

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-01114-WJM-MJW

EUGENE GALLEGOS and
DIANE GALLEGOS,

Plaintiff(s),

v.

SAFECO INSURANCE COMPANY OF AMERICA,

Defendant(s).

**ORDER REGARDING
PLAINTIFFS' MOTION FOR ISSUANCE OF SANCTIONS AGAINST
NON-PARTY PT & C AND COREY SCHRAUBEN
[DOCKET NO. 108]**

Entered by Magistrate Judge Michael J. Watanabe

Now before this court for consideration is Plaintiffs' Motion for Issuance of Sanctions Against Non-Party PT & C and Corey Schrauben [docket no. 108]. The court has reviewed the subject motion [docket no. 108], the response by Non-Party PT & C Forensic Consulting Services, P.A. and Corey Schrauben [docket no. 110], and the reply [docket no. 111]. In addition, the court has taken judicial notice of the court's file and has considered applicable Federal Rules of Civil Procedure and case law. The court now being fully informed makes the following findings of fact, conclusions of law, and Order.

FINDING OF FACT, CONCLUSIONS OF LAW

This court finds:

On March 4, 2015, this court entered an Order Regarding (1) Plaintiffs' Motion to Compel and for Sanctions Regarding Selective Assertion of Attorney-Client Privilege

(docket no. 37) and (2) Plaintiffs' Motion to Compel Documents from PT & C and Corey Schrauben (docket no. 38) [docket no. 81]. This **ORDER** [docket no. 81] stated:

1. That Plaintiffs' Motion to Compel and for Sanctions Regarding Selective Assertion of Attorney-Client Privileges (docket no. 37) is **GRANTED IN PART AND DENIED IN PART**. This motion (docket no. 37) is **GRANTED** as follows. Plaintiff may set a continued deposition of Safeco's [Defendant's] Rule 30(b)(6) representative Ms. Weis and inquire into those questions listed in paragraph 12. A, B, and C. above only. This continued deposition of Ms. Weis shall be limited to one-half hour, and the court reporter and/or video conference costs shall be paid by Safeco [Defendant] as a sanction, but the cost for any transcript shall be paid by each party. The parties shall meet forthwith and set this continued Rule 30(b)(6) deposition of Ms. Weis. The discovery cut-off date is extended to **March 31, 2015** to allow for the completion of Ms. Weis' deposition. This motion (docket no. 37) is **DENIED** as to the remainder of the questions and other areas of inquiry as outlined in paragraph 4 above;
2. That Plaintiffs' Motion to Compel Documents from PT&C and Corey Schrauben (docket no. 38) is **GRANTED**. That PT&C and Corey Schrauben shall provide the following reports to Plaintiffs on or before **March 18, 2015**: (a) the last ten reports signed by Corey

Schrauben, P.E.; (b) the last ten reports to Safeco [Defendant] from PT&C regarding residential claims in Colorado; and (c) the last 15 reports by Mr. Schrauben prepared by Mr. Schrauben. PT&C and Corey Schrauben shall redact the following from all of the reports listed above: the names of the policyholders [i.e., other not-at-issue insureds], confidential personal identifying information and confidential financial information of the not-at-issue insureds, and the claim numbers. The reports listed above are to be used for the limited purpose of this case only and for no other purpose and are subject to the protective order (docket no. 26) entered in this case on July 15, 2014; and,

3. That each party shall pay their own attorney fees and costs for both of these motions (docket nos. 37 and 38), except as provided in paragraph 14 above.

[docket no. 81].

On March 13, 2015, a Motion of PT & C Forensic Consulting Services, P.A. and Corey Schrauben for Stay of Order Compelling Production Pursuant to Fed. R. Civ. P. 72(a); D.C.COLO.LCivR 30.2(b) [docket no. 87] was filed.

On March 16, 2015, this court entered the following **ORDER**:

It is hereby **ORDERED** that the Motion of PT & C Forensic Consulting Services, P.A. and Corey Schrauben for Stay of Order Compelling Production Pursuant to Fed. R. Civ. P. 72(a); D.C.COLO.LCivR 30.2(b) is

DENIED finding no basis of law or fact to justify a stay. The case of *Everhart v. Am. Family Ins.*, 14-cv-0694-WYD-BNB, as cited by PT & C Forensic Consulting Services, P.A. and Shrauben, is separate and distinct from the case before this court. The facts and circumstances of these two cases are not identical. Moreover, the discovery cut off date in this case is March 31, 2015, and the Final Pretrial Conference is set on April 9, 2015. See docket no. 89.

[docket no. 89] (emphasis added).

On March 18, 2015, PT & C Forensic Consulting Services, P.A., and Corey Schrauben filed an Appeal of and Objection to Magistrate Judge's Ruling on Motion to Compel and Motion to Stay of Effect of Order Granting Motion to Compel [docket no. 92], which is pending before Judge Martinez. On this same day, a Motion of PT & C Forensic Consulting Services, P.A. and Schauben [sic] for Stay of Order Compelling Production, Pursuant to Fed. R. Civ. P. 72(a); D.C.COLO.LCivR 30.2(b) was filed [docket no. 91].

On March 19, 2015, PT & C Forensic Consulting Services, P.A. and Schauben [sic] for Stay of Order Compelling Production, Pursuant to Fed. R. Civ. P. 72(a); D.C.COLO.LCivR 30.2(b) [docket no. 91] was **DENIED** for a second time for the reasons outlined in docket no. 89. See docket no. 96. On this same day, PT & C Forensic Consulting Services, P.A. filed an Appeal and Objection to Minute Order (docket no. 96) entered by Magistrate Judge Watanabe on the Second Motion for Stay [docket no. 97], which is pending before Judge Martinez.

On April 9, 2015, this court entered a Final Pretrial Order. See docket nos. 101 and 102. On this same day, Judge Martinez set a five-day jury trial on September 14, 2015, at 8:30 a.m. He also set a Final Trial Preparation Conference on August 28, 2015, at 2:00 p.m. See docket no. 103.

On April 22, 2015, Defendant Safeco Insurance Company of America filed a Motion to Reschedule Trial [docket no. 105].

On April 29, 2015, Judge Martinez entered an Order Granting the Motion to Reschedule Trial [docket no. 105]. Judge Martinez reset the jury trial to October 13, 2015, at 8:30 a.m. for four days. He also reset the Final Trial Preparation Conference to September 25, 2015, at 3:00 p.m. See docket no. 107.

That D.C.COLO.LCivR 30.2(b) states;

An objection under Fed. R. Civ. P. 72(a) to an order by a magistrate judge concerning discovery **does not stay** the discovery to which the order is directed. A stay of the order shall be obtained by motion filed with the magistrate judge, and if denied, then with the assigned district judge.

D.C.COLO.LCivR 30.2(b) (emphasis added). See Esparza v. Bridgestone/Firestone, Inc., 200 F.R.D. 654 (D. Colo. June 22, 2001).

That there are Objections (docket nos. 92 and 97) filed by Non-Party PT & C Forensic Consulting Services, P.A., and Corey Schrauben concerning Magistrate Judge Watanabe's **ORDERS** [docket nos. 81 and 96] of the disputed discovery and denying staying of the disputed discovery that are pending before District Judge Martinez. In this case, Magistrate Judge Watanabe has thus far **DENIED** two attempts to stay

discovery by Non-Party PT & C Forensic Consulting Services, P.A., and Corey Schrauben. See **ORDERS DENYING** a Stay of the disputed discovery [docket nos. 89 and 96]. Moreover, District Judge Martinez **HAS NOT** entered an **ORDER** staying the disputed discovery as of the date of this Order.

ORDER

WHEREFORE, based upon these findings of fact and conclusions of law, it is hereby

ORDERED that Plaintiffs' Motion for Issuance of Sanctions Against Non-Party PT & C and Corey Schrauben [docket no. 108] is **DENIED**. However, it is further

ORDERED that on or before **May 29, 2015**, PT&C and Corey Schrauben shall file with the court under Level 2 Restriction, in conformance with D.C.COLO.LCivR 7.2, the documents this court ordered be produced in its Order of March 4, 2015 [docket no. 81], namely: (a) the last ten reports signed by Corey Schrauben, P.E.; (b) the last ten reports to Safeco [Defendant] from PT&C regarding residential claims in Colorado; and (c) the last 15 reports by Mr. Schrauben prepared by Mr. Schrauben. PT&C and Corey Schrauben shall redact the following from all of the reports listed above: the names of the policyholders [i.e., other not-at-issue insureds], confidential personal identifying information and confidential financial information of the not-at-issue insureds, and the claim numbers.

Done this 13th day of May 2015.

BY THE COURT

s/ Michael J. Watanabe
Michael J. Watanabe
U.S. Magistrate Judge