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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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TIM PEREZ and NORMA PEREZ,

Plaintiffs,

v.

STATE FARM MUTUAL AUTOMOBILE

INSURANCE COMPANY,

Defendant.

Case No. 2:14-cv-02005-RFB-PAL

ORDER

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Before the Court for consideration is the Motion for Reconsideration (ECF No. 57) and the Motion for Certification (ECF No. 58). The Court denies both motions.

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I. Motion for Reconsideration

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Defendant argues that this Court should reverse its Order (ECF No. 55) denying Defendant summary judgment on the bad faith claim. A district court possesses the inherent authority to revise, modify or rescind an interlocutory order for sufficient cause. City of L.A. v. Santa Monica BayKeeper, 254 F.3d 882, 886 (9th Cir. 2001). The Defendant offers a few arguments for reversal or reconsideration. First, the Defendant argues that it was error for this Court to deny summary judgment because “a genuine dispute regarding the value of a claim cannot as a matter of law support a bad faith claim.” Second, the Defendant argues that this Court erred when it found that the “reasonableness” of State Farm’s conduct was a matter for the jury, since the “Nevada Supreme Court has ruled that the reasonableness of an insurance carrier’s conduct under the ‘genuine dispute doctrine’ is a matter of law appropriate for the court to determine on summary judgment and not an issue of fact for the jury.” The Defendant cites to Allstate Ins. Co. v. Miller, 212 P.3d 318, 330 (Nev. 2009) to support this latter argument.

1 As a preliminary matter, the Court incorporates by reference its previous factual findings
2 in its Order (ECF No. 55).

3 The Court rejects Defendant’s arguments for reconsideration. First, the Court does not find
4 that a “genuine dispute” regarding value served as a basis for its ruling even assuming that Nevada
5 law would incorporate the “genuine dispute” doctrine relied upon by California courts. See
6 Guebara v. Allstate Ins. Co., 237 F.3d 987, 992 (9th Cir. 2001)(“Because the key to a bad faith
7 claim is whether denial of a claim was reasonable, a bad faith claim should be dismissed on
8 summary judgment if the defendant demonstrates that there was a genuine dispute as to coverage”).
9 To the extent it was not clear in its previous ruling, the Court clarifies that State Farm cannot
10 simply rely upon its own valuation of a claim in terms of its offers for the Court to find as a matter
11 of law that its offers to the Plaintiffs were reasonable. There are various disputed facts from which
12 a jury could infer that State Farm acted unreasonably, including but not limited to: its failure to
13 consider pending additional medical expenses and lost wages in its offers to Plaintiffs, its seeming
14 double standard as to its own internal estimations by employee Natalie Ross as to the value of the
15 claims of the Plaintiffs versus the amounts offered, its apparent disregard for known medical and
16 other expenses in terms of its offers to the Plaintiffs, and its staggered offer process in its dealings
17 with the Plaintiffs. Thus, the Court’s determination that the bad faith claim should proceed to trial
18 is not based upon a mere valuation difference between the parties. The Court finds that there are
19 disputed facts as to whether State Farm unreasonably disregarded known information regarding
20 damages and disregarded its own internal estimates when it processed Plaintiffs’ claims and made
21 offers to them.

22 Second, the Court does not find that even under the “genuine dispute” doctrine that a trial
23 court is required to decide as a matter of law at summary judgment whether or not an insurer acted
24 reasonably. The Court rejects the Defendant’s attempt to restructure the summary judgment
25 analysis with its argument that Nevada law requires a trial court to determine as a matter of law
26 whether an insurer had “a reasonable basis” for its evaluation and leaves to the jury the
27 determination of whether the insurer’s “evaluation was reasonable as a matter of law.” First, the
28 Defendant cites no authority – whether in Nevada or any other state that codifies this distinction.

1 The Defendant cites to the Nevada Supreme Court’s decision in Allstate in support of this
2 proposition. 212 P.3d at 330. This citation and reliance is misplaced. The Nevada Supreme
3 Court ruled that a trial court could determine as a matter of law whether or not an insurer was
4 legally obligated to file an interpleader action and not whether an insurer acted reasonably as a
5 matter of law regarding its valuation of a claim. Id. Second, the “genuine dispute” doctrine itself
6 as applied does not require such a legal determination in bad faith cases. As the Ninth Circuit
7 itself explained, the “genuine dispute” doctrine does not enshrine a mandated form of analysis or
8 inquiry but must instead be considered on a “case-by-case basis.” Guebara, 237 F.3d at 994.

9 Most importantly, the Defendant has misstated the impact of the rule on a trial court’s
10 inquiry as to motions for summary judgment. See Wilson v. 21st Century Ins. Co., 42 Cal. 4th
11 713 723-25 (2007)(explaining the operation of the doctrine). The genuine dispute doctrine does
12 not “not relieve an insurer from its obligation to thoroughly and fairly investigate, process and
13 *evaluate* the insured's claim.” Id. at 723 (emphasis added). Moreover, as the California Supreme
14 Court explained, when it reversed summary judgment in favor of an insurer based on the genuine
15 dispute doctrine, the doctrine does not fundamentally alter the traditional analytic framework for
16 summary judgment:

17 “Nor does the rule alter the standards for deciding and reviewing motions for summary
18 judgment. The genuine issue rule in the context of bad faith claims allows a [trial] court to
19 grant summary judgment when it is *undisputed or indisputable that the basis for the*
20 *insurer's denial of benefits was reasonable*—for example, where even under the plaintiff's
21 version of the facts there is a genuine issue as to the insurer's liability under California law.
22 [Citation.] ... On the other hand, an insurer is not entitled to judgment as a matter of law
where, viewing the facts in the light most favorable to the plaintiff, a jury could conclude
that the insurer acted unreasonably.” Id. at 724 (citing Amadeo v. Principal Mut. Life Ins.
Co., 290 F.3d 1152, 1161–1162 (9th Cir. 2002)(emphasis added).

23 The standard identified by the California Supreme Court is not the one offered by the Defendant
24 here that if the trial court determines that there is “a reasonable basis” for the insurer’s conduct
25 then the insurer is entitled to summary judgment as a matter of law. Rather, the California Supreme
26 Court reiterates the standard of the Ninth Circuit in Amadeo that the claim should proceed to the
27 jury if “a jury *could conclude* that the insurer acted unreasonably.” 290 F.3d at 1161 (emphasis
28 added). Moreover, as the Ninth Circuit explained in Amadeo the “The reasonableness of an

1 insurer's claims-handling conduct is ordinarily a question of fact.” Id. The Court has concluded
2 in this case that a jury could reasonably conclude that the Defendant acted unreasonably when it
3 did not offer full coverage to the Plaintiffs on their UIM claims. Summary judgement is thus
4 inappropriate even considering the “genuine dispute” doctrine.

6 **II. Certification to the Ninth Circuit on “Genuine Dispute” Doctrine Under Nevada Law**

7 The Court also declines to certify any question to the Ninth Circuit Court of Appeals
8 pursuant to 28 U.S.C. § 1292. First, as the Court’s analysis above indicates, its decision on the
9 motion for summary judgement as first announced and clarified in this Order does not stem from
10 a rejection of the applicability or incorporation of the “genuine dispute” doctrine into the Nevada
11 law. Even accepting the applicability of the “genuine dispute” doctrine to bad faith claims under
12 Nevada law, the Court would reach the same conclusion as to the Defendant’s motion for summary
13 judgment.

14 Second, to the extent the Court would even consider certifying a question as to the
15 applicability and analytic function of the “genuine dispute” doctrine under Nevada law such
16 certification would properly be made to the Nevada Supreme Court and not the Ninth Circuit Court
17 of Appeals. As recognized by the Ninth Circuit, “[i]t is solely within the province of the state
18 courts to authoritatively construe state legislation.” Cal. Teachers Ass’n v. State Bd. Of Educ., 271
19 F.3d 1141, 1146 (9th Cir. 2001). Thus, the Nevada Supreme Court ultimately construes state
20 statutes and possible doctrines available for claims under state law. Id. This Court finds, however,
21 for the reasons stated, that certification is not necessary to the Nevada Supreme Court or the Ninth
22 Circuit Court of Appeals.

24 **III. Conclusion**


25 For the reasons stated,

26 **IT IS ORDERED** that the Defendant’s Motion for Reconsideration (ECF No. 57) and
27 Motion for Certification (ECF No. 58) are DENIED.

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IT IS FURTHER ORDERED that the parties shall file a Proposed Joint Pretrial Order by **April 20, 2018** so the Court can set this case for trial.

DATED this 31st day of March, 2018.



RICHARD F. BOULWARE, II
United States District Judge