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7  
 8 UNITED STATES DISTRICT COURT  
 9 DISTRICT OF NEVADA

10 ADAM HOWE, Individually,

11 Plaintiff,

12 vs.

13 GEICO ADVANTAGE INSURANCE,  
 DOES I through X, ROE CORPORATIONS  
 14 I through X, inclusive,

15 Defendant(s)

CASE NO.: 2:22-cv-01171

**DEFENDANT GEICO ADVANTAGE  
 INSURANCE'S MOTION TO STAY  
 DISCOVERY ON EXTRA-  
 CONTRACTUAL CLAIMS, COUNTS  
 TWO AND THREE OF PLAINTIFF'S  
 AMENDED COMPLAINT**

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 17 COME NOW, Defendant, GEICO ADVANTAGE INSURANCE, by and through its  
 18 counsel, the law firm of WINNER & BOOZE, for the purpose of presenting the instant Motion  
 19 to stay discovery on the extra-contractual or, "bad faith", claims (counts II & III of Plaintiffs'  
 20 Amended Complaint), in order to avoid unfair prejudice against the defendant and save costs  
 21 until the pending Motion for partial summary judgment in regard to said claims (ECF No. 11) is  
 22 heard.

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1 This motion is made and based upon the pleadings and papers on file herein, the  
2 Memorandum of Points and Authorities attached hereto, exhibits attached hereto, defendant's  
3 motion for partial summary judgment and the exhibits attached thereto (ECF No. 11), and any  
4 oral argument this Court may entertain at the time of hearing.

5 DATED this \_\_2<sup>nd</sup>\_\_ day of November, 2022.

6  
7 WINNER & BOOZE

8  
9 */s/ Matthew J. Douglas*  
10 Matthew J. Douglas, Esq.  
11 Nevada Bar No. 11371  
12 1117 South Rancho Drive  
13 Las Vegas, Nevada 89102  
14 *Attorneys for GEICO Advantage Ins.*

15  
16 **DECLARATION OF MATTHEW J. DOUGLAS IN SUPPORT OF**  
17 **DEFENDANT'S MOTION TO STAY DISCOVERY IN COMPLIANCE**  
18 **WITH LR 26-6(c) & LR IA 1-3(f)**

19 I, Matthew J. Douglas, under penalty of perjury, does hereby declare as follows:

20 1. I am an attorney duly licensed to practice in all courts of the State of Nevada and  
21 Nevada Federal District Courts, at the law firm of WINNER & BOOZE, the attorneys of record  
22 for Defendant, GEICO ADVANTAGE INSURANCE (hereinafter "GEICO"), herein.

23 2. I have personal knowledge of the matters set forth below and could competently  
24 testify thereto if called to do so, and I attest to the contents of this Declaration in support of  
25 Defendant's instant Motion to Stay Discovery.

26 3. Pursuant to LR 26-6(c) and LR IA 1-3(f), I personally spoke with and, conferred  
27 with, Plaintiff's counsel, Justin Wilson, Esq. on November 1, 2022, to discuss the possibility of  
28 resolving the issues raised in this Motion to stay discovery without having to seek the  
intervention of the Court.





1 has not provided a clear standard for evaluating a motion to stay discovery pending resolution  
2 of a potentially dispositive motion, it has affirmed that district courts may grant such a motion  
3 for good cause. *Id.* (affirming district court's decision to stay discovery pending resolution of  
4 motion for summary judgment); See *Wenger v. Monroe*, 282 F.3d 1068, 1077 (9th Cir.  
5 2002) (affirming district court's grant of protective order staying discovery pending resolution  
6 of motion to dismiss). *Federal Rule of Civil Procedure 26* states “[t]he court may, for good  
7 cause, issue an order to protect a party or person from annoyance, embarrassment, oppression,  
8 or undue burden or expense,” including forbidding discovery. *Fed. R. Civ. P. 26(c)(1)*. Indeed,  
9 the U.S. Supreme Court has endorsed that discovery may be stayed pending resolution of a  
10 dispositive motion. See *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1954 (2009) (“Because respondent’s  
11 complaint is deficient under Rule 8, he is not entitled to discovery...”); *Bell Atlantic Corp. v.*  
12 *Twombly*, 550 U.S. 554, 564, n. 8 (2007) (Referring to an “understanding that, before proceeding  
13 to discovery, a complaint must allege facts suggestive of illegal conduct”).

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15  
16 “[T]he Federal Rules of Civil Procedure does not provide for automatic or blanket stays  
17 of discovery when a potentially dispositive motion is pending.” *Mlejnecky v. Olympus Imaging*  
18 *Am. Inc.*, 2011 WL 489743, at 6 (E.D. Cal. 2011). District courts do not favor blanket stays of  
19 discovery because “delaying or prolonging discovery can create unnecessary litigation expenses  
20 and case management problems.” *Salazar v. Honest Tea, Inc.*, 2015 WL 6537813, at 1 (E.D.  
21 Cal. 2015) (citing *Simpson v. Specialty Retail Concepts, Inc.*, 121 F.R.D. 261, 263 (M.D.N.C.  
22 1988)). When considering a motion to stay discovery a district court “inevitably must balance  
23 the harm produced by a delay in discovery against the possibility that the motion will be granted  
24 and entirely eliminate the need for such discovery.” *Simpson*, 121 F.R.D. at 263.

25  
26 District courts in the Ninth Circuit may apply a two-pronged test to evaluate whether a  
27 stay discovery of discovery may issue. *Mlejnecky*, 2011 WL 489743, at 6; *Seven Springs Ltd.*  
28

1 *P'ship v. Fox Capital Mgmt. Corp.*, 2007 WL 1146607, at 1 (E.D. Cal. 2007), *Tradebay LLC v.*  
2 *eBay, Inc.*, 278 F.R.D. 597, 602 (D. Nev. 2011). The first prong of the test requires that the  
3 pending motion “be potentially dispositive of the entire case, or at least dispositive on the issue  
4 at which discovery is aimed.” *Id.* For the second prong, the court can “determine whether the  
5 pending, potentially dispositive motion can be decided absent additional discovery.” *Id.* If either  
6 prong is not met, discovery should proceed. *Id.*

7  
8 Defendant asserts the motion for partial summary judgment would be potentially  
9 dispositive of both Counts ii & III and that the decision on the motion to dismiss can be made  
10 absent further discovery. Defendant incorporates by reference its entire Motion for partial  
11 summary judgment, ECF No. 11, as if it were more fully set forth herein.<sup>1</sup> First, as this court can  
12 plainly see, defendant’s motion is clearly dispositive on the extra-contractual claims as, if it is  
13 granted, would completely dispose of counts II & II under F.R.C.P. 56. Accordingly, defendant  
14 satisfies prong one of the test for a stay of discovery – the motion is clearly dispositive on the  
15 merits for counts II & III.

16  
17 Defendant also clearly satisfies prong two of the test – that no further discovery is needed  
18 to decide the motion and, thus, the motion is ready for ruling without the need of additional  
19 discovery. Indeed, defendant’s motion is based on a **legal issue** – namely whether GEICO’s  
20 reliance on a medical expert report to dispute plaintiff’s valuation of his claim is sufficient to  
21 create a ‘genuine dispute’, precluding ‘bad faith.’

22  
23 In this way, the motion for partial summary judgment is set for ruling on a discrete legal  
24 issue, which is potentially dispositive of both counts II & III, and for which no further discovery  
25 is needed. In the case of *Sekera v Allstate Ins. Co.*, 763 Fed. Appx. 629 (9th Cir. 2019), the Ninth  
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<sup>1</sup> The Court may take a look at the merits of the underlying motions to dismiss in considering whether a limited stay is warranted. *Tradebay LLC v. eBay, Inc.*, 278 F.R.D. 597, 602 (D. Nev. 2011)

1 Circuit held that an insurer’s reliance on the findings of an Independent Medical Exam is  
2 evidence of a ‘genuine dispute’, precluding bad faith. See also *Fraley v Allstate Ins. Co.*, 97 Cal.  
3 Rptr. 2d 386 (Ca. App. 4th 2000) (reliance upon experts for repair estimates considered a  
4 genuine dispute).

5 Defendant asserts its chances for success are good given the above-cited case law. In  
6 short, as a genuine dispute exists, plaintiff cannot maintain either counts II or III of his complaint  
7 either and, as **this issue is dispositive** and, **requires no further discovery**, defendant asks this  
8 court to stay discovery on alleged extra-contractual claims.

9  
10 Conducting discovery would be unfairly prejudicial to GEICO where plaintiffs’ clearly  
11 seek expensive, confidential, and intrusive discovery into claims handling and, issues wholly  
12 unrelated to the plaintiffs’ deficient claims. This type of discovery is not only costly, but also  
13 clearly unrelated, prejudicial, and unnecessary when it is founded upon deficient claims. Thus,  
14 the court should weigh this clear prejudice and costs to defendant along with any claim of  
15 efficiency in deciding to stay. As such, it is respectfully requested that this Court stay all  
16 discovery or, alternatively stay all discovery on the extra-contractual claims.

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III.

CONCLUSION

WHEREFORE, defendant GEICO ADVANTAGE INSURANCE respectfully requests that this Honorable Court GRANT defendant's Motion to Stay the discovery on counts two and three of plaintiffs' complaint, for breach of the implied covenant of good faith and fair dealing, and breach of the Nevada Unfair Claims Practices Act pending the outcome of the dispositive motion regarding same claims, ECF No. 11.

DATED this 2<sup>nd</sup> day of November, 2022.

WINNER & BOOZE

/S/ Matthew J. Douglas  
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Las Vegas, Nevada 89102  
*Attorneys for Defendant GEICO*

**ORDER**

IT IS ORDERED that ECF No. 13 Defendant's Motion to Stay Discovery is GRANTED as unopposed. See LR 7-2(d).

IT IS FURTHER ORDERED that the hearing scheduled for 12/9/2022 is VACATED.

IT IS SO ORDERED  
DATED: 12:01 pm, November 21, 2022

  
BRENDA WEKSLER  
UNITED STATES MAGISTRATE JUDGE