

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

JEFFREY DECKER, et al.,  
Plaintiffs,

vs.

CHUBB NATIONAL INSURANCE CO., et al.,  
Defendants.

Case No. 1:15-cv-88  
Dlott, J.  
Litkovitz, M.J.

**ORDER**

This matter is before the Court following informal discovery conferences held September 29, 2016 and October 3, 2016 before the undersigned magistrate judge. At issue are four matters outlined by the parties in their joint discovery dispute agenda:

1. Depositions/sworn statements taken by defense counsel on June 8 and 9, 2016 of M. Folzenlogen, R. Knotts, J. Baum and B. Kuhlmann without notice to plaintiffs' counsel, with transcripts provided on August 2, 2016.

2. Request for review of the claims file generated by coverage counsel, Smith, Rolfes & Skavdahl Company LPA, during investigation of the claim, prior to denial of plaintiffs' claim, including coverage counsel's Opinion and Recommendation to pay or deny the claim authored prior to denial of plaintiffs' claims, exclusive of any litigation strategy.

3. Request for written representation from defense counsel that there are no other files containing documents or other claims related information which were generated during the investigation of the claim and kept outside the "official claims file," as defense counsel defines that term, that were authored during the investigation of, and prior to, the denial of plaintiffs' claims, excluding litigation strategy and attorney/client communications occurring subsequent to the filing of the lawsuit.

4. Request that the Court permit an agreement between counsel to extend expert disclosures for 15 days in order to complete rescheduled depositions.

(Doc. 38).

For the reasons stated on the record, the Court finds as follows:

### **1. Depositions/sworn statements taken by defense counsel**

The “sworn statements” taken by defense counsel on June 8 and 9, 2016 are declared a nullity for all purposes. Plaintiffs shall re-notice the depositions of M. Folzenlogen, R. Knotts, J. Baum and B. Kuhlmann at a date mutually agreeable to the parties and defendants shall pay the subpoena fees for such depositions. To the extent defendants’ expert witness relied on such “sworn statements” for his or her opinion, the expert must submit an updated or supplemental report that does not rely on such “sworn statements.”

### **2. Request for review of the claims file generated by coverage counsel including coverage counsel’s Opinion and Recommendation to pay or deny the claim authored prior to denial of Plaintiffs’ claims**

To the extent plaintiffs seek reconsideration of the Court’s October 14, 2015 Report and Recommendation (Doc. 23) and November 9, 2015 Order adopting such recommendation (Doc. 25), plaintiffs’ request is denied. Plaintiffs’ request is untimely, coming nearly one year after the Court ruled that the opinion letter and time line documents contained in File 8 of the *in camera* documents submitted by defendants are protected as work product and may be withheld from plaintiffs. The Court is not persuaded that the recent disclosure of the additional 583 documents by defendants to plaintiffs compels a different result.

In regards to the documents relating to the innocent spouse doctrine and mediation found in coverage counsel’s file, defendants shall submit such documents to the Court for an *in camera* review by October 6, 2016.

### **3. Request for written representation from defense counsel that there are no other files containing documents or other claims related information which were generated during the investigation of the claim and kept outside the “official claims file”**

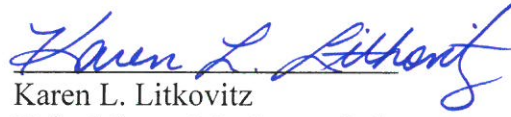
Plaintiffs state they accept defendants’ written representation set forth in the joint discovery dispute agenda.

**4. Request that the Court permit an agreement between counsel to extend expert disclosures for 15 days in order to complete rescheduled depositions.**

The Court grants the parties' respective requests for extensions of time as set forth in their joint discovery dispute agenda.

**IT IS SO ORDERED.**

Date: 10/3/16

  
Karen L. Litkovitz  
United States Magistrate Judge