

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

SHANE TRACEY,	)	Case No.: 2:09-CV-1257-GMN-PAL
	)	
Plaintiff,	)	<b>ORDER</b>
vs.	)	
	)	
AMERICAN FAMILY MUTUAL	)	
INSURANCE COMPANY; DOES I	)	
through XX; and ROE CORPORATIONS	)	
I through XX,	)	
	)	
Defendant.	)	
	)	

**INTRODUCTION**

Before the Court is Defendant American Family Mutual Insurance Co.’s Motion In Limine to exclude evidence or testimony by any witness to any claims of insurance bad faith or breach of the Nevada Unfair Claims Handling and/or to prohibit said references to evidence in Phase I of a Bifurcated Trial (ECF No. 56) and Motion In Limine to Strike Documents and Witnesses Not Properly Disclosed by Plaintiff and/or in the alternative, Strike Evidence and Witnesses irrelevant to the Claims, herein (ECF No. 57). Plaintiff timely filed responses to both motions (ECF Nos. 60 & 59 respectively) and Defendant filed replies (ECF No. 61 & 62 respectively). In addition Defendant requests an Oral Argument for each motion filed.

Based on the following reasons, this Court DENIES Defendant’s Motion In Limine to exclude evidence or testimony by any witness to any claims of insurance bad faith or breach of the Nevada Unfair Claims Handling (ECF No. 56) and GRANTS Defendant’s Motion In Limine to Strike Documents and Witnesses Not Properly Disclosed by Plaintiff (ECF No. 57).

**FACTS AND PROCEDURAL HISTORY**

This is a breach of contract claim filed regarding Defendant’s failure and refusal to pay a

1 policy limit under Plaintiff's Uninsured/Underinsured Motorist coverage ("UIM"). Plaintiff,  
2 Shane Tracey, was involved in a motor vehicle accident on September 16, 2007. (Complaint ¶ 8  
3 pg. 3, ECF No. 65). On that date, Plaintiff was traveling northbound on Decatur Blvd., in Las  
4 Vegas, Nevada, when another driver, Lisa Robinson, attempted to make a U-turn and struck  
5 Plaintiff's vehicle. (*Id.*). As a result of the impact, Plaintiff's vehicle rolled several times and  
6 came to rest upside down on the roadway. (*Id.*).

7 The tortfeasor, Lisa Robinson, had a policy of insurance which provided only \$15,000 in  
8 liability coverage per person. (*Id.* at ¶ 10 pg. 4). This amount was paid to Plaintiff by Ms.  
9 Robinson's insurance carrier. (*Id.*). Plaintiff also had a policy of insurance through Defendant,  
10 American Family Mutual Insurance Company ("American Family"), which provided  
11 Uninsured/Underinsured Motorist coverage in the amount of \$50,000 per person and Medical  
12 Payments Coverage, in the amount of \$5,000. (*Id.* at ¶ 11 pg. 4, Plaintiff's Response pg.2, ECF  
13 No. 58). American Family has paid the \$5,000 in Medical Payments Coverage to Plaintiff's  
14 medical care providers. (Plaintiff's Response pg.2, ECF No. 58). Plaintiff provided American  
15 Family with documentation of medical specials exceeding \$57,000 and documentation of a need  
16 for spinal surgery which will cost in excess of \$100,000. (Complaint ¶ 35 pg. 9, ECF No. 65).

17 Defendant has failed and refused to pay the UIM Coverage to Plaintiff and disputes the  
18 value of payment owed to Plaintiff under the policy. (Mtn. for SJ pg. 3 ECF No. 55). Defendant  
19 claims that the mid-back treatment Plaintiff received after September 2006 was unrelated to the  
20 accident underlying this suit and that the Plaintiff was receiving treatment for similar symptoms  
21 one month before this loss. (*Id.* pg. 2-3). Therefore, Defendant offered Plaintiff \$3,000 to settle  
22 his UIM claim based on the un-relatedness of his additional treatment. (Complaint ¶ 34 pg. 9,  
23 ECF No. 65).

24 Plaintiff brought this suit on May 19, 2009 in the Eighth Judicial District Court for the  
25 State of Nevada. (Complaint, ECF No. 65). It was properly removed to this Court on July 13,

1 2009. (ECF No. 1). Plaintiff alleges breach of contract, common law bad faith, and statutory bad  
2 faith on the part of Defendant for failure to pay the policy limit. (Complaint, ECF No. 65). The  
3 parties submitted a Rule 26(f) Case Conference Report and Discovery Plan. (ECF No. 18).  
4 Magistrate Judge Leen then ordered a discovery deadline of February 1, 2010, and an initial  
5 expert disclosure deadline of December 3, 2009. (ECF No. 20). A Stipulation and Order to  
6 Amend the Discovery Plan and Scheduling Order, seeking to extend the discovery deadline was  
7 filed on January 12, 2010, and the Stipulation was denied by the Court, but the Court did extend  
8 the discovery deadline to March 2, 2010. (ECF No. 23 & 24). Then, on January 20, 2010, the  
9 Defendant filed a Motion to Extend the Expert Disclosure Deadline seeking additional time to  
10 identify an expert witness. Over Plaintiff's objection the Court issued an Order on February 3,  
11 2010 allowing the Defendant to identify a single medical expert and enable the expert to conduct  
12 an independent medical examination of the Plaintiff. (Order, ECF No. 29). It was agreed that the  
13 parties were then to attend a status conference in thirty days to allow the Court to order deadlines  
14 so as to enable Plaintiff to designate a rebuttal expert and depose the Defendant's expert. *Id.*  
15 During this time Defendant objected to some of the written discovery requests submitted by  
16 Plaintiff and Plaintiff filed a Motion to Compel. (ECF No. 35). The Motion to Compel and other  
17 discovery items were the subject of the March 23, 2010 hearing. The following are the minutes  
18 from this hearing:

19           MINUTES OF PROCEEDINGS - Motion Hearing held on  
20           3/23/2010 before Magistrate Judge Peggy A. Leen. Crtrm  
21           Administrator: *Jeff Miller*; Pla Counsel: *Jerry A. Wiese, Esq.*; Def  
22           Counsel: *Matthew John Douglas, Esq., Thomas E. Winner, Esq.*;  
23           Court Reporter/FTR #: *11:02:28 - 11:23:32*; Time of Hearing:  
24           *11:00am*; Courtroom: *3B*; The Court hears representations from  
25           counsel as to the remaining discovery issues on this case.  
          Plaintiff's counsel represents that the Plaintiff's I.M.E. has been  
          completed, and that they still have some depositions they want to  
          complete. Plaintiff's counsel further represents that Defense  
          counsel has supplemented some of their discovery production that  
          Plaintiff had requested in his Motion to Compel 35. Plaintiff

1 wishes to withdraw the Motion to Compel 35, but still seeks some  
2 additional answers/supplementation. The Court next hears  
3 representations from Defense counsel. After hearing counsels'  
4 arguments, **IT IS ORDERED:** Motion to Compel 35 is  
5 GRANTED/DENIED as follows: DENIED with respect to answers  
6 to Interrogatory #9 and Request for Production #7, and GRANTED  
7 with respect to the requirement that Defense counsel supplement  
8 their response to Request for Production #2 with respect to the  
9 actual named defendant, and not all parent subsidiaries, to provide  
10 a specimine copies of media advertising concerning it's U.I.M  
11 products and automobiles containing U.I.M. products from January  
12 1, 2007 to the present, and answer to Interrogatory #12.  
13 Supplementation shall be completed within 30 days from today's  
14 date and should be done as timely as possible, **IT IS FURTHER**  
15 **ORDERED:** Discovery deadlines will be extended as follows:  
16 Court will grant an additional 45 days to finish experts and rebuttal  
17 expert discovery, 30 days thereafter for dispositive motions, and 30  
18 days thereafter for the joint pretrial order to be filed (or 30 days  
19 after all pending dispositive motions are ruled on as directed in the  
20 Local Rules). SEPARATE WRITTEN ORDER WILL ISSUE.

21 The written order that followed concluded with the following deadlines:

22 The following discovery plan and scheduling order deadline shall  
23 apply:

24 a. Last date to complete discovery: **May 7, 2010**

25 b. Last date to file dispositive motions: **June 7, 2010**

c. Last date to file the joint pretrial order: **July 7, 2010.** If  
dispositive motions are timely filed, the obligation to file a joint  
pretrial

order is suspended until 30 days after decision of  
dispositive motions.

(Order, ECF No. 41)

In preparation of trial, Defendant filed the instant motion in limine to exclude evidence or  
testimony by any witness to any claims of insurance bad faith or breach of the Nevada Unfair  
Claims Handling and/or to prohibit said references to evidence in Phase I of a Bifurcated Trial.

(ECF No. 56) Defendant also filed the instant motion to strike and exclude documents and  
witnesses not properly disclosed and/or in the alternative strike evidence & witnesses irrelevant  
to the claims herein. (ECF No. 57)

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1 **DISCUSSION**

2 **A. Legal Standard**

3 A motion in limine is a procedural device to obtain an early and preliminary ruling on the  
4 admissibility of evidence. Black’s Law Dictionary defines it as “[a] pretrial request that certain  
5 inadmissible evidence not be referred to or offered at trial. Typically, a party makes this motion  
6 when it believes that mere mention of the evidence during trial would be highly prejudicial and  
7 could not be remedied by an instruction to disregard.” Black’s Law Dictionary 1109 (9th Ed.  
8 2009). Although the Federal Rules of Evidence do not explicitly authorize a motion in limine,  
9 the Supreme Court has held that trial judges are authorized to rule on motions in limine pursuant  
10 to their authority to manage trials. *Luce v. United States*, 469 U.S. 38, 41 n.4 (1984).

11 It is settled law that in limine rulings are provisional. Such “rulings are not binding on  
12 the trial judge [who] may always change his mind during the course of a trial.” *Ohler v. United*  
13 *States*, 529 U.S. 753, 758 n.3 (2000); *accord Luce*, 469 U.S. at 41 (noting that in limine rulings  
14 are always subject to change, especially if the evidence unfolds in an unanticipated manner).  
15 “Denial of a motion in limine does not necessarily mean that all evidence contemplated by the  
16 motion will be admitted to trial. Denial merely means that without the context of trial, the court  
17 is unable to determine whether the evidence in question should be excluded.” *Ind. Ins. Co.*, 326  
18 F. Supp. 2d at 846.

19 Judges have broad discretion when ruling on motions in limine. *See Jenkins v. Chrysler*  
20 *Motors Corp.*, 316 F.3d 663, 664 (7th Cir. 2002). However, a motion in limine should not be  
21 used to resolve factual disputes or weigh evidence. *See C&E Servs., Inc., v. Ashland, Inc.*, 539 F.  
22 Supp. 2d 316, 323 (D.D.C. 2008). To exclude evidence on a motion in limine “the evidence  
23 must be inadmissible on all potential grounds.” *E.g., Ind. Ins. Co. v. Gen. Elec. Co.*, 326 F. Supp.  
24 2d 844, 846 (N.D. Ohio 2004). “Unless evidence meets this high standard, evidentiary rulings  
25 should be deferred until trial so that questions of foundation, relevancy and potential prejudice

1 may be resolved in proper context.” *Hawthorne Partners v. AT&T Tech., Inc.*, 831 F. Supp.  
2 1398, 1400 (N.D. Ill. 1993). This is because although rulings on motions in limine may save  
3 “time, costs, effort and preparation, a court is almost always better situated during the actual trial  
4 to assess the value and utility of evidence.” *Wilkins v. Kmart Corp.*, 487 F. Supp. 2d 1216, 1219  
5 (D. Kan. 2007).

6 Federal Rule of Civil Procedure 26(a)(1)(A) requires the parties to identify potential fact  
7 witnesses and documents in support of his/her allegations. Moreover, Fed. R. Civ. P. 26  
8 (e)(1)(A) and (B) requires a party to supplement his/her disclosures in a timely manner if the  
9 party learns that in some material respect the disclosure or response is incomplete or incorrect,  
10 and if the additional or corrective information has not otherwise been made known to the other  
11 parties during the discovery process or in writing or as ordered by the Court.

12 Federal Rule of Civil Procedure 37 of the Federal Rules of Civil Procedure permits a  
13 court to impose sanctions against a party or the party’s attorney for discovery violations.  
14 Sanctions may be imposed if a party “fails to provide information or to identify a witness as  
15 required by Rule 26(a) or (e),” Fed. R. Civ. P. 37(c)(1). The culpable party “is not allowed to  
16 use” the undisclosed information or witness as evidence, unless the failure was substantially  
17 justified or harmless. Fed. R. Civ. P. 37(c)(1). A party that without substantial justification fails  
18 to disclose information required by Rule 26(a) or 26(e)(1), or to amend a prior response to  
19 discovery as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as  
20 evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed.  
21 *Wong v. Regents of University of California*, 410 F.3d 1052, 1062 (9th Cir. 2005).

22 The imposition of or refusal to impose discovery sanctions is reviewed for an abuse of  
23 discretion. *See Childress v. Darby Lumber, Inc.*, 357 F.3d 1000, 1010 (9th Cir. 2004). Findings  
24 of fact underlying discovery sanctions are reviewed for clear error. *Payne v. Exxon Corp.*, 121  
25 F.3d 503, 507 (9th Cir. 1997). If the district court fails to make factual findings, the decision

1 whether to impose sanctions is reviewed de novo. *Adriana Int'l Corp. v. Thoeren*, 913 F.2d  
2 1406, 1408 (9th Cir. 1990).

3 **B. Requirement of Expert Witness**

4 Defendant petitions this Court to strike and exclude testimony by any witness to any  
5 claims of insurance 'bad faith' or breach of the Nevada Fair Claims Practices Act or improper  
6 claims handling at trial or, alternatively, to prohibit said testimony and/or evidence during Phase  
7 I of a bifurcated trial because Plaintiff failed to disclose an expert witness pursuant to Fed. R.  
8 Civ. Pr. 26(a). Defendant claims that a party *must* produce an expert witness in order to prove an  
9 insurance 'bad faith' claim because the issues regarding insurance coverage issues are beyond  
10 the ken of an average juror. In support of this argument, Defendant quotes *Cooper v. Travelers*  
11 *Indem. Co.*:

12 In order to prevail on the bad faith claim, Cooper was required to  
13 establish that Travelers' reasons for withholding coverage under  
14 the policy were either unreasonable or without proper cause. Bad  
15 faith implies unfair dealing rather than mistaken judgment. Thus,  
16 [an insurer] would not have acted in bad faith if there existed a  
17 genuine dispute over a factual or legal issue, even if the dispute  
18 was ultimately resolved against it. Finally, [the insurer's]  
19 interpretation that the policy did not require coverage would  
20 amount to bad faith only if the interpretation was 'inherently  
21 unreasonable.'

18 113 F. App'x. 198, 200-01 (9th Cir. 2004). Defendant goes on to claim that "the Court held that  
19 parties are entitled to rely on expert opinion to establish whether claims handling was  
20 appropriate." (Motion In Limine pg.7, ECF No. 56). However, Defendant misinterpreted the  
21 cited case. In *Travelers*, the court held that the insurer was entitled to rely on the advice and  
22 opinions of its experts to determine the scope and direction of its investigation. *Id.* at 201. In  
23 other words, an insurer can use the fact that it relied on an expert while handling a claim to prove  
24 that it acted in good faith when it denied the claim. It has nothing to do with an expert testifying  
25 during a trial. Defendant has not provided any other persuasive evidence that an expert is

1 required to establish a bad faith claim.

2           While there is no definitive authority in the Ninth Circuit or the State of Nevada, there is  
3 considerable authority from other jurisdictions to the effect that expert testimony is not generally  
4 required to establish bad faith or other improper handling of claims. *See Thompson v. State*  
5 *Farm Fire and Cas. Co.*, 34 F.3d 932, 41 Fed. R. Evid. Serv. 156, 30 Fed. R. Serv. 3d 62 (10th  
6 Cir. 1994); *State v. Merchants Ins. Co. of New Hampshire*, 109 A.D.2d 935, 486 N.Y.S.2d 412  
7 (3d Dep't 1985); *Groce v. Fidelity General Ins. Co.*, 252 Or. 296, 448 P.2d 554 (1968); *Weiss v.*  
8 *United Fire and Cas. Co.*, 197 Wis. 2d 365, 541 N.W.2d 753 (1995); *Bergman v. United*  
9 *Services Auto. Ass'n*, 1999 PA Super 300, 742 A.2d 1101 (Pa. Super. Ct. 1999) (Expert  
10 testimony is not required as a per se rule in bad faith actions against insurers.) When an insurer's  
11 alleged breach of its duty of good faith and fair dealing toward its insured involves facts and  
12 circumstances within the common knowledge or ordinary experience of the average juror, the  
13 insured need not produce expert testimony to establish a bad faith claim. *Weiss*, 197 Wis. 2d at  
14 365, 541 N.W.2d at 753. Only if the court finds that an alleged breach involves unusually  
15 complex or esoteric matters beyond ken of the average juror, should the court require the insured  
16 to produce expert testimony to establish prima facie case for bad faith. *Id.*

17           Defendant has not argued or provided any evidence that this case involves an unusually  
18 complex or esoteric matter such that an expert should be required. One case even cautioned  
19 against allowing experts to testify:

20           In addition, there is a serious question as to whether this so-called  
21 expert should be permitted to testify. He qualified as a person  
22 experienced in claims handling and adjusting on behalf of insurers,  
23 but this is not a malpractice case in which the insurer's conduct  
24 would be judged by the standards of the insurance industry. Bad  
25 faith is a legal concept of general application which does not  
require that scientific, technical or specialized knowledge be  
presented to assist the trier of fact. The witness' opinion is nothing  
more than subjective speculation unsupported by any scientific or  
specialized knowledge.

1 *Dattilo v. State Farm Ins. Co.* 1997 WL 644076, 5 (E.D.Pa.) (E.D.Pa.,1997). Therefore,  
2 Defendant's motion to exclude evidence or testimony by any witness to any claims of  
3 insurance bad faith or breach of the Nevada Unfair Claims Handling should be DENIED.

4 **C. Bifurcate**

5 Defendant's second petition to in the alternative prohibit said testimony and/or  
6 evidence during Phase I of a bifurcated trial is moot. This Court has denied Defendant's  
7 Motion to bifurcate the trial (ECF No. 55).

8 **D. Motion to Strike**

9 Plaintiff and Defendant are in dispute about the date on which Discovery was  
10 closed. This Court issued a scheduling order which mandated expert disclosures by  
11 December 1, 2009 and an all discovery closure date of February 1, 2010. (ECF No. 20).  
12 Deadlines were extended by Magistrate Judge Leen regarding expert disclosures. (*See*  
13 *discussion supra* pg. 2-4). Plaintiff argues that discovery did not close until May 7, 2010,  
14 a date indicated in Magistrate Judge Leen's Order dated March 25, 2010. (ECF No. 41).  
15 However, Defendant argues that the May 7 deadline was only extended to allow the  
16 parties to complete expert and rebuttal expert discovery as stated in the Minute Order  
17 dated March 23, 2010. (ECF No. 43). Reviewing all the above-referenced orders, *this*  
18 *Court finds that the Discovery deadline was limited to finish expert and rebuttal expert*  
19 *discovery*. The initial Order regarding extending the expert discovery deadline granted  
20 an extension "for the limited purpose of allowing the defendant to serve plaintiff with a  
21 fully compliant expert report and enable the expert to conduct an independent medical  
22 examination of the plaintiff." (Order pg. 7, ECF No. 29) Further it reads that at the status  
23 conference in thirty days the court will hear "any requests for a modest extension of the  
24 discovery plan and scheduling order deadlines to enable plaintiff to designate a rebuttal  
25 expert and depose the defendant's expert." At the hearing held on March 23, 2010, it

1 seems obvious from the minutes that the extension regarding discovery deadlines only  
2 pertained to experts. Based on these three items in the record one can assume that the  
3 written order containing the May 7, 2010 deadline was meant to pertain only to expert  
4 discovery.

5 Plaintiff submitted four supplemental pleadings after March 2, 2010 (Fifth  
6 Supplement on March 26, 2010, Sixth Supplement on April 2, 2010, Seventh Supplement  
7 on April 14, 2010, and an Eighth Supplement on April 22, 2010). Defendant objects to  
8 the inclusion of any of the witnesses, or their testimony, as well as any documents  
9 disclosed in these supplements because the Plaintiff failed to timely disclose pursuant to  
10 court order. Moreover, Defendant moves for exclusion of the witnesses disclosed by  
11 Plaintiff's Fifth Supplement, witness number 38, as well as Documents numbered 66-85  
12 and Plaintiff's Seventh Supplement Documents numbered 98-102. Furthermore,  
13 Defendant argues that it will be substantially prejudiced because the Plaintiff, by failing  
14 to disclose evidence and witnesses that were known to Plaintiff before the discovery cut-  
15 off, Plaintiff has prevented Defendant from deposing or otherwise obtaining information  
16 concerning those potential witnesses' testimony. Plaintiff does not specifically argue that  
17 these supplements were substantially justified or harmless, as the Plaintiff believes that  
18 discovery was open until May 7, 2010 and thus timely.

19 Fed. R. Civ. P. 37(c)(1) "excludes evidence from an untimely disclosed witness  
20 unless 'the parties' failure to disclose the required information is substantially justified or  
21 harmless.'" *Wong*, 410 F.3d at 1062 (quoting *Yeti by Molly, Ltd. v. Deckers Outdoor*  
22 *Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001). The duty to supplement is not an  
23 opportunity to add to information which should have been disclosed initially under Rule  
24 26(a). *See Keener v. USA*, 181 F.R.D. 639 (D. Mont. 1998). Rather, "[s]upplementation  
25 under the Rules means correcting inaccuracies, or filling the interstices of an incomplete

1 report based on information that was not available at the time of the initial disclosure.”  
2 *Id.* at 640; Plaintiff does not specifically argue that the supplemental disclosures are  
3 substantially justified or harmless. However, in support of admitting the disclosures,  
4 Plaintiff argues that such disclosures are within the possession of Defendant, lending to  
5 the idea that they are harmless. Defendant protests that the disclosures are not harmless  
6 as they provide a multitude of potential new witnesses that Defendant cannot depose  
7 prior to trial.

8         Based on the documents listed in additional Supplemental Disclosures it appears  
9 Plaintiff is not trying to correct inaccuracies or fill an incomplete report that was not  
10 available at the time of initial disclosure. Plaintiff’s Fifth Supplement Disclosure added  
11 as a witness the right to call parties listed in all other UM/UIM Bad Faith Litigation  
12 involving American Family and any attorneys involved in the cases as a witness. Then  
13 Plaintiff lists twenty cases involving American Family from which it will produce  
14 documents (66-85). In Plaintiff’s previous disclosures not a single suit that American  
15 Family was a party to was listed as evidence of Bad Faith. Plaintiff’s Seventh  
16 Supplement Disclosure adds more cases in which American Family is a party (98-106).  
17 Plaintiff also added documents of American Family’s Corporate Claim Documents, the  
18 nature of which was not previously listed in Plaintiff’s disclosures (86-96). Plaintiff’s  
19 Sixth Supplement Disclosure added correspondence from Defense counsel to Plaintiff’s  
20 attorney in another case listing all ‘First Party’ cases filed against American Family in  
21 Nevada. Finally Plaintiff’s Eight Supplemental Disclosure adds correspondence between  
22 defense counsel and Plaintiff that were not previously disclosed but each party were privy  
23 to before and during litigation. It is clear that Plaintiff has added all the above documents  
24 and witnesses to bolster its bad faith claim against Defendant. Plaintiff properly pled this  
25 as a claim against Defendant, but then Plaintiff had a duty to abide by the discovery order

1 to admit the evidence Plaintiff needed to prove its bad faith claim.

2 Why then didn't Plaintiff disclose all these documents and witnesses before the  
3 discovery deadline? Plaintiff had filed a Motion to Compel (ECF No. 35) which included  
4 a request for the Defendant to supplement Interrogatory No. 9. Interrogatory No. 9 asks  
5 American Family to identify each case in which it has been sued in the last ten years for  
6 breach of contract and/or bad faith in any state in the United States relating to American  
7 Family's failure to pay UIM policy limits to its insured and related case information.  
8 Defendant objected to the interrogatory as overboard and unduly burdensome on the  
9 ground that the probative value of the information is substantially outweighed by the  
10 danger of unfair prejudice. In Defendant's opposition (ECF No. 40), and in oral  
11 argument, defense counsel represented that Defendant does not maintain a central data  
12 base which tracks the information requested and Defendant would be required to  
13 manually search offices through the United States. At the March 23, 2010 status hearing,  
14 Magistrate Judge Leen found that the interrogatory is overboard in requesting  
15 identification of complaints through the United States for a ten year period. (ECF No.  
16 41). At the above mentioned hearing Plaintiff did not ask for the Court's permission to  
17 supplement its disclosure filing and instead filed the Fifth Supplemental Disclosure  
18 within days of the hearing. Therefore, it looks as though the Plaintiff found the above  
19 cases and documents after this Court refused to enforce their interrogatory. However, if  
20 Plaintiff wanted to submit the above disclosures it should have done so within the  
21 discovery timeline. Plaintiff's Fifth through Eighth Supplemental Disclosures show that  
22 all the documents were available to Plaintiff, or at least within Plaintiff's grasp, before  
23 the end of discovery. As mentioned before, the duty to supplement is not an opportunity  
24 to add to information which should have been disclosed initially under Rule 26(a). Thus,  
25 the Court should grant Defendant's Motion to Strike all witnesses and documents from

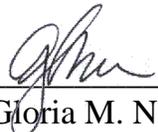
1 Plaintiff's Fifth through Eighth Supplemental Disclosures (except for the supplemental  
2 report of Dr. Dunn which was disclosed properly) for not having been properly disclosed  
3 in accordance with F.R.C.P. 26(a) and (e).

4 **CONCLUSION**

5 IT IS HEREBY ORDERED that this Court DENIES Defendant's motion to  
6 exclude evidence or testimony by any witness to any claims of insurance bad faith or  
7 breach of the Nevada Unfair Claims Handling or, alternatively, to prohibit said testimony  
8 and/or evidence during Phase I of a bifurcated trial.

9 IT IS FURTHER ORDERED that this Court GRANTS Defendant's Motion In  
10 Limine to Strike Documents and Witnesses Not Properly Disclosed by Plaintiff (except  
11 for the supplemental report of Dr. Dunn which was disclosed properly).

12 DATED this 14th day of September, 2010.

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15 Gloria M. Navarro  
16 United States District Judge  
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