UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

GEICO CASUALTY COMPANY,

Plaintiff

5 v.

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6 PAUL SCHNEIDER; KIMBERLY SCHNEIDER; and CASANDRA7 SCHNEIDER,

Defendants

Case No.: 2:17-cv-00961-APG-VCF

Order Denying Motions for Summary Judgment and Setting Hearing

[ECF Nos. 25, 27]

At the hearing on May 30, 2018, I ordered the parties to submit supplemental affidavits
and briefs on the validity of the anti-stacking provision of GEICO's uninsured/underinsured
motorist (UIM) coverage. After considering the parties' briefs and GEICO's affidavit, I find a
question of fact remains as to whether GEICO has met the statutory requirements.

Under Nevada Revised Statutes § 687B.145(1), an anti-stacking provision will be void if "the named insured has purchased separate coverage on the same risk and has paid a premium calculated for full reimbursement under that coverage." The insurer has the burden to show that a "different [UIM] premium amount was charged for each separate policy (thus showing that each policy covered a separate and unique risk) or that the insured received a discount for the anti-stacking provision." *Schneider v. State Farm Mut. Auto. Ins. Co.*, No. 2:14-cv-01932- JAD-CWH, 2016 WL 4520907, at *2 (D. Nev. Aug. 29, 2016) (citations omitted).

GEICO's submits the affidavit of its Assistant Vice President of Pricing, Product and
Reserving Department, which states that in Nevada, UIM "coverage for a policy is calculated for
a single amount of coverage." ECF No. 43-1 at 3. This calculation starts with a base rate, which
"represents the starting dollar amount . . . used to calculate the premium for one covered

1 exposure[,]... defined as one insured vehicle for one year." *Id.* Several factors are applied to
2 the base rate. Finally, as to the Schneider's policy, "[a]fter accounting for the 6 vehicles on the
3 policy, a 'Multi Vehicle Discount' factor is applied." *Id.* at 5. The affidavit states this discount
4 factor was .6935, but does not explain how it was calculated or whether it is a discount given for
5 the anti-stacking provision or something else, such as the business generated by multiple lines of
6 business. *See id.; see also Tenas v. Progressive Preferred Ins. Co.*, 238 P.3d 860, 2008 WL

6113368, at *3 (Nev. Sept. 16, 2008) (finding a genuine issue of material fact as to the validity of
an anti-stacking provision where the policy declarations page "provides a 'multi-car
discount' . . . [but did] not unambiguously state whether [the insured] had received a discount as
to anti-stacking"). Therefore, a genuine issue of material fact exists as to the validity of the UIM
anti-stacking provision, and granting either party's motions for summary judgment on this issue
would be inappropriate.

GEICO has demanded, and has the right to, a jury trial. *See* ECF No. 1; *Kam-Ko Bio- Pharm Trading Co., Ltd-Australasia v. Mayne Pharma (USA) Inc.*, 560 F.3d 935, 942 (9th Cir.
2009) ("[I]n a declaratory relief action, as in other civil actions, a party has an absolute right to a
jury trial unless a jury has been waived." (emphasis omitted) (quotation omitted)). Given the
limited nature of the facts at issue, the parties should confer about whether they want a jury or a
bench trial. I will hold a hearing to discuss the scheduling and details of a trial on July 18, 2018.

19 IT IS THEREFORE ORDERED that the portion of GEICO's motion for summary
20 judgment (ECF No. 27) addressing the UIM coverage is DENIED.

IT IS FURTHER ORDERED that the Schneiders' motion for summary judgment (ECF
No. 25) is DENIED.

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1	IT IS FURTHER ORDERED that the parties shall appear for a hearing on July 18, 2018
2	at 1:30 p.m. in Las Vegas courtroom 6C to discuss the scheduling and details of a trial.
3	DATED this 9th day of July, 2018.
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5	ANDREW P. GORDON UNITED STATES DISTRICT JUDGE
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