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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

NATIONAL UNION FIRE INSURANCE )  
COMPANY OF PITTSBURGH, PA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
SHARP PLUMBING, )  
 )  
Defendants. )

Case No. 2:09-cv-00783-GMN-GWF  
**ORDER**  
**Motion to Compel - #146**

This matter is before the Court on Third-Party Defendant National Fire & Marine Ins. Co.’s Motion to Compel (#146), filed on May 29, 2012; Third Party Plaintiff Sharp Plumbing, Inc.’s Opposition to Motion to Compel (#147), filed on May 29, 2012; and Third-Party Defendant National Fire & Marine Ins. Co.’s Reply in Support of its Motion to Compel (#149), filed on June 1, 2012. The Court conducted a hearing in this matter on June 21, 2012.

**BACKGROUND**

This case involves a dispute whether a general liability insurance policy issued by National Fire & Marine Ins. Co. (“National Fire”) to Sharp Plumbing, Inc. (“Sharp”) provided coverage for Sharp’s liability resulting from the installation of defective plumbing fittings in several hundred homes in Southern Nevada. National Fire retained counsel to defend Sharp in an underlying action brought on behalf of the homeowners in whose residences the defective fittings were installed. National Fire paid for Sharp’s defense through trial and appeal, subject to a reservation of rights that the insurance policy did not provide coverage for the claims. The trial resulted in a \$8,749,400.00 verdict against Sharp. Following the trial, National Fire settled the case for \$1,269,182.80.

1 Sharp alleges that National Fire breached the insurance contract and acted in bad faith by  
2 not settling the underlying lawsuit prior to trial. As a result, Sharp alleges that it was compelled to  
3 participate in a lengthy trial which resulted in a verdict that decimated Sharp's business. *Amended*  
4 *Third Party Complaint (#56)*, ¶74. Sharp alleges that it was forced to terminate nearly all of its  
5 employees because local builders were unwilling to do business with Sharp as a result of the verdict  
6 and the anticipated judgment that Sharp was unable to satisfy. ¶75. Sharp also alleges that  
7 National Fire's conduct prevented it from obtaining a contract to perform the plumbing refit work  
8 on residences that were the subject of the underlying lawsuit. ¶¶76-77. Sharp further alleges that it  
9 was forced to incur attorney's fees and costs and was forced into bankruptcy because of National  
10 Fire's breaches of duty. ¶94. Sharp seeks the recovery of compensatory and punitive damages for  
11 breach of contract, tortious breach of the covenant of good faith and fair dealing, and for violations  
12 of the Nevada Unfair Claims Practices Act. National Fire has asserted a counterclaim to recover  
13 the \$1,269,182.80 it paid to settle the underlying lawsuit on Sharp's behalf on the grounds that the  
14 jury verdict against Sharp was for damages not covered by the insurance policy.

#### 15 DISCUSSION

16 National Fire served interrogatories and requests for production of documents on Sharp  
17 relating to Sharp's damages claims and allegations. Interrogatory No. 1 asked Sharp to:

18 Describe in detail all damages that YOU seek from NATIONAL  
19 FIRE in this action, including but not limited to the computation of  
20 damages that was required to be provided pursuant to Rule  
21 26(a)(1)(a)(iii).

22 The first paragraph of Sharp's answer to this interrogatory stated:

23 As detailed in Sharp Plumbing's initial disclosures, its damages are  
24 the subject of expert opinions which, under the existing schedule, are  
25 not due until February 17, 2012. Notwithstanding the foregoing,  
26 however, Sharp Plumbing expressly notes that its damages include,  
27 without limitation, the following sums:

28 *Motion to Compel (#146), Exhibit D.*

The answer then stated that from June 2, 2006 when National Fire issued its reservation of  
rights letter, Sharp Plumbing's owner, Henry Sharp, made himself available and rendered  
assistance to National Fire and its retained counsel. Sharp stated that it was therefore entitled to

1 “Supplemental Payments” coverage under the insurance policy which provides that the insurer will  
2 pay all reasonable expenses incurred by the insured at the insurer’s request in the investigation or  
3 defense of the claim or suit, “*including actual loss of earnings up to \$250 a day because of time off*  
4 *work.*” (Emphasis added by the Court). Pursuant to this provision, Sharp seeks \$298,500.00.  
5 Sharp calculated the \$298,500.00 by adding the total number of days from June 3, 2006 through  
6 February 28, 2011 that Mr. Sharp or other Sharp employees allegedly devoted time to the  
7 underlying claim or lawsuit and then multiplying those days by \$250. Sharp also seeks  
8 \$149,640.00 in attorney’s fees for the services of independent counsel in the underlying action.  
9 Sharp’s counsel in this action also served as Sharp’s independent counsel in the underlying action.  
10 *Id.*

11 The first paragraph of Sharp’s answer to Interrogatory No. 1 indicates that its claims for  
12 actual loss of earnings and attorney’s fees under the Supplemental Payments coverage is not  
13 necessarily all of the damages it seeks in this action. Sharp’s answer also does not state whether it  
14 suffered actual loss of earnings on each day for which \$250 is claimed and, if so, how that actual  
15 loss of earnings was determined.

16 Answers to interrogatories must be complete, explicit and responsive. If a party cannot  
17 furnish details, it should say so under oath, say why and set forth the efforts it used to obtain the  
18 information. A party cannot plead ignorance to information that is from sources within its control.  
19 Information in the hands of a corporate party’s agents and others within its control must be  
20 supplied. *Milner v. National School of Health Technology*, 73 F.R.D. 628, 632-33 (E.D.Pa. 1977),  
21 citing 4A Moore’s Federal Practice P 33.26; *Cache La Poudre Feeds, LLC v. Land O’Lakes, Inc.*,  
22 244 F.R.D. 614, 631 (D.Colo. 2007). Some, or perhaps all, of the information on which Sharp  
23 relies to support its claim for actual loss of earnings is contained in a Declaration of Henry Sharp,  
24 dated April 12, 2012. Sharp, however, is required to set forth such information in its answer to  
25 Interrogatory No. 1 and may not simply refer National Fire to Mr. Sharp’s declaration or to  
26 information contained in pleadings or other discovery. *See Union Pacific R. Co. v. Larkin*, 229  
27 F.R.D. 240, 243 (D.N.M. 2005) and *Mulero-Abreau v. Puerto Rico Police Dept.*, 675 F.3d 88, 93  
28 (1<sup>st</sup> Cir. 2012). The Court therefore orders Sharp to supplement its answer to Interrogatory No. 1

1 and provide a full and complete description of its alleged damages.

2 Interrogatory No. 2 asked Sharp to “[d]escribe in detail all facts supporting YOUR claim to  
3 entitlement of compensatory damages from NATIONAL FIRE in this ACTION.” Sharp answered  
4 this interrogatory by referring to its response to Interrogatory No. 1. Because Interrogatory No. 2  
5 arguably asks the same question, or a subset of the same question, as Interrogatory No. 1, Sharp’s  
6 response will be sufficient so long as its answer to Interrogatory No. 1 provides a detailed  
7 description of its compensatory damages claim.

8 Interrogatory No. 3 asks Sharp to describe in detail all facts supporting its claim for punitive  
9 damages against National Fire. Punitive damages may be awarded against an insurer who acts in  
10 bad faith regarding its obligations where the misconduct rises to the level of oppression, fraud or  
11 malice. *See* Nevada Revised Statute (NRS) 42.005. Although the focus of punitive damages is on  
12 the defendant’s conduct, the extent of injury or harm caused by that conduct is also a relevant factor  
13 in the award of punitive damages. *See Albert H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249, 1267,  
14 969 P.2d 949, 962 (1998) (“In determining whether a punitive damages award is excessive . . . we  
15 will consider a variety of factors including . . . vulnerability and injury suffered by the offended  
16 party . . .”).

17 Sharp’s answer to Interrogatory No. 3 lists in a general manner National Fire’s alleged  
18 wrongful acts that support its claim for punitive damages. Although the Amended Third Party  
19 Complaint alleges that National Fire’s bad faith refusal to settle prior to trial caused the destruction  
20 of Sharp’s business and forced it into bankruptcy, these alleged injuries are not mentioned in  
21 Sharp’s answer to Interrogatory No. 3. The Court therefore orders Sharp to supplement its answer  
22 to Interrogatory No. 3 and provide a full and complete description of National Fire’s alleged  
23 conduct that supports an award of punitive damages, *including* a description of the injury or harm  
24 that Sharp allegedly suffered as a result of such conduct.

25 Interrogatory No. 4 asks Sharp to identify every person who has knowledge of its claims for  
26 damages against National Fire. According to National Fire, all of the individuals listed in Sharp’s  
27 answer to the interrogatory are affiliated with National Fire. Obviously, Henry Sharp or other  
28 persons employed by or affiliated with Sharp Plumbing have knowledge of Sharp’s damages

1 claims. Sharp is therefore ordered to supplement its answer to Interrogatory No. 4 and identify all  
2 individuals, reasonably known to it or its counsel, who have knowledge of its damage claims.

3 The main thrust of National Fire's motion is to compel Sharp to produce documents  
4 relevant to its claims for compensatory or punitive damages. Request Nos. 1-31 seek documents  
5 relating to Sharp's alleged damages in a variety of ways. *See Motion to Compel (#146), pgs. 7-19.*  
6 Requests Nos. 7-13 request documents relating to Sharp's specific allegations that National Fire's  
7 conduct damaged its business, forced it to terminate nearly all of its employees, and deprived it of  
8 the opportunity to perform plumbing re-fit work on the homes that were the subject of the  
9 underlying action. Sharp objected to these requests as irrelevant, immaterial and not reasonably  
10 calculated to lead to the discovery of admissible evidence. In this regard, Sharp stated that it is not  
11 advancing claims for lost profits and business impairment. It appears, however, that Sharp has not  
12 waived the option of introducing evidence at trial regarding these allegations in support of its claim  
13 for punitive damages. Accordingly, the Court overrules Sharp's relevancy objections and orders  
14 that it respond to the requests.

15 Documents relating to Sharp's past and present financial or business condition are relevant  
16 to its claim for nearly \$300,000 in alleged actual loss of earnings pursuant the Supplemental  
17 Payments coverage of the policy. Such information is also relevant to Sharp's claims for general  
18 compensatory damages and punitive damages. Because National Fire's requests for production of  
19 documents are duplicative, the Court orders Sharp to produce financial or business documents  
20 responsive to these requests, as a whole. Sharp should, however, identify documents by bates  
21 number ranges or other means of identification that are responsive to particular requests, such as  
22 requests for documents relating to Sharp's bankruptcy or documents relating to business or  
23 financial harm that is specifically alleged in the amended third party complaint.

24 Sharp is also ordered to produce complete and unredacted records relating to its claim for  
25 attorney's fees and costs pursuant to the Supplemental Payments coverage of the policy, or as  
26 damages resulting from National Fire's alleged bad faith. Such documents include, but are not  
27 necessarily limited to, attorney retainer agreements, billing invoices, correspondence relating to  
28 Sharp's attorney's fees and other legal expenses, and payment records such as cancelled checks or

1 bank statements. The attorney fee billing records shall be produced subject to a protective order  
2 that neither party shall provide the confidential information contained in such records to third  
3 persons or entities who are not parties or representatives or agents of the parties, or witnesses who  
4 may be required to review the records for purposes of testimony at deposition or trial. This order  
5 does not, however, require Sharp to produce confidential attorney-client communications between  
6 Sharp and its counsel relating to Sharp's claims against National Fire in this action. Such records  
7 or entries may be withheld or redacted from the produced documents. Sharp shall provide National  
8 Fire with a privilege log regarding all withheld documents or redactions based on a claim of  
9 privilege.

10 **CONCLUSION**

11 **IT IS HEREBY ORDERED** that Third-Party Defendant National Fire & Marine Ins. Co.'s  
12 Motion to Compel (#146) is **granted** in accordance with the foregoing provisions of this order.

13 **IT IS FURTHER ORDERED** that Third Party Plaintiff Sharp Plumbing, Inc. shall provide  
14 its supplemental discovery responses on or before **July 6, 2012**.

15 DATED this 27th day of June, 2012.

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18 GEORGE FOLEY, JR.  
19 United States Magistrate Judge  
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