correspondence from Plaintiff's attorney, that
26 York was refusing to complete her EUO. For this reason,
27 *inter alia*, Defendant denied Plaintiff's claim. Defendant
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1 made the decision to deny coverage for Plaintiff's claim.
2 (Farley Dec., para. 38)

3 (16) Several persons who appear on Defendant's
4 December 6, 2013 Privilege Log, but who were not identi-
5 fied at that time, are identified as employees of Defen-
6 dant who were involved the in the administration of
7 Plaintiff's claim.^{4/}

8 The Declaration of Steven D. Turner ("Turner Dec.")
9 states in pertinent part:

10 (1) *Jones Turner LLP served as coverage counsel for*
11 *Defendant for Plaintiff's claim* from approximately March
12 2010 through early 2013. (Turner Dec., para. 1, emphasis
13 added).

14 (2) In late March 2010, *Defendant gave Jones Turner*
15 *LLP the assignment to provide coverage advice and conduct*
16 *EUOs in connection with Plaintiff's claim.* In July 2010,
17 Turner took over as the principal attorney for the assign-
18 ment. Alan Jones had previously been the principal attor-
19 ney for the assignment. (Turner Dec., para. 2).

20 (3) From August 3, 2010 to November 18, 2010, Turner
21 requested that Plaintiff's attorney provide him with the
22 documents Plaintiff contends will substantiate its claim.

25 ^{4/}These persons are: Joseph Salko, Defendant's in-house counsel; Wendy
26 Hansen, Defendant's underwriter; Daniel McLaughlin, Defendant's Director; Lisa
27 Melillo, Defendant's in-house counsel; Mary Galvin, Defendant's in-house counsel,
28 Verdis Skates, Defendant's Prosecution Coordinator; and Matt Huls, Defendant's
Investigative Services - Manager of Field Operations. Ron Burnovski, who was not
identified in Defendant's December 6, 3013 Privilege Log, is one of Turner's
partners at Jones Turner LLP who provided Turner with assistance in assessing the
coverage issues in this case. (Declaration of Steven D. Turner, para. 49).

1 On November 18, 2010, Turner was provided with a few
2 documents. (Turner Dec., paras. 3-8).

3 (4) On August 25, 2010, Turner conducted an EUO of
4 York. The EUO could not be completed because Plaintiff had
5 not yet provided to Turner all documents related to the
6 nature and scope of the alleged loss. At the EUO, York
7 agreed to provide additional documents in support of
8 Plaintiff's claim. (Turner Dec., para. 4).

9 (5) On January 25, 2011, Turner conducted another
10 session of the EUO of York. At the EUO, York's testimony
11 indicated that various documents promised to be produced
12 at the August 25, 2010 EUO had not been produced. (Turner
13 Dec., para. 10).

14 (6) On January 26, 2011, Plaintiff's attorney
15 provided Turner with documents that partially supported
16 Plaintiff's claim. (Turner Dec., para. 11).

17 (7) Turner had no power to authorize claim payments
18 made by Defendant. The scope and purpose of Turner's
19 retention by Defendant was to complete the EUO and *provide*
20 *coverage advice to Defendant*. (Turner Dec., para. 13,
21 emphasis added).

22 (8) From February 9, 2011 to April 22, 2011, Turner
23 and Farley continued to ask Plaintiff to provide documents
24 to support Plaintiff's claim and to provide documents that
25 had been promised by York, but had not yet been produced.
26 (Turner Dec., paras. 15-20).

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1 (9) On April 22, 2011, Turner conducted another
2 session of York's EUO. At the EUO, York produced to Turner
3 a new box containing documents. Turner and Plaintiff's
4 counsel agreed to suspend the EUO to another date, due to
5 York's production to Turner of more documents. At the EUO,
6 York identified new items for which Plaintiff sought
7 recovery. (Turner Dec., paras. 21, 23).

8 (10) On April 29, 2011, Plaintiff's attorney sent
9 Turner a revised claim inventory spreadsheet that detailed
10 Plaintiff's claimed losses. The spreadsheet increased the
11 claim from 238 line items to over 1,000 line items.
12 (Turner Dec., para. 23, Exh. 25).

13 (11) On April 29, 2011, Turner sent an email to
14 Plaintiff's counsel that requested that Plaintiff produce
15 all supporting documentation regarding the new items
16 identified in the April 22, 2011 EUO. By May 4, 2011,
17 Turner had not received a response to his email. (Turner
18 Dec., para. 24).

19 (12) On May 5, 2011, Plaintiff's attorney sent
20 Turner a re-revised claim inventory spreadsheet, with some
21 additional documents. The re-revised inventory increased
22 Plaintiff's claim to approximately 1,114 line items, which
23 totaled over \$13 million in value. (Turner Dec., para. 25,
24 Exh. 27).

25 (13) On May 12, 2011, Turner renewed his request to
26 Plaintiff for further documentation to support Plaintiff's
27 claim. York responded by requesting that Defendant conduct
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1 the next session of her EUO, but failed to provide Turner
2 with additional information regarding the May 5, 2011
3 spreadsheet. (Turner Dec., para. 27).

4 (14) On May 13, 2011, Plaintiff's attorney informed
5 Turner that Turner "may deal with Ms. York directly."
6 (Turner Dec., para. 28, Exh. 29).

7 (15) On May 27, 2011, Plaintiff's attorney sent an
8 email to Turner that confirmed that Plaintiff had still
9 not produced all documents it promised to produce. (Turner
10 Dec., para. 33, Exh. 34).

11 (16) On June 2, 2011, Plaintiff's attorney sent an
12 email to Turner which Turner understood to be the final
13 revised inventory spreadsheet of the losses sustained by
14 Plaintiff. (Turner Dec., para. 34, Exh. 35).

15 (17) On July 12, 2011, Turner conducted another
16 session of York's EUO. The EUO could not be completed due
17 to the significant number of new items that had been added
18 to Plaintiff's claim. (Turner Dec., para. 39).

19 (18) The parties agreed that the fifth session of
20 York's EUO would be conducted on August 4, 2011. On August
21 3, 2011, Turner received an email from Plaintiff's attor-
22 ney that cancelled the August 4, 2011 EUO. Turner wrote to
23 Plaintiff's attorney to reschedule the fifth session of
24 York's EUO. Plaintiff's attorney did not respond to
25 Turner's letter. No further EUO of York was scheduled.
26 (Turner Dec., paras. 42-46).

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1 (19) On December 20, 2011, Turner sent York and
2 Plaintiff's attorney a letter that detailed Defendant's
3 denial of Plaintiff's claim. (Turner Dec., para. 47, Exh.
4 43).

5 2. Applicable Law

6 a. California Law Applies

7 The Court's jurisdiction over this case arises from
8 the diversity of the parties. In diversity cases, the
9 Court must decide privilege issues in accordance with
10 state law. Fed. R. Evid. 501. Therefore, California law
11 applies to the determination of privilege issues in this
12 case.

13 b. Attorney-Client Privilege Under
14 California Law

15 Under California law, the attorney-client privilege,
16 affords a privilege to the client "to refuse to disclose,
17 and to prevent another from disclosing, a confidential
18 communication between a client and lawyer..." Cal Evidence
19 Code § 954. A confidential communication between a client
and a lawyer is defined as:

20 information transmitted between a client and
21 his or her lawyer in the course of that rela-
22 tionship and in confidence by a means which,
23 so far as the client is aware, discloses the
24 information to no third persons other than
25 those who are present to further the interest
26 of the client in the consultation or those to
27 whom disclosure is reasonably necessary for
28 the transmission of the information or the
accomplishment of a purpose for which the
lawyer is consulted, and includes a legal
opinion formed and the advice given by the
lawyer in the course of that relationship.
Cal. Evidence Code § 952.

1 “The privilege is absolute and disclosure may not
2 be ordered, without regard to relevance, necessity or any
3 particular circumstance peculiar to the case... The party
4 claiming the privilege has the burden of establishing the
5 preliminary facts necessary to support its exercise, i.e.
6 a communication made in the course of an attorney-client
7 relationship... Once that party establishes facts neces-
8 sary to support a *prima facie* claim of privilege, the
9 communication is presumed to have been made in confidence
10 and the opponent of the claim of privilege has the burden
11 of proof to establish the communication was not confiden-
12 tial or that the privilege does not for other reasons
13 apply.” Costco Wholesale Corp. v. Superior Court, 47 Cal.
14 4th 725, 732-733 (2009)(citations omitted), Umpqua Bank v.
15 First American Title Insurance Co., 2011 WL 997212 at *2
16 (E.D. Cal. 2011).

17 In Costco, the California Supreme Court stated that
18 in a bad faith case between an insured and an insurer, a
19 court should “determine the dominant purpose of the
20 *relationship* between the insurance company and its in-
21 house attorneys, i.e. was it one of attorney-client or one
22 of claims adjuster-insurance corporation.” Costco, 47 Cal.
23 4th at 739-740 (emphasis in original).

24 Here, the issue raised by Plaintiff is whether Jones
25 Turner, LLP was hired by Defendant to give its legal
26 opinion or whether it was hired to take over the claims
27 adjuster role and to shield Defendant from liability on
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1 the bad faith claim. Where the answer appears to be both,
2 the court must make a determination of which purpose was
3 primary. Umpqua Bank, 2011 WL 997212 at *3.

4 It is clear to the Court that Jones Turner, LLP
5 performed both the function of attorney hired to render
6 legal opinions regarding coverage under the insurance
7 policy at issue, *and* the function of a claim adjuster
8 assigned to take EUOs. However, based on the representa-
9 tions of Farley, Defendant's claim adjuster assigned to
10 Plaintiff's claim, and the representations of Turner, the
11 attorney at Jones Turner, LLP who performed work on
12 Plaintiff's claim, the Court finds that the dominant
13 purpose of the relationship between Defendant and Turner
14 was one of attorney-client, not claims adjuster-insurance
15 corporation.

16 Specifically, Farley has stated that (1) she re-
17 ceived a copy of the York-Goldman divorce judgment, a
18 legal document that required interpretation, to clarify
19 what property Plaintiff alleged was stolen. (Farley Dec.,
20 para. 11), (2) she specifically retained Jones Turner, LLP
21 to assist Defendant in taking EUOs and *to provide coverage*
22 *advice* (Farley Dec., para. 12 emphasis added), (3) she
23 intended that all communications between Defendant and
24 Jones Turner, LLP would be privileged and confidential
25 (Farley Dec., para. 13), (4) the attorneys at Jones
26 Turner, LLP were not, and are not, employees of Defendant
27 (Farley Dec., para. 14), (5) Turner conducted several

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1 sessions of York's EUO, but that throughout the course of
2 the administration of Plaintiff's claim, *she sought*
3 *coverage advice from Turner* (Farley Dec., paras. 14, 16,
4 23, 39, emphasis added), and (5) Defendant, not Turner,
5 made the decision to deny coverage for Plaintiff's claim
6 (Farley Dec., para. 38), and she wrote several letters to
7 Plaintiff and Plaintiff's attorneys regarding Plaintiff's
8 requests for advance payments. (Farley Dec., paras. 20-21,
9 24, 32, 34, 37, Exhs. 7, 8, 10, 13, 14).

10 Further, Turner has stated that (1) in late March
11 2010, *Defendant gave Jones Turner LLP the assignment to*
12 *provide coverage advice* and conduct EUOs in connection
13 with Plaintiff's claim. (Turner Dec., para. 2 emphasis
14 added), (2) *Jones Turner, LLP served as coverage counsel*
15 *for Defendant* for Plaintiff's claim from approximately
16 March 2010 through early 2013. (Turner Dec., para. 1
17 emphasis added), and (3) he sent York and Plaintiff's
18 attorney a letter that detailed the legal and factual
19 reasons for Defendant's denial of Plaintiff's claim.
20 (Turner Dec., para, 47, Exh. 43).

21 The Court finds that Defendant has met its burden of
22 establishing the preliminary facts necessary to support a
23 *prima facie* claim of attorney-client privilege for infor-
24 mation that was transmitted in confidence between Jones
25 Turner, LLP and Defendant in the course of the attorney-
26 client relationship. Further, Plaintiff has not met its
27 burden of proof to establish that the communications at
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1 issue were not confidential or the privilege does not
2 apply for other reasons. Therefore, the information
3 transmitted between Defendant and Jones Turner, LLP need
4 not be disclosed. See Umpqua Bank, 2011 WL 997212 at *3-4.

5 Plaintiff argues that Defendant has failed to
6 establish the elements of the attorney-client privilege
7 for each document withheld by Defendant. Defendant argues
8 that it is not required to establish the elements of the
9 attorney-client privilege for each withheld document.
10 Rather, it can meet its burden by showing that the domi-
11 nant purpose of the relationship between itself and its
12 attorney was one of attorney-client, and not one of claims
13 adjuster-insurance company.

14 Plaintiff cites 2022 Ranch, L.L.C. v. Superior
15 Court, 113 Cal. App. 4th 1377 (2003) in support of its
16 position. In 2022 Ranch, the court held that the results
17 of the factual investigation done by the insurance com-
18 pany's in-house attorneys was not privileged, as the
19 attorneys were serving as claim adjusters in performing
20 the investigation. However, the court also held that
21 communications by the attorneys that reflected rendering
22 of legal advice were attorney-client privileged. There-
23 fore, it ordered the trial court to review each of the
24 communications to determine their dominant purpose. Id. at
25 1387.

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1 However, the California Supreme Court in Costco
2 disapproved of 2022 Ranch, in part. The Costco court found
3 that the 2022 Ranch court erred in distinguishing between
4 the communication of the results of the factual investiga-
5 tion done by the attorneys and the attorneys' communica-
6 tions reflecting the rendering of legal advice to the
7 insurance company. The Costco court held that the "proper
8 procedure would have been for the trial court first to
9 determine the dominant purpose of the relationship between
10 the insurance company and its attorneys, i.e. was it one
11 of attorney-client or one of claims adjuster-insurance
12 corporation..." Costco, 47 Cal. 4th 725, 739-740, Umpqua
13 Bank, 2011 WL 997212 at *2. "The (insurance company has)
14 the burden of establishing the preliminary facts that the
15 communications were made during the course of an attorney-
16 client relationship. Costco, 47 Cal 4th 725, 740 (emphasis
17 added). The California Supreme Court's disapproval of 2022
18 Ranch has also been recognized by Bonfigli v. Strachan,
19 192 Cal. App. 4th 1302 (2011) and Hawker v. BancInsurance,
20 2013 WL 6843088 (E.D. Cal. 2013).

21 The Costco court joined together all the communica-
22 tions between the attorneys and the insurance company that
23 reflected the communications of factual information and
24 the rendering of legal advice. This approach has been
25 followed by Costco's progeny. See Umpqua Bank, 2011 WL
26 997212 at *1 ["(Defendant counters that Plaintiff 'is
27 improperly attempting to obtain documents that were
28 created as a result of (defendant's) retention of an

1 outside, independent attorney to provide a coverage
2 opinion...'"](emphasis added); Ivy Hotel v. Houston
3 Casualty Co., 2011 WL 4914941 at *2 ["Ivy Hotel requested
4 documents concerning (Defendant's) 'handling of the claim
5 for legal fees and expenses incurred in connection with
6 (an underlying) cross-complaint.'"](emphasis added).

7 Where the dominant or primary purpose of the rela-
8 tionship is to provide legal advice and claims adjusting
9 happens to occur as a collateral duty, as is the case
10 here, Defendant need only establish a *prima facie* case
11 that an attorney-client relationship exists. If Defendant
12 is able to make this showing, then all documents and
13 communications are protected by the privilege without the
14 necessity of having to make individualized showings as to
15 each communication or document. This approach makes sense,
16 especially in document-intensive cases, as it would be
17 potentially unduly burdensome to, if not outright invasive
18 of, the attorney-client relationship to require the party
19 who has established an attorney-client relationship to
20 justify each and every communication as privileged.
21 Conversely, if it is determined that the primary role of
22 the attorney is to adjust the claim and legal advice is
23 provided as a collateral duty, then, as Plaintiff argues,
24 it would make sense to require Defendant to itemize each
25 communication and justify those to which the privilege is
26 claimed. But this is not the case here.

27 As a result of the foregoing, the Court finds
28 Plaintiff's argument in this regard to be unavailing.

1 Defendant is not required to establish the elements of the
2 attorney-client privilege for each document it has with-
3 held from production to Plaintiff.

4 Also, Plaintiff argues that Defendant has not
5 established that the dominant purpose of its relationship
6 with its attorney was for the rendering of legal advice
7 because Defendant has not shown for what legal issue(s)
8 legal advice was sought. Plaintiff argues that in Costco,
9 and its progeny, the courts in those cases noted, and
10 quoted from submitted declarations, the issues for which
11 legal advice was sought. Therefore here, since the Farley
12 Dec. and the Turner Dec. do not identify the issues for
13 which legal advice was sought, Defendant has failed to
14 meet its burden in proving the dominant purpose of its
15 relationship with its attorneys. Plaintiff does not cite
16 any authority for its position.

17 The Court finds that Plaintiff's argument in this
18 regard is unavailing. Neither Costco, nor its progeny
19 require that the issues for which legal advice was sought
20 to be noted or explained by the insurance adjuster or the
21 attorney for the insurance company. In fact, the Costco
22 court explained that in a situation where an insurance
23 company hires an attorney to provide legal advice, "(t)he
24 attorney (is) given a legal document (the insurance
25 policy) and (is) asked to interpret the policy and to
26 investigate the events that resulted in damage to deter-
27 mine whether (the insurance company is) legally bound to
28 provide coverage for such damage." Costco, 47 Cal. 4th 725,

1 736, citing Aetna Casualty & Surety Co. v. Superior Court,
2 153 Cal. App. 3d 467, 476 (1984).

3 Here, the Court finds that Defendant did just what
4 the Costco court envisioned. As a result, the Court finds
5 that Defendant need not specifically identify the issues
6 for which it sought legal advice from its attorney to
7 adequately show the dominant purpose of its relationship
8 with its attorney.

9 III

10 CONCLUSION

11 1. Plaintiff's Application to compel production of
12 documents pertaining to Defendant's expense reserves is
13 DENIED.

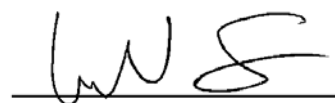
14 2. Plaintiff's Application to compel production of
15 documents pertaining to Defendant's loss reserves is
16 GRANTED.

17 3. Plaintiff's Application to compel production of
18 documents pertaining to Defendant's Claims Handling and
19 Employee Training Standards is DENIED.

20 4. Plaintiff's Application to compel production of
21 documents pertaining to the documents withheld by Defen-
22 dant based on the attorney-client privilege is DENIED.

23 IT IS SO ORDERED.

24 DATED: April 1, 2014

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26 

27 Hon. William V. Gallo
28 U.S. Magistrate Judge