

APPENDIX A

**ORDER RE: DOCUMENTS WITHHELD AND/OR REDACTED BY DEFENDANT
PURSUANT TO ATTORNEY-CLIENT PRIVILEGE AND/OR WORK PRODUCT**

Darin Menapace v. Alaska National Insurance Company

Civil Action No. 20-cv-00053-REB-STV

Bates No./ Doc. ID*	Document Date	Basis Claimed for Withholding	Court's Ruling
Memorandum from HMR to Keith Olivera, with attachments (56 pages)	01/08/2020	attorney-client privilege; Work-Product Doctrine	The Court finds that this memorandum is properly withheld pursuant to the attorney-client privilege and the work product doctrine. The memorandum provides specific legal advice regarding Plaintiff's insurance claim and thus is entitled to attorney-client privilege protection. Because the instant memorandum does not include a discussion of the factual information Mr. Olivera gathered while acting in the role of a claims adjuster, the Court finds that the entirety of the memorandum is privileged. <i>See Nat'l Farmers</i> , 718 P.2d at 1049 (concluding that privilege did not apply to first portion of memorandum addressing factual investigation but did apply to "portion . . . which contain[ed] legal conclusions"). Given the nature of the document and that it was created after this litigation was commenced, the Court finds that the memorandum also is protected by the work product doctrine.
AN_000416	07/25/2017	attorney-client privilege	The Court finds that this claim note is properly withheld pursuant to the attorney-client privilege. The communication, which was authored by an in-house counsel for Defendant, provides legal advice regarding Plaintiff's claim, and also provides information to Mr. Olivera to assist in his ability to provide legal advice. Moreover, there is no indication in the record, as of July 25, 2017, that Mr. Olivera was acting in the role of a claims adjuster rather than as an attorney. [See #51-1 at 41 (7/02/2018 email from Mr. Millar informing Ms. Anzalone that Defendant "h[as] retained Keith Olivera in Denver to work with you to get the EUO and any IME promptly completed")]

* For purposes of the instant Appendix, the Court has abbreviated the Bates number prefix "AlaskaNational" as "AN."

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AN_000415	07/25/2017	attorney-client privilege	The Court finds that this claim note is properly withheld pursuant to the attorney-client privilege. In the communication, an in-house counsel for Defendant makes a specific request for legal advice from Mr. Olivera related to Plaintiff's claim and provides information to assist in providing that advice. Moreover, there is no indication in the record, as of July 25, 2017, that Mr. Olivera was acting in the role of a claims adjuster rather than as an attorney. [See #51-1 at 41 (7/02/2018 email from Mr. Millar informing Ms. Anzalone that Defendant "h[as] retained Keith Olivera in Denver to work with you to get the EUO and any IME promptly completed")]
AN_000413	08/29/2017	attorney-client privilege	The Court finds that this claim note is not protected by the attorney-client privilege and thus should be PRODUCED . The communication does not disclose either a request for legal advice or the provision of legal advice but instead is administrative in nature. Because the attorney-client privilege protects only the substance of the communication between counsel and client and not the fact that such communication took place, the privilege does not attach to communications that "reflect the scheduling of a telephone call or conference, with no hint of the topic(s) to be discussed and no legal advice requested or given." <i>Plaza</i> , 2015 WL 3528336, at *6 (collecting cases). At most, the communication indicates that a prior request for legal advice was made. See <i>Sterling Const. Mgmt., LLC v. Steadfast Ins. Co.</i> , No. 09-CV-02224-MSK-MJW, 2011 WL 3903074, at *13 (D. Colo. Sept. 6, 2011) (finding that document did not relate "to legal advice or strategy" where it did "little more than memorialize that a transmission of information occurred").
AN_000413	09/05/2017	attorney-client privilege	The Court finds that this claim note is properly withheld pursuant to the attorney-client privilege. In the communication, Mr. Olivera provides specific legal advice to Defendant and requests additional information to assist in providing further advice. Moreover, there is no indication in the record, as of September 5, 2017, that Mr. Olivera was acting in the role of a claims adjuster rather than as an attorney. [See #51-1 at 41 (7/02/2018 email from Mr. Millar informing Ms. Anzalone that Defendant "h[as] retained

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			Keith Olivera in Denver to work with you to get the EUO and any IME promptly completed”)]
AN_000413	09/05/2017	attorney-client privilege	The Court finds that this claim note is properly withheld pursuant to the attorney-client privilege. In the communication, Mr. Millar provides Mr. Olivera additional information specifically requested by Mr. Olivera to assist him in providing further advice. Moreover, there is no indication in the record, as of September 5, 2017, that Mr. Olivera was acting in the role of a claims adjuster rather than as an attorney. [See #51-1 at 41 (7/02/2018 email from Mr. Millar informing Ms. Anzalone that Defendant “h[as] retained Keith Olivera in Denver to work with you to get the EUO and any IME promptly completed”)]
AN_000412	09/06/2017	attorney-client privilege	The Court finds that this claim note is properly withheld pursuant to the attorney-client privilege. The claim note reflects communications in which Mr. Olivera provides specific legal advice and requests additional information to assist in providing further advice, and Mr. Millar responds with additional information and a request for additional legal advice. Moreover, there is no indication in the record, as of September 6, 2017, that Mr. Olivera was acting in the role of a claims adjuster rather than as an attorney. [See #51-1 at 41 (7/02/2018 email from Mr. Millar informing Ms. Anzalone that Defendant “h[as] retained Keith Olivera in Denver to work with you to get the EUO and any IME promptly completed”)]
AN_000410	11/08/2017	attorney-client privilege	The Court finds that this claim note is properly withheld pursuant to the attorney-client privilege. The claim note reflects communications in which Mr. Millar appears to request legal advice from Mr. Olivera and provides information for the purpose of obtaining that advice. Although the request for legal advice is not specific, the Court notes that at this point, all of Defendant’s communications with Mr. Olivera have related to requests for legal advice and there is no indication in the record, as of November 8, 2017, that Mr. Olivera was acting in the role of a claims adjuster rather than as an attorney. [See #51-1 at 41 (7/02/2018 email from Mr. Millar informing Ms. Anzalone that Defendant “h[as] retained Keith Olivera in Denver to

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			work with you to get the EUO and any IME promptly completed”)]
AN_000410	11/09/2017	attorney-client privilege	The Court finds that this claim note is properly withheld pursuant to the attorney-client privilege. The claim note includes a summary of communications with Mr. Olvera regarding legal advice. Moreover, there is no indication in the record, as of November 9, 2017, that Mr. Olvera was acting in the role of a claims adjuster rather than as an attorney. [See #51-1 at 41 (7/02/2018 email from Mr. Millar informing Ms. Anzalone that Defendant “h[as] retained Keith Olvera in Denver to work with you to get the EUO and any IME promptly completed”)]
AN_000406	06/25/2018	attorney-client privilege; Work- Product Doctrine	The Court finds that this claim note is not protected by the attorney-client privilege or the work product doctrine and thus should be PRODUCED with the exception of the two sentences described below that are properly withheld on the basis of the attorney-client privilege. Although Mr. Olvera testifies that Mr. Millar contacted him on June 25, 2018, “seeking legal advice regarding responding to a demand . . . consistent with Colorado law” [#51-3, ¶ 11(j)], he does not identify a specific communication and the email from Mr. Millar reflected in the instant claim note does not specifically request any legal advice. Moreover, Mr. Olvera’s response makes clear that his role is no longer limited to providing specific legal advice but rather has expanded to activities associated with the adjustment of the claim, such as determining what information is necessary to evaluate the claim (without explicit or implicit reference to the requirements of Colorado law) and drafting a response to the demand. Notably, Mr. Olvera does not provide legal advice regarding the requirements for adjusting a claim or responding to a demand under Colorado law but rather makes clear that he will actively participate in the actual performance of the ordinary claims adjusting activities. In its privilege log, Defendant asserts privilege because the note allegedly reflects “legal advice regarding Colo. Rev. Stat. §§ 10-3-1115, 1116.” ¹ The Court finds that only the last two sentences of Mr. Olvera’s

¹ In addition, the Court notes that the redacted portion of the claim note includes information regarding Mr. Olvera’s firm’s billing practices

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			response—beginning with “As we have discussed” and ending with “claim”—relate to that advice; those two sentences thus are attorney-client privileged and may remain redacted. Defendant, however, has failed to sustain its burden of demonstrating that the remainder of the claim note relates to the provision of legal advice rather than Mr. Olivera’s claims adjustment activities. For the reasons explained in the Order, the Court finds that Defendant has not demonstrated that it reasonably anticipated litigation prior to October 4, 2019 at the earliest and thus this document is not entitled to work product protection.
AN_000405	06/26/2018	attorney-client privilege; Work- Product Doctrine	The Court finds that this claim note is not protected by the attorney-client privilege or the work product doctrine and thus should be PRODUCED . In the privilege log, Defendant contends that this claim note reflects communications “regarding valuing a claim under Colorado law.” The claim note, however, does not reference any information regarding the requirements for valuing a claim under Colorado law. Although Mr. Olivera testifies that he had a telephone call with Mr. Millar on June 26, 2018 in which he “provided legal advice regarding valuing a UIM claim under Colorado law” [#51-3, ¶ 11(k)], it is unclear whether this claim note relates to that conversation as the declaration does not specifically reference the claim note and the claims note does not mention any such advice. ² Instead, the claim note appears only to reference the ordinary claims activities of valuing the insurance claim and determining what information is needed to do so. Defendant thus has failed to sustain its burden of demonstrating that the claim note relates to the provision of legal advice rather than Mr. Olivera’s involvement in claims adjustment activities. For the reasons explained in the Order, the Court finds that Defendant has not

and rates that is not protected by the attorney-client privilege. See *Wesp*, 33 P.3d at 199 n.15 (“[A]n attorney generally may not refuse to answer questions about the identity of a client and fee arrangements”); *Lee v. State Farm Mut. Auto. Ins. Co.*, 249 F.R.D. 662, 684 (D. Colo. 2008) (“[B]illing records are not accorded privileged status unless specific entries contain privileged communications.”).

² To the extent Mr. Olivera’s testimony does relate to this claim note, because the claim note does not mention any request for legal advice, production of the claim note would not reveal any such legal advice discussed during the call.

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			demonstrated that it reasonably anticipated litigation prior to October 4, 2019 at the earliest and thus this document is not entitled to work product protection.
AN_000405	06/28/2018	attorney-client privilege; Work- Product Doctrine	The Court finds that this claim note is not protected by the attorney-client privilege or the work product doctrine and thus should be PRODUCED . In the privilege log, Defendant contends that this claim note reflects a communication “providing facts necessary for attorney to provide legal advice regarding the requirements of Colorado law.” Neither the claim note, nor any of the surrounding documents, however, reference any legal advice regarding the requirements of Colorado law with respect to the information provided. ³ Instead, Mr. Millar appears to be providing the information to facilitate Mr. Olivera’s involvement in performing the ordinary claims activities of valuing the insurance claim and determining what information is needed to do so. Defendant thus has failed to sustain its burden of demonstrating that the claim note relates to the provision of legal advice rather than Mr. Olivera’s involvement in claims adjustment activities. For the reasons explained in the Order, the Court finds that Defendant has not demonstrated that it reasonably anticipated litigation prior to October 4, 2019 at the earliest and thus this document is not entitled to work product protection.
AN_000404 ⁴	6/29/2018		The Court takes no position regarding the propriety of Defendant’s redaction of “reserves” information in this claim note because Plaintiff has not raised a challenge specific to that redaction.

³ Mr. Olivera’s conclusory testimony that Mr. Millar provided him “information that was necessary for providing legal advice regarding the requirements of Colorado law” thus also is unavailing. [#51-3, ¶ 11(I)] Moreover, as explained in the Order, Defendant cannot shroud all of Mr. Olivera’s communications related to the adjustment of Plaintiff’s claim with the protections of the privilege merely because his involvement was, in part, for the purpose of obtaining legal advice.

⁴ No entry for this redaction was included on the version of Defendant’s privilege log submitted to the Court.

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AN_000399	08/24/2018	attorney-client privilege; Work-Product Doctrine	<p>The Court finds that this claim note is not protected by the attorney-client privilege or the work product doctrine and thus should be PRODUCED. In the privilege log, Defendant contends that this claim note reflects Mr. Olivera's "opinions on preparing for anticipated litigation." The claim note, however, does not reference any anticipated litigation. Nor does the claim note include any reference to legal advice provided by—or requested from—Mr. Olivera; there is no reference to the legal requirements for adjusting a claim under Colorado law.⁵ Instead, the claim note summarizes a telephone conversation in which Mr. Olivera relayed the information obtained during the EUO (which it appears no other representative of Defendant attended) and discusses what additional information was needed to adjust the claim. An insurer cannot avail itself of the protections of the attorney-client privilege for all information obtained during an EUO merely by delegating that ordinary business activity to an attorney and thus Mr. Olivera's report of the information he obtained during that EUO—including his perceptions of the witness—are not attorney-client privileged. See <i>Ivan</i>, 2018 WL 11182728, at *2 (finding that insurer's outside counsel "was not acting in its role as counsel when it provided a detailed factual summary of . . . medical records" to insurer); <i>Sterling Const. Mgmt., LLC</i>, 2011 WL 3903074, at *15 ("Where an attorney is acting as a conduit for non-confidential information, the client may not invoke attorney-client privilege with regard to that communication."). Defendant thus has failed to sustain its burden of demonstrating that the claim note relates to the provision of legal advice rather than Mr. Olivera's involvement in claims adjustment activities. For the reasons explained in the Order, the Court finds that Defendant has not demonstrated that it reasonably anticipated litigation prior to October 4, 2019 at the earliest and thus this document is</p>

⁵ Thus, even if Mr. Olivera did provide legal advice regarding the requirements for adjusting a claim under Colorado law and/or his opinions regarding preparing for litigation, as indicated in his declaration [#51-3, ¶ 11(n)], those discussions do not appear to be summarized in the claim note and thus the claim note is not privileged.

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			not entitled to work product protection.
AN_000398 ⁶	8/31/2018		The Court takes no position regarding the propriety of Defendant's redaction of "reserves" information in this claim note because Plaintiff has not raised a challenge specific to that redaction.
AN_000397	10/22/2018	attorney-client privilege; Work- Product Doctrine	The Court finds that the claim note is not work product and only one sentence of the redacted claim note is protected by the attorney-client privilege and thus the remaining non-privileged portions should be PRODUCED . In the privilege log, Defendant contends that this claim note reflects Mr. Olivera's "legal advice regarding Colo. Rev. Stat. §§ 10-3-1115, 1116." The Court finds that only one sentence—the sentence starting with "I know"—relates to the provision of legal advice and thus is entitled to attorney-client privilege protection. The remainder of the claim note merely relays information obtained by Mr. Olivera in his communications with Ms. Anzalone and thus relates to Mr. Olivera's performance of claims adjusting activities. With the exception of the sentence that begins "I know," Defendant thus has failed to sustain its burden of demonstrating that the claim note relates to the provision of legal advice rather than Mr. Olivera's involvement in claims adjustment activities. ⁷ For the reasons explained in the Order, the Court finds that Defendant has not demonstrated that it reasonably anticipated litigation prior to October 4, 2019 at the earliest and thus this document is not entitled to work product protection.

⁶ No entry for this redaction was included on the version of Defendant's privilege log submitted to the Court.

⁷ The Court's finding is consistent with Mr. Olivera's testimony that he "emailed [Mr.] Millar and provided legal advice regarding Colo. Rev. Stat. §§ 10-3-1115, 1116 and adjusting the claim consistent with these statutes" [#51-3, ¶ 11(p)]. The fact that one sentence of Mr. Olivera's email conveyed legal advice does not entitle the entire email to attorney-client privilege, especially here where Mr. Olivera was performing claims adjustment tasks in addition to providing legal advice.

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AN_000396	11/06/2018	attorney-client privilege; Work- Product Doctrine	The Court finds that this claim note is not protected by the attorney-client privilege or the work product doctrine and thus should be PRODUCED . In the privilege log, Defendant contends that this claim note reflects a “confidential invoice [that] was submitted to [Defendant].” Defendant does not identify the allegedly confidential information and none is apparent to the Court. Instead, the communication appears administrative in nature and, at most, reveals that counsel sent an invoice to Defendant on a certain date. As such, Defendant has not satisfied its burden of establishing that the communication is privileged. See <i>Plaza</i> , 2015 WL 3528336, at *6 (collecting cases holding that communications regarding administrative matters are not attorney-client privileged); <i>Lee</i> , 249 F.R.D. at 684 (“[B]illing records are not accorded privileged status unless specific entries contain privileged communications.”). For the reasons explained in the Order, the Court finds that Defendant has not demonstrated that it reasonably anticipated litigation prior to October 4, 2019 at the earliest and thus this document is not entitled to work product protection.
AN_000393	1/15/2019	attorney-client privilege; Work- Product Doctrine	The Court finds that the claim note is not work product and only half of the redacted sentence in the claim note is protected by the attorney-client privilege and thus the remaining portion of that sentence should be PRODUCED . In the privilege log, Defendant contends that the redacted sentence reflects Mr. Olivera’s advice “regarding proceeding with the UIM claim consistent with the requirements of Colorado law.” The Court finds that only the second half of that sentence—beginning with “and”—appears to relate to the provision of legal advice and thus is entitled to attorney-client privilege protection. Defendant has not offered any evidence that the remaining portion of the sentence reflects legal advice obtained from Mr. Olivera as distinguished from information Mr. Olivera may have provided in performing activities associated with adjusting the claim and such a distinction is not clear from the face of the document or the surrounding facts. Indeed, the phrasing of this first part of the sentence indicates that the information results from a determination made by Defendant.

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			<p>Defendant thus has failed to sustain its burden of demonstrating that the first portion of the redacted sentence relates to the provision of legal advice rather than Mr. Olivera's involvement in claims adjustment activities. For the reasons explained in the Order, the Court finds that Defendant has not demonstrated that it reasonably anticipated litigation prior to October 4, 2019 at the earliest and thus this document is not entitled to work product protection.</p>
AN_000370	01/29/2019	attorney-client privilege; Work-Product Doctrine	<p>The Court finds that this claim note is not protected by the attorney-client privilege or the work product doctrine and thus should be PRODUCED. In the privilege log, Defendant contends that this claim note reflects Mr. Olivera's "legal advice regarding proceeding with the UIM claim consistent with the requirements of Colorado law." The claim note, however, does not include any legal advice and makes no reference to the requirements for adjusting a claim under Colorado law. In his declaration, Mr. Olivera contends that he sent this communication "to address a communication from opposing counsel, potential developments in the claim, the potential outcome of certain parts of the investigation, and the type of further information or investigation" that would be needed. [#51-3, ¶ 11(r)] There are all issues related to the adjustment of the claim typically performed by a claims adjuster. See <i>Ivan</i>, 2018 WL 11182728, at *2 (finding that insurer's outside counsel "was not acting in its role as counsel when it provided a detailed factual summary of . . . medical records" to insurer); <i>Sterling Const. Mgmt., LLC</i>, 2011 WL 3903074, at *15 ("Where an attorney is acting as a conduit for non-confidential information, the client may not invoke attorney-client privilege with regard to that communication."). Although Mr. Olivera contends that another purpose of the email was to discuss "further information [he] would need . . . in order to provide further legal advice regarding compliance with the requirements of Colorado law" [#51-3, ¶ 11(r)] , that is not apparent from the claim note or the surrounding contemporaneous documentation. Instead, it appears that the further information was necessary for Defendant to complete its evaluation of the</p>

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			claim. [See, e.g., #53-4 at 6-11 (communications between Mr. Olivera and Ms. Anzalone regarding Defendant's requests for information and an independent review of the medical records); AN_000369 (2/07/2019 unredacted email from in-house counsel to Mr. Millar requesting that he "follow up with [Mr. Olivera about getting" medical records)] Defendant thus has failed to sustain its burden of demonstrating that the claim note relates to the provision of legal advice rather than Mr. Olivera's involvement in claims adjustment activities. For the reasons explained in the Order, the Court finds that Defendant has not demonstrated that it reasonably anticipated litigation prior to October 4, 2019 at the earliest and thus this document is not entitled to work product protection.
AN_000367	04/02/2019	attorney-client privilege; Work- Product Doctrine	The Court finds that this claim note is not protected by the attorney-client privilege or the work product doctrine and thus should be PRODUCED . In the privilege log, Defendant contends that this claim note reflects a "summary of information and advice [Defendant] sought from defense counsel regarding proceeding with the UIM claim consistent with the requirements of Colorado law." The claim note, however, does not reference any legal advice or request for legal advice. Instead, the communication relates to the status of the claim and a request that Mr. Olivera obtain additional information from Plaintiff and potentially others. ⁸ There is no indication in the claim note or the surrounding contemporaneous documentation that the additional information was being sought for purposes of obtaining legal advice. Instead, it appears that the further information was necessary for Defendant to complete its evaluation of the claim. [See, e.g., #53-4 at 6-11 (communications between Mr. Olivera and Ms. Anzalone regarding Defendant's requests for information

⁸ Although Mr. Olivera contends that Mr. Millar "contacted [him] to obtain [his] legal advice and legal assistance given that certain information expected on the claim had not yet been received" [#51-3, ¶ 11(s)], there is no request for legal advice or legal assistance in the email. Instead, it appears clear that Mr. Millar is reaching out to Mr. Olivera with regard to the "information expected on the claim" because Defendant had made Mr. Olivera "the primary point of contact for Plaintiff's counsel" [#51 at 34]—a role typically performed by a claims adjuster.

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			and an independent review of the medical records); AN_000369 (2/07/2019 unredacted email from in-house counsel to Mr. Millar requesting that he "follow up with [Mr. Olivera about getting" medical records]) Defendant thus has failed to sustain its burden of demonstrating that the claim note relates to the provision of legal advice rather than Mr. Olivera's involvement in claims adjustment activities. For the reasons explained in the Order, the Court finds that Defendant has not demonstrated that it reasonably anticipated litigation prior to October 4, 2019 at the earliest and thus this document is not entitled to work product protection.
AN_000364- AN_000366	04/02/2019	attorney-client privilege; Work- Product Doctrine	The Court finds that this claim note is not protected by the attorney-client privilege or the work product doctrine and thus should be PRODUCED . In the privilege log, Defendant contends that this claim note includes "communications regarding information necessary for defense counsel to provide legal advice to Alaska National regarding proceeding with the UIM claim consistent with the requirements of Colorado law." The claim note, however, does not reference any legal advice or request for legal advice. Instead, the communication (which is a chain of emails that includes the email contained in the 4/02/2019 claim note Bates-numbered AN_000367 addressed above) relates to the status of the claim and obtaining additional information from Plaintiff and potentially others. There is no indication in the claim note or the surrounding contemporaneous documentation that the additional information was being sought for purposes of obtaining legal advice. Although Mr. Olivera testifies that he "requested further information that [he] needed to provide legal advice regarding the payments made to [Plaintiff] on his multiple claims," [#53-3, ¶ 11(s)], Defendant has not provided adequate evidence that this information was sought for the purpose of providing legal advice as distinguished from determining the value of Plaintiff's claim. ⁹ Defendant thus has failed to sustain its burden

⁹ Although Mr. Olivera testifies that the information was "needed to provide legal advice" [#53-3, ¶ 11(s)], this self-serving and conclusory statement standing alone is insufficient to establish that the communication at issue related to the provision of legal advice and not to the

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			of demonstrating that the claim note relates to the provision of legal advice rather than Mr. Olivera's involvement in claims adjustment activities. For the reasons explained in the Order, the Court finds that Defendant has not demonstrated that it reasonably anticipated litigation prior to October 4, 2019 at the earliest and thus this document is not entitled to work product protection.
AN_000339	04/05/2019	attorney-client privilege; Work-Product Doctrine	The Court finds that this claim note is not protected by the attorney-client privilege or the work product doctrine and thus should be PRODUCED . In the privilege log, Defendant contends that this claim note reflects a "summary of . . . communications" relating Mr. Olivera's "advice and opinions on how to proceed on the claim consistent with the requirements of Colorado law." The claim note, however, is the summary of a single call between Mr. Olivera and Mr. Millar regarding information requested from Plaintiff. ¹⁰ The claim note does not reference any legal advice or request for legal advice. There is no indication in the claim note or the surrounding contemporaneous documentation that the additional information was being sought for purposes of obtaining legal advice. [See, e.g., #53-4 at 6-11

adjustment of Plaintiff's claim. As an initial matter, Mr. Olivera contends that all of his activities related to the provision of legal advice [*id.* at ¶ 7]—a contention which the Court has rejected as explained in the Order—and Mr. Olivera's declaration thus makes no attempt to distinguish between communications related to providing legal advice and those related to his activities undertaken for the purpose of investigating and evaluating the claim. With regard to the specific request in this email, it is unclear to the Court why Mr. Olivera would need to know the amounts of the payments—as distinguished from the types of payments—to render legal advice on the requirements of Colorado law. Instead, it would appear that the request was made for the purpose of determining the value of Plaintiff's UIM claim—a task typically performed by the claims adjuster. This is consistent with the remainder of the email chain, which relates to obtaining additional information from Plaintiff's counsel—a task clearly related to the adjustment of the claim for which Mr. Olivera took primary responsibility.

¹⁰ In his declaration, Mr. Olivera testifies that he had a telephone conversation with Mr. Millar on April 5, 2019 in which he "provide[d] . . . legal advice . . . regarding how it should comply with Colorado law . . ." [#53-3, ¶ 11(t)] Because Mr. Olivera's declaration does not identify any specific document to which it refers, it is unclear whether the claim note at issue relates to this same phone conversation. Even if it is, however, the claim note does not reveal—or even refer to—any discussion regarding legal advice or the requirements of Colorado law and thus the claim note is not privileged.

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			<p>(communications between Mr. Olivera and Ms. Anzalone regarding Defendant's requests for information and an independent review of the medical records); AN_000339 (4/22/2019 claim note stating "[f]ile is pending review of recent MRI of clmt's knee")] Defendant thus has failed to sustain its burden of demonstrating that the claim note relates to the provision of legal advice rather than Mr. Olivera's involvement in claims adjustment activities. For the reasons explained in the Order, the Court finds that Defendant has not demonstrated that it reasonably anticipated litigation prior to October 4, 2019 at the earliest and thus this document is not entitled to work product protection.</p>
AN_000312- AN_000313	05/28/2019	attorney-client privilege; Work- Product Doctrine	<p>The Court finds that the claim note is not work product and only the first of the two emails redacted in the claim note is protected by the attorney-client privilege and thus the second email should be PRODUCED. In the privilege log, Defendant contends that the claim note was redacted to remove "legal advice regarding recent developments in Colorado law." The Court agrees with Defendant that the first email in the claim note from Mr. Olivera to Mr. Millar reflects Mr. Olivera's legal advice and thus is properly withheld. [See #51-3, ¶ 11(u) (Mr. Olivera's testimony regarding 5/28/2019 email to Mr. Millar regarding recent developments in Colorado law)] The second email that was redacted, however, does not refer to or request legal advice. Instead, the email merely requests information on the status of Plaintiff's claim. Given that Defendant made Mr. Olivera the primary point of contact for Plaintiff's counsel, the Court does not understand this email to request legal advice. Defendant thus has failed to sustain its burden of demonstrating that the second email in the redacted claim note relates to the provision of legal advice rather than Mr. Olivera's involvement in claims adjustment activities. For the reasons explained in the Order, the Court finds that Defendant has not demonstrated that it reasonably anticipated litigation prior to October 4, 2019 at the earliest and thus this document is not entitled to work product protection.</p>

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AN_000312	06/03/2019	attorney-client privilege; Work-Product Doctrine	The Court finds that the claim note is not work product but that the claim note is properly withheld pursuant to the attorney-client privilege. The claim note summarizes specific legal advice provided to Defendant by outside counsel and thus is protected by the attorney-client privilege. [See #51-3, ¶ 11(v) (Mr. Olivera's testimony regarding 6/03/2019 telephone call with Mr. Millar regarding recent developments in Colorado law)] For the reasons explained in the Order, the Court finds that Defendant has not demonstrated that it reasonably anticipated litigation prior to October 4, 2019 at the earliest and thus this document is not entitled to work product protection.
AN_000284	06/05/2019	attorney-client privilege; Work-Product Doctrine	The Court finds that the claim note is not work product but that the claim note is properly withheld pursuant to the attorney-client privilege. The redacted portion of the claim note summarizes specific legal advice provided to Defendant by outside counsel and thus is protected by the attorney-client privilege. [See AN_000312; #51-3, ¶ 11(v)] For the reasons explained in the Order, the Court finds that Defendant has not demonstrated that it reasonably anticipated litigation prior to October 4, 2019 at the earliest and thus this document is not entitled to work product protection.
AN_000255- AN_000256	06/06/2019	attorney-client privilege; Work-Product Doctrine	The Court finds that this claim note is not protected by the attorney-client privilege or the work product doctrine and thus should be PRODUCED . In the privilege log, Defendant contends that this claim note reflects a communication regarding "the information that was necessary to provide legal advice." The claim note, however, does not reference any legal advice or request for legal advice. There is no indication in the claim note or the surrounding contemporaneous documentation that the additional information was being sought for purposes of obtaining legal advice. ¹¹

¹¹ Mr. Olivera testifies that he exchanged emails with Mr. Millar on June 5, 2019—which is the date of the emails contained in this claim note dated June 6, 2019—to “provide[] advice and information in light of then-recent case law governing how an insurer determines reasonable amounts that may be recovered on a UM/UIM claim.” [#53-1, ¶ 11(w)] Because Mr. Olivera’s

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			<p>Instead, it appears that the further information was necessary for Defendant to complete its evaluation of the claim. [See AN_000257-58 (6/05/2019 email from Mr. Olivera to Ms. Anzalone thanking her for providing the new medical records and stating that he will follow-up “once [Defendant] has had a chance to review and analyze this medical information”)] Defendant thus has failed to sustain its burden of demonstrating that the claim note relates to the provision of legal advice rather than Mr. Olivera’s involvement in claims adjustment activities. For the reasons explained in the Order, the Court finds that Defendant has not demonstrated that it reasonably anticipated litigation prior to October 4, 2019 at the earliest and thus this document is not entitled to work product protection.</p>
AN_000255	06/21/2019	attorney-client privilege; Work- Product Doctrine	<p>The Court finds that this claim note is not protected by the attorney-client privilege or the work product doctrine and thus should be PRODUCED. In the privilege log, Defendant contends that this claim note reflects a communication regarding “proceeding with the claim in a manner consistent with the requirements of Colorado law.” The claim note, however, does not reference any legal advice or request for legal advice or the requirements of Colorado law. Instead, the claim note relates to a communication discussing the need for additional information and there is no indication in the claim note or the surrounding contemporaneous documentation that the additional information was being sought for purposes of obtaining legal advice. Rather, it appears that the further information was necessary for Defendant to complete its evaluation of the claim. [See #53-4 at 6-7 (6/28/2018 email from Mr. Olivera to Ms. Anzalone stating that Defendant “will not be able to complete its updated evaluation of [Plaintiff’s] claim” until it retains a different orthopedic surgeon to review medical records] Defendant thus has failed to sustain its burden of</p>

declaration does not identify any specific document to which it refers, it is unclear whether the claim note at issue relates to this same email exchange. Even if it is, however, the claim note does not reveal—or even refer to—any legal advice or recent case law developments but instead relates to obtaining medical information for the evaluation of Plaintiff’s claim.

Bates No./ Doc. ID*	Document Date	Basis Claimed for Withholding	Court's Ruling
			demonstrating that the claim note relates to the provision of legal advice rather than Mr. Olivera's involvement in claims adjustment activities. For the reasons explained in the Order, the Court finds that Defendant has not demonstrated that it reasonably anticipated litigation prior to October 4, 2019 at the earliest and thus this document is not entitled to work product protection.
AN_000255	06/21/2019	attorney-client privilege; Work- Product Doctrine	The Court finds that this claim note is not protected by the attorney-client privilege or the work product doctrine and thus should be PRODUCED . In the privilege log, Defendant contends that this claim note reflects a communication regarding "proceeding with the claim in a manner consistent with the requirements of Colorado law." The claim note, however, does not reference any legal advice or request for legal advice or the requirements of Colorado law. Instead, the claim note relates to a communication discussing the need for additional information and there is no indication in the claim note or the surrounding contemporaneous documentation that the additional information was being sought for purposes of obtaining legal advice. Rather, it appears that the further information was necessary for Defendant to complete its evaluation of the claim. [See #53-4 at 6-7 (6/28/2018 email from Mr. Olivera to Ms. Anzalone stating that Defendant "will not be able to complete its updated evaluation of [Plaintiff's] claim" until it retains a different orthopedic surgeon to review medical records] Defendant thus has failed to sustain its burden of demonstrating that the claim note relates to the provision of legal advice rather than Mr. Olivera's involvement in claims adjustment activities. For the reasons explained in the Order, the Court finds that Defendant has not demonstrated that it reasonably anticipated litigation prior to October 4, 2019 at the earliest and thus this document is not entitled to work product protection.

Bates No./ Doc. ID*	Document Date	Basis Claimed for Withholding	Court's Ruling
AN_000254	06/25/2019 to 06/26/2019	attorney-client privilege; Work- Product Doctrine	The Court finds that this claim note is not protected by the attorney-client privilege or the work product doctrine and thus should be PRODUCED . In the privilege log, Defendant contends that this claim note reflects a communication regarding “proceeding with the claim in a manner consistent with the requirements of Colorado law.” The claim note, however, does not reference any legal advice or request for legal advice or the requirements of Colorado law. Instead, the claim note relates to a communication discussing the need for additional information and there is no indication in the claim note or the surrounding contemporaneous documentation that the additional information was being sought for purposes of obtaining legal advice. ¹² Rather, it appears that the further information was necessary for Defendant to complete its evaluation of the claim. [See #53-4 at 6-7 (6/28/2018 email from Mr. Olivera to Ms. Anzalone stating that Defendant “will not be able to complete its updated evaluation of [Plaintiff’s] claim” until it retains a different orthopedic surgeon to review medical records] Defendant thus has failed to sustain its burden of demonstrating that the claim note relates to the provision of legal advice rather than Mr. Olivera’s involvement in claims adjustment activities. For

¹² In his declaration, Mr. Olivera testifies that he exchanged emails with Mr. Millar on June 25, 2019 “regarding information necessary for [him] to provide legal advice.” [#53-3, ¶ 11(y)] Mr. Olivera acknowledges, however, that the subject matter of the communications was “a development pertaining to an expert who had been consulted on the file.” [*Id.*] This development was disclosed to Plaintiff and Defendant—through Mr. Olivera—represented to Plaintiff that the expert’s opinion was needed to evaluate the medical records Plaintiff had recently provided, seemingly for purposes of evaluating the claim. [#53-4 at 6-7] It thus appears that the purpose of the communications referenced in the claim note was the evaluation of Plaintiff’s claim, not the provision of legal advice. Notably, Defendant did not redact the claim note summarizing the subsequent call between Mr. Millar, Mr. Olivera, and the expert discussing the expert’s opinion. [AN_000248 (7/25/2019 claim note)] Although Mr. Olivera testifies that he “gave [his] legal advice regarding how Colorado law governing insurance claims encouraged the company to respond to [the] development” regarding the expert” [#53-3, ¶ 11(y)], because Mr. Olivera’s declaration does not identify any specific document to which it refers, it is unclear whether the claim note at issue is the one referred to in Mr. Olivera’s testimony. To the extent it is, the redacted email does not mention any requirement under Colorado law and the Court cannot discern any legal advice included in the email. Instead, it appears only to include information related to the adjustment of Plaintiff’s claim that would ordinarily be handled by a claims adjuster.

Bates No./ Doc. ID*	Document Date	Basis Claimed for Withholding	Court's Ruling
			the reasons explained in the Order, the Court finds that Defendant has not demonstrated that it reasonably anticipated litigation prior to October 4, 2019 at the earliest and thus this document is not entitled to work product protection.
AN_000212	10/01/2019	attorney-client privilege; Work- Product Doctrine	The Court finds that the claim note is not work product and only a portion of the redacted claim note is protected by the attorney-client privilege and that the remainder of the claim note should be PRODUCED . In the privilege log, Defendant contends that the claim note was redacted to remove a “communication providing legal advice on Colorado law and its application to Plaintiff’s UIM policy and claim.” The Court agrees with Defendant that a portion of one sentence—beginning with “a memo” and ending with “and”—in the claim note reflects the advice of counsel and thus is properly redacted. The remainder of the claim note, however, does not refer to or request legal advice. Instead, it relates to communicating with Plaintiff’s counsel—a task typically performed by a claims adjuster that Defendant delegated to Mr. Olivera. [See #51 at 34 (acknowledging that Mr. Olivera “replace[d] Mr. Millar as the primary point of contact for Plaintiff’s counsel”)] Notably, there is no testimony from Mr. Olivera that the draft document referenced in that portion of the claim note contained legal advice and, given the nature of the draft document, it seems unlikely to the Court that it would have contained confidential legal advice. ¹³ Defendant thus has failed to sustain its burden of demonstrating that the remainder of the redacted claim note relates to the provision of legal advice rather than Mr. Olivera’s involvement in claims adjustment activities. For the reasons

¹³ Mr. Olivera testifies only that, on September 27, 2019 (the date of the email contained in the claim note), he “sent an email to and had a phone conversation with [Mr.] Millar regarding Colorado Law and the handling of [Plaintiff’s] claim.” [#51-3, ¶ 11(dd)] The Court further notes that the attachments referenced in the communication described in the claim note are not included on Defendant’s Privilege Log and have not been submitted to the Court for *in camera* review. To the extent they are not included because they have been produced to Plaintiff, any privilege with regard to this claim note may be waived, but that issue has not been presented to the Court.

Bates No./ Doc. ID*	Document Date	Basis Claimed for Withholding	Court's Ruling
			explained in the Order, the Court finds that Defendant has not demonstrated that it reasonably anticipated litigation prior to October 4, 2019 at the earliest and thus this document is not entitled to work product protection.
AN_000201 AN_000205- AN_000206 AN_000209	10/07/2019	attorney-client privilege; Work- Product Doctrine	Based upon the documents submitted to the Court for <i>in camera</i> review, it does not appear that Defendant redacted or otherwise withheld the communication referenced in these entries. To the extent they have been withheld, the Court finds that they should be PRODUCED for the same reasons the Court finds the communications in the next entries (AN_000193-AN_000194, <i>et al.</i>) should be produced.
AN_000193- AN_000194 AN_000200 AN_000205 AN_000208- AN_000209 AN_000211	10/16/2019	attorney-client privilege; Work- Product Doctrine	The Court finds that these claim notes are not protected by the attorney-client privilege or the work product doctrine and thus should be PRODUCED . In the privilege log, Defendant contends that these claim notes reflect “communications regarding proceeding on the UIM claim in a manner consistent with Colorado law.” The claim notes, however, make no reference to the legal requirements for adjusting a claim under Colorado law. Instead, the redacted emails relate only to the status of communications with Plaintiff’s counsel. Given that Defendant made Mr. Olivera the primary point of contact for Plaintiff’s counsel—a role ordinarily performed by a claims adjuster, the Court does not understand these emails to request or relate to legal advice and they are not entitled to attorney-client privilege protection. <i>See Sterling Const. Mgmt., LLC</i> , 2011 WL 3903074, at *15 (“Where an attorney is acting as a conduit for non-confidential information, the client may not invoke attorney-client privilege with regard to that communication.”). Although the communications were prepared at a time when Defendant may have reasonably anticipated litigation, Defendant has not shown that such anticipated litigation was “the driving force behind the preparation” of the communications, nor is that apparent from the face of the documents. <i>Colorado Mills</i> , 2013 WL 1340649, at *6. Accordingly, the documents are not entitled to protection under the work product doctrine.

Bates No./ Doc. ID*	Document Date	Basis Claimed for Withholding	Court's Ruling
AN_000193 ¹⁴ AN_000199- AN_000200 AN_000208 AN_000210	10/28/2019	attorney-client privilege; Work- Product Doctrine	The Court finds that these claim notes are not protected by the attorney-client privilege or the work product doctrine and thus should be PRODUCED . In the privilege log, Defendant contends that these claim notes reflect “communications regarding proceeding on the UIM claim in a manner consistent with Colorado law and the status of anticipated litigation.” The claim notes, however, make no reference to the legal requirements for adjusting a claim under Colorado law or any anticipated litigation. Instead, the redacted emails relate only to the status of communications with Plaintiff’s counsel. Given that Defendant made Mr. Olivera the primary point of contact for Plaintiff’s counsel—a role ordinarily performed by a claims adjuster, the Court does not understand these emails to request or relate to legal advice and they are not entitled to attorney-client privilege protection. <i>Sterling Const. Mgmt., LLC</i> , 2011 WL 3903074, at *15 (“Where an attorney is acting as a conduit for non-confidential information, the client may not invoke attorney-client privilege with regard to that communication.”). Although the communications were prepared at a time when Defendant may have reasonably anticipated litigation, Defendant has not shown that such anticipated litigation was “the driving force behind the preparation” of the communications, nor is that apparent from the face of the documents. <i>Colorado Mills</i> , 2013 WL 1340649, at *6. Accordingly, the documents are not entitled to protection under the work product doctrine.
AN_000192 AN_000198- AN_000199	11/11/2019	attorney-client privilege; Work- Product Doctrine	The Court finds that these claim notes are not protected by the attorney-client privilege or the work product doctrine and thus should be PRODUCED . In the privilege log, Defendant contends that these claim notes reflect “communications regarding proceeding on the UIM claim in a manner consistent with Colorado law and the status of anticipated

¹⁴ This entry relates to an email from Mr. Millar to Mr. Olivera dated October 28, 2019. That same email is repeated in the claim note found on AlaskaNational_000204, which is redacted but does not appear to be included on Defendant’s privilege log. The Court’s ruling with regard to this entry applies also to the same email found on AlaskaNational_000204.

Bates No./ Doc. ID*	Document Date	Basis Claimed for Withholding	Court's Ruling
AN_000203- AN_000204 AN_000207			litigation.” The claim notes, however, makes no reference to the legal requirements for adjusting a claim under Colorado law or any anticipated litigation. Instead, the redacted emails relate only to the status of Plaintiff’s insurance claims. Defendant thus has failed to sustain its burden of demonstrating that the claim notes relate to the provision of legal advice rather than Mr. Olivera’s involvement in claims adjustment activities. Although the communications were prepared at a time when Defendant may have reasonably anticipated litigation, Defendant has not shown that such anticipated litigation was “the driving force behind the preparation” of the communications, nor is that apparent from the face of the documents. <i>Colorado Mills</i> , 2013 WL 1340649, at *6. Accordingly, the documents are not entitled to protection under the work product doctrine.
AN_000192- AN_000193 AN_000199 AN_000204 AN_000207- AN_000208	11/11/2019	attorney-client privilege; Work- Product Doctrine	The Court finds that these claim notes are not protected by the attorney-client privilege or the work product doctrine and thus should be PRODUCED . In the privilege log, Defendant contends that these claim notes reflect “communications regarding proceeding on the UIM claim in a manner consistent with Colorado law and the status of anticipated litigation.” The claim notes, however, make no reference to the legal requirements for adjusting a claim under Colorado law or any anticipated litigation. Instead, the redacted emails relate only to the status of communications with Plaintiff’s counsel and the status of Plaintiff’s claim. Given that Defendant made Mr. Olivera the primary point of contact for Plaintiff’s counsel—a role ordinarily performed by a claims adjuster, the Court does not understand these emails to request or relate to legal advice and they are not entitled to attorney-client privilege protection. <i>Sterling Const. Mgmt., LLC</i> , 2011 WL 3903074, at *15 (“Where an attorney is acting as a conduit for non-confidential information, the client may not invoke attorney-client privilege with regard to that communication.”). Defendant thus has failed to sustain its burden of demonstrating that the claim notes relate to the provision of legal advice rather than Mr. Olivera’s involvement in claims adjustment activities. Although the communications were

Bates No./ Doc. ID*	Document Date	Basis Claimed for Withholding	Court's Ruling
			prepared at a time when Defendant may have reasonably anticipated litigation, Defendant has not shown that such anticipated litigation was “the driving force behind the preparation” of the communications, nor is that apparent from the face of the documents. <i>Colorado Mills</i> , 2013 WL 1340649, at *6. Accordingly, the documents are not entitled to protection under the work product doctrine.
AN_000198 ¹⁵ AN_000203	11/11/2019	attorney-client privilege; Work- Product Doctrine	The Court finds that these claim notes are not protected by the attorney-client privilege or the work product doctrine and thus should be PRODUCED . In the privilege log, Defendant contends that these claim notes reflect “communications regarding proceeding on the UIM claim in a manner consistent with Colorado law and the status of anticipated litigation.” The claim notes, however, make no reference to the legal requirements for adjusting a claim under Colorado law or any anticipated litigation. Instead, the redacted emails relate only to the status of Plaintiff’s insurance claims. Defendant thus has failed to sustain its burden of demonstrating that the claim notes relate to the provision of legal advice rather than Mr. Olivera’s involvement in claims adjustment activities. Although the communications were prepared at a time when Defendant may have reasonably anticipated litigation, Defendant has not shown that such anticipated litigation was “the driving force behind the preparation” of the communications, nor is that apparent from the face of the documents. <i>Colorado Mills</i> , 2013 WL 1340649, at *6. Accordingly, the documents are not entitled to protection under the work product doctrine.

¹⁵ This entry relates to an email from Mr. Millar to Mr. Olivera dated November 11, 2019. That same email is repeated in the claim note found on AlaskaNational_000191-192, which is redacted but does not appear to be included on Defendant’s privilege log. The Court’s ruling with regard to this entry applies also to the same email found on AlaskaNational_000191-192.

Bates No./ Doc. ID*	Document Date	Basis Claimed for Withholding	Court's Ruling
AN_000190 ¹⁶	11/13/2019	attorney-client privilege; Work- Product Doctrine	The Court finds that the claim note is not work product and only one sentence of the redacted claim note is protected by the attorney-client privilege and thus the remaining non-privileged portions should be PRODUCED . In the privilege log, Defendant contends that this claim note reflects "communications regarding proceeding on the UIM claim in a manner consistent with Colorado law and the status of anticipated litigation." The claim note, however, makes no reference to the legal requirements for adjusting a claim under Colorado law or any anticipated litigation. Based upon the surrounding contemporaneous documentation, however, the Court understands that the sentence that begins "I guess" is responding to specific legal advice provided by Mr. Olivera and thus is entitled to attorney-client privilege protection. [See AN_000191, AN_000197] The remainder of the claim note, however, relates to the status of Plaintiff's insurance claims. Defendant thus has failed to sustain its burden of demonstrating that this portion of the claim note relates to the provision of legal advice rather than Mr. Olivera's involvement in claims adjustment activities. Although the communication was prepared at a time when Defendant may have reasonably anticipated litigation, Defendant has not shown that such anticipated litigation was "the driving force behind the preparation" of the communication, nor is that apparent from the face of the document. <i>Colorado Mills</i> , 2013 WL 1340649, at *6. Accordingly, the document is not entitled to protection under the work product doctrine.
AN_000191-	11/13/2019	attorney-client privilege; Work- Product Doctrine	The Court finds that the claim note is not work product but that the claim note is properly withheld pursuant to the attorney-client privilege with the exception of one sentence that is not protected by the attorney-client privilege and thus should be PRODUCED . The majority of the claim note provides specific legal advice regarding recent developments in Colorado

¹⁶ This entry relates to an email from Mr. Millar to Mr. Olivera dated November 13, 2019. That same email is repeated in the claim note found on AlaskaNational_000197, which is redacted but does not appear to be included on Defendant's privilege log. The Court's ruling with regard to this entry applies also to the same email found on AlaskaNational_000197.

Bates No./ Doc. ID*	Document Date	Basis Claimed for Withholding	Court's Ruling
AN_000192 ¹⁷			law and thus is protected by the attorney-client privilege. [See #51-3, ¶ 11(ee) (Mr. Olivera testifying that on 11/13/2019 and 11/14/2019, he exchanged emails with Mr. Millar conveying legal advice regarding recent developments in Colorado law)] The sentence starting with "Still," however, relates to communications with Plaintiff's counsel. Given that Defendant made Mr. Olivera the primary point of contact for Plaintiff's counsel—a role ordinarily performed by a claims adjuster, the Court finds that this sentence is not entitled to attorney-client privilege protection. <i>Sterling Const. Mgmt., LLC</i> , 2011 WL 3903074, at *15 ("Where an attorney is acting as a conduit for non-confidential information, the client may not invoke attorney-client privilege with regard to that communication."). Although the communication was prepared at a time when Defendant may have reasonably anticipated litigation, Mr. Olivera does not mention any anticipated litigation in his testimony regarding the communications and Defendant has not otherwise shown that such anticipated litigation was "the driving force behind the preparation" of the communication, nor is that apparent from the face of the document. <i>Colorado Mills</i> , 2013 WL 1340649, at *6. Accordingly, the document is not entitled to protection under the work product doctrine.
AN_000197- AN_000198 AN_000202- AN_000203	11/13/2019	attorney-client privilege; Work- Product Doctrine	The email communications referenced in these entries are duplicative of the email addressed in the above entry for the email found on AN_000191. The Court's ruling with regard to these entries thus is the same as the above entry for the November 13, 2019 email from Mr. Olivera to Mr. Millar found on AN_000191.
AN_000190 AN_000196- AN_000197	11/14/2019	attorney-client privilege; Work- Product	The Court finds that the first and second sentences of the communication in the claim note are properly withheld pursuant to the attorney-client privilege and that the second sentence is also properly withheld on the basis of the work product doctrine, but that the remainder of the claim note

¹⁷ The communication dated 11/13/2019 that begins on AN_000191 does not extend to AN_000192. The communication that starts on AN_000191 and extends to AN_000192 is dated 11/11/2019 and is duplicative of AN_000198 and AN_000203 addressed above. For this entry, the Court thus only addresses the 11/13/2019 communication found entirely on AN_000191.

Bates No./ Doc. ID*	Document Date	Basis Claimed for Withholding	Court's Ruling
		Doctrine	<p>is not protected by either the attorney-client privilege or the work product doctrine and thus should be PRODUCED. The first and second sentences of the communication in the claim note concern specific legal advice and thus are protected by the attorney-client privilege. In addition, the second sentence was prepared in response to anticipated litigation and thus is protected by the work product doctrine.¹⁸ The remainder of the communication reflected in the claim note, however, relates to communications with Plaintiff's counsel. Given that Defendant made Mr. Olivera the primary point of contact for Plaintiff's counsel—a role ordinarily performed by a claims adjuster, the Court finds that the remainder of the claim note is not entitled to attorney-client privilege protection. <i>Sterling Const. Mgmt., LLC</i>, 2011 WL 3903074, at *15 (“Where an attorney is acting as a conduit for non-confidential information, the client may not invoke attorney-client privilege with regard to that communication.”). Although the communication was prepared at a time when Defendant may have reasonably anticipated litigation, with the exception of the second sentence of the communication reflected in the claim note, Defendant has not shown that the anticipated litigation was “the driving force behind the preparation” of the communication, nor is that apparent from the face of the document. <i>Colorado Mills</i>, 2013 WL 1340649, at *6. Instead, with the exception of the second sentence, the communication relates to the adjustment of Plaintiff's insurance claim and thus is not entitled to protection under the work product doctrine.</p>

¹⁸ Plaintiff contends that Defendant has waived any privilege with regard to communications between Mr. Olivera and Defendant regarding monitoring the court docket by revealing the substance of those communications in its brief. [#53 at 25 n.10] Defendant responds that it merely “identified the basis for asserting privilege, which is not itself a waiver.” [#57 at 11 n.2] The Court agrees with Defendant. In order to maintain the assertion of privilege and work product protection, Defendant is required to “describe[] in detail the documents or information claimed to be privileged and the precise reasons the materials are subject to the privilege asserted.” *Sigler v. JPMorgan Chase Bank NA*, No. 10-CV-01794-LTB-BNB, 2012 WL 1130158, at *3 (D. Colo. Apr. 4, 2012).

Bates No./ Doc. ID*	Document Date	Basis Claimed for Withholding	Court's Ruling
AN_000189	12/06/2019	attorney-client privilege; Work- Product Doctrine	The Court finds that this claim note is properly withheld pursuant to the attorney-client privilege and the work product doctrine. The claim note reflects a communication providing legal advice regarding this litigation. Given that the communication specifically addresses the instant litigation, the Court finds that the communication also is protected by the work product doctrine.
AN_000189	12/13/2019	attorney-client privilege; Work- Product Doctrine	The Court finds that the portion of the claim note commencing with "Update" and concluding with "litigation" is properly withheld pursuant to the attorney-client privilege and the work product doctrine, but that the remainder of the claim note is not protected by either the attorney-client privilege or the work product doctrine and thus should be PRODUCED . In the privilege log, Defendant contends that this claim note was redacted "to remove confidential information prepared to further ongoing litigation." Because the claim note was not drafted by an attorney, that description would only appear to support Defendant's work product claim. The surrounding contemporaneous documentation, however, makes clear that the portion of the claim note commencing with "Update" and concluding with "litigation" summarizes a conversation with counsel related to legal advice and thus is attorney-client privileged. [See AN_000189 (12/06/2019 claim note)] Because that portion of the claim note also addresses the instant litigation, that portion of the claim note also is protected by the work product doctrine. Because the remainder of the summary in the claim note relates to communications with Plaintiff's counsel related to the adjustment of Plaintiff's claim that occurred prior to the time when litigation was reasonably anticipated and does not refer to legal advice, Defendant has not satisfied its burden to show it is entitled to protection either from the attorney-client privilege or the work product doctrine. The final sentence of the claim note beginning "SLR" does not reflect legal advice and appears related to ordinary claims adjustment activities that would have been performed regardless of the pending litigation and thus that sentence also is not entitled to either attorney-client privilege or work product protection.

Bates No./ Doc. ID*	Document Date	Basis Claimed for Withholding	Court's Ruling
			See <i>Colorado Mills</i> , 2013 WL 1340649, at *6 (holding that anticipated litigation must be “driving force” behind creation of the document for work product doctrine to apply).
AN_000188	12/13/2019	attorney-client privilege; Work- Product Doctrine	The Court finds that this claim note is properly withheld pursuant to the attorney-client privilege and the work product doctrine. The claim note reflects a communication between Defendant and outside counsel regarding the instant litigation and thus is protected by both the attorney-client privilege and the work product doctrine.
AN_000188	12/18/2019	attorney-client privilege; Work- Product Doctrine	The Court takes no position regarding the propriety of Defendant's assertion of attorney-client privilege and work product protection over this claim note—which contains a communication from Defendant's in-house counsel to a reinsurer concerning the instant litigation— because Plaintiff has not raised a challenge specific to that designation.
AN_002351	12/06/2019	attorney-client privilege; work product doctrine.	The redaction on AN_002351 consists of two emails. The first is an email from Mr. Olivera to Mr. Millar dated December 6, 2019, which is the same email the Court addressed above with regard to the redaction found on AN_000189. The second is an email from Mr. Olivera to Mr. Millar dated November 14, 2019, which is the same email the Court addressed above with regard to the redactions found on AN_000190 and AN_000196-197. The Court's rulings above with regard to these emails thus apply equally to this entry.
AN_002437	11/10/2017	attorney-client privilege	The Court finds that this claim note is properly withheld pursuant to the attorney-client privilege. The claim note summarizes legal advice provided by outside counsel during a telephone conference between Defendant and outside counsel, including Mr. Olivera. Moreover, there is no indication in the record, as of November 10, 2017, that Mr. Olivera was acting in the role of a claims adjuster rather than as an attorney. [See #51-1 at 41 (7/02/2018 email from Mr. Millar informing Ms. Anzalone that Defendant “h[as] retained

Bates No./ Doc. ID*	Document Date	Basis Claimed for Withholding	Court's Ruling
			Keith Olivera in Denver to work with you to get the EUO and any IME promptly completed”)]
AN_002445	10/19/2017	attorney-client privilege	The Court finds that this claim note is properly withheld pursuant to the attorney-client privilege. The claim note consists of communications between Defendant and Mr. Olivera in which Defendant makes a specific request for legal advice from Mr., Olivera related to Plaintiff's claim and Mr. Olivera provides specific legal advice. Moreover, there is no indication in the record, as of October 19, 2017, that Mr. Olivera was acting in the role of a claims adjuster rather than as an attorney. [See #51-1 at 41 (7/02/2018 email from Mr. Millar informing Ms. Anzalone that Defendant “h[as] retained Keith Olivera in Denver to work with you to get the EUO and any IME promptly completed”)]
AN_002446	10/17/2017	attorney-client privilege	The Court finds that this claim note is properly withheld pursuant to the attorney-client privilege. The claim note consists of communications between Defendant and Mr. Olivera in which in-house counsel for Defendant offers specific legal advice and makes a specific request to Mr. Olivera for legal advice and provides Mr. Olivera information to assist in providing that advice. Moreover, there is no indication in the record, as of October 17, 2017, that Mr. Olivera was acting in the role of a claims adjuster rather than as an attorney. [See #51-1 at 41 (7/02/2018 email from Mr. Millar informing Ms. Anzalone that Defendant “h[as] retained Keith Olivera in Denver to work with you to get the EUO and any IME promptly completed”)]

Bates No./ Doc. ID*	Document Date	Basis Claimed for Withholding	Court's Ruling
AN_002448	09/15/2017	attorney-client privilege	The Court finds that this claim note is properly withheld pursuant to the attorney-client privilege. The claim note consists of communications between one of Defendant's adjusters and one of Defendant's in-house counsel in which the adjuster makes a specific request for legal advice and the in-house counsel provides legal advice.
AN_002453	07/25/2017	attorney-client privilege	This claim note contains the same communications as the claim note Bates-numbered AN_000415 addressed above. The Court thus finds that it is properly withheld pursuant to the attorney-client privilege for the same reasons.
AN_002454	07/25/2017	attorney-client privilege	This claim note contains the same communications as the claim note Bates-numbered AN_000416 addressed above. The Court thus finds that it is properly withheld pursuant to the attorney-client privilege for the same reasons.
AN_002354-AN_002355 ¹⁹	09/17/2018	attorney-client privilege; Non Responsive; Irrelevant; work product doctrine.	For the reasons explained in the Order, the Court finds that Defendant has not demonstrated that it reasonably anticipated litigation prior to October 4, 2019 at the earliest and thus this major loss report is not entitled to work product protection. The Court takes no position regarding the propriety of Defendant's redaction of "reserves" information in this major loss report because Plaintiff has not raised a challenge specific to those redactions. The Court finds that the remaining redactions are not protected by the attorney-client privilege and thus should be PRODUCED . Each of the remaining redacted statements reflect information provided by defense counsel for which the Court has held Defendant has not sustained its burden for establishing the protections of the attorney client-privilege. [See discussion of AN_000399 (8/24/2018 claim note) above] For the same

¹⁹ The Court notes that "Reserve History" information also was redacted on the first page of the serious loss report, which is Bates-numbered AN_002352.

Bates No./ Doc. ID*	Document Date	Basis Claimed for Withholding	Court's Ruling
			reasons, the Court finds that Defendant has failed to sustain its burden of demonstrating that these redacted statements in the major loss report relate to the provision of legal advice rather than Mr. Olivera's involvement in claims adjustment activities.
AN_002358 ²⁰	03/18/2019	attorney-client privilege; Non-Responsive; Irrelevant; work product doctrine.	For the reasons explained in the Order, the Court finds that Defendant has not demonstrated that it reasonably anticipated litigation prior to October 4, 2019 at the earliest and thus this major loss report is not entitled to work product protection. The Court takes no position regarding the propriety of Defendant's redaction of "reserves" information in this major loss report because Plaintiff has not raised a challenge specific to those redactions. The Court finds that the redaction beginning with "recommended" is properly withheld pursuant to the attorney-client privilege but that the remaining redactions are not protected by the attorney-client privilege and thus should be PRODUCED . The redaction beginning with "recommended" reveals specific legal advice that the Court has held is entitled to attorney-client privilege protection and thus the Court finds that this statement in the serious loss report repeating that advice is entitled to protection for the same reasons. [See discussion of AN_000397 (10/22/2018 claim note) above] Each of the remaining redacted statements relates to communications between Mr. Olivera and Plaintiff's counsel. Given that Defendant made Mr. Olivera the primary point of contact for Plaintiff's counsel—a role ordinarily performed by a claims adjuster, the Court finds that Defendant has not sustained its burden of demonstrating that those statements relate to the provision of legal advice and thus they are not entitled to attorney-client privilege protection. <i>Sterling Const. Mgmt., LLC</i> , 2011 WL 3903074, at *15 ("Where an attorney is acting as a conduit for non-confidential information, the client may not invoke attorney-

²⁰ The Court notes that "Reserve History" information also was redacted on the first page of the serious loss report, which is Bates-numbered AN_002356.

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			client privilege with regard to that communication.”).
AN_002363 ²¹	11/13/2019 ²²	attorney-client privilege; Non-Responsive; Irrelevant; work product doctrine.	Although this serious loss report was prepared at a time when Defendant may have reasonably anticipated litigation, Defendant has not shown that such anticipated litigation was “the driving force behind the preparation” of the communication, nor is that apparent from the face of the document. <i>Colorado Mills</i> , 2013 WL 1340649, at *6. Instead, it is clear from the record in this case that Mr. Millar created the serious loss reports as part of his ordinary practice of adjusting a claim and thus the serious loss reports are prepared regardless of whether litigation is anticipated. Accordingly, the document is not entitled to protection under the work product doctrine. The Court takes no position regarding the propriety of Defendant’s redaction of “reserves” information in this major loss report because Plaintiff has not raised a challenge specific to those redactions. The Court finds that the only other redaction in the serious loss report is properly withheld pursuant to the attorney-client privilege. That redaction—the only redaction on AN_002363—reveals specific legal advice provided to Defendant by outside counsel and thus is properly withheld pursuant to the attorney-client privilege. [See AN_000196-197]
Memorandum from Robert Christiansen of Investigative Resources, Inc. to Mr.	09/15/2018	attorney-client privilege; Work-Product Doctrine	For the reasons explained in the Order, the Court finds that Defendant has not demonstrated that it reasonably anticipated litigation prior to October 4, 2019 at the earliest and thus this memorandum is not entitled to work product protection. Although Defendant included “Attorney-Client Privilege” as a basis for withholding this memorandum, the “document description” states only that it is a “[m]emorandum containing attorney work product.” Although improperly not disclosed in Defendant’s privilege log, ²³

²¹ The Court notes that “reserves” information also was redacted from two other pages of the serious loss report, which are Bates-numbered AN_002360 and AN_002362.

²² Defendant’s privilege log indicated that the document was dated “11/13/2018.” That appears to be a typographical error as the document itself is dated 11/13/2019 and based upon the surrounding context found in the document, that date appears to be accurate.

²³ Pursuant to Fed. R. Civ. P. 26(b)(5)(A)(ii), a party withholding information on the basis of privilege must “describe the nature of the

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Olivera, with attachments (9 pages)			the document is a memorandum from Robert Christiansen of Investigative Resources, Inc. to Mr. Olivera. It thus is not clear from the face of the document that it is subject to the attorney-client privilege and Defendant has offered no specific argument in support of a finding that this memorandum is privileged. Notably, Defendant submitted a declaration from Mr. Olivera in support of its claims of privilege and work product, but that declaration is silent as to the instant memorandum. Defendant thus has not established that Mr. Olivera obtained the memorandum to assist him in providing legal advice; nor does that seem likely in light of the subject-matter of the memorandum. Indeed, the Court found above that Defendant failed to provide sufficient evidence to demonstrate that the decision to obtain this type of report was made for the purpose of obtaining legal advice rather than as part of Mr. Olivera's involvement in claims adjustment activities. [See discussion of AN_000399 (8/24/2018 claim note) above] For the same reasons, the Court finds that Defendant has failed to sustain its burden of demonstrating that this memorandum was obtained to aid in the provision of legal advice rather than as part of Mr. Olivera's involvement in claims adjustment activities. The Court thus concludes that the memorandum is not attorney-client privileged.

documents . . . in a manner that . . . will enable other parties to assess the claim.” “Generally, a privilege log is adequate if it identifies with particularity the documents withheld, including their date of creation, author, title or caption, addressee and each recipient, and general nature or purpose for creation.” *Zander v. Craig Hosp.*, 743 F. Supp. 2d 1225, 1232 (D. Colo. 2010). Defendant’s conclusory statement that the memorandum “contain[s]” attorney work product is woefully inadequate. Further, although Defendant’s privilege log includes a column to identify “To/From” information and the memo itself expressly states this information at the top, Defendant failed to include that information in its privilege log. Because the Court finds that Defendant has failed to satisfy its burden of establishing that the document is privileged, the Court does not reach the issue of whether Defendant has waived the right to assert privilege based upon these clear deficiencies in the privilege log. See *Atteberry v. Longmont United Hosp.*, 221 F.R.D. 644, 649 (D. Colo. 2004) (“[P]roduction of an inadequate privilege log may be deemed a waiver of the privilege asserted.”), *aff’d*, 2005 WL 8169547 (D. Colo. Aug. 18, 2005).

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Letter from Mr. Olivera to Richard Myers of JAMS, with attachments (40 pages)	10/17/2018	attorney-client privilege; Work-Product Doctrine Confidential Under Rule 408	For the reasons explained in the Order, the Court finds that Defendant has not demonstrated that it reasonably anticipated litigation prior to October 4, 2019 at the earliest and thus the letter and its exhibits are not entitled to work product protection. The Court takes no position regarding the propriety of Defendant withholding the letter and exhibits based upon Federal Rule of Evidence 408, because Plaintiff has not raised a challenge specific to that withholding. Because Plaintiff has not challenged Defendant's decision to withhold these documents on the basis of Rule 408, the Court finds it unnecessary to consider whether the documents also are protected from production pursuant to the attorney-client privilege and the parties have not addressed that issue.