IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Levern McCray, Plaintiff, vs. Allstate Insurance Company and Liberty Mutual Fire Insurance Company, Defendants.	)	C/A No.: 3:14-cv-02623-TLW

ORDER

This matter is before the Court for consideration of a First Motion to Compel filed by Plaintiff, Levern McCray ("Plaintiff"), on April 27, 2015 (Doc. #49) seeking an Order compelling Defendant Allstate Insurance Company ("Defendant Allstate") to provide full and complete answers to Plaintiff's Interrogatories numbers 2 through 9 and Requests to Admit numbers 6 and 7. Defendant Allstate filed a Response opposing Plaintiff's motion on May 22, 2015 (Doc. #53), to which Plaintiff replied on June 1, 2015 (Doc. #56). The Court directs Defendant Allstate to provide answers to Plaintiff's Interrogatories 2, 3, 4, 5, 6, 7, 8 and 9, and to provide direct responses to Plaintiff's Requests to Admit 6 and 7.

In considering discovery matters, the Court notes that parties to civil litigation are generally allowed broad discovery under the rules, as detailed in Fed. R. of Civ. P. 26(b)(1):

> Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense—including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

Fed. R. Civ. P. 26(b)(1).

In conducting discovery, the parties to a federal civil lawsuit must comply with the Federal Rules of Civil Procedure, as well as any applicable local court rules. Guided by these principles, the Court considers the Plaintiff's First Motion to Compel (Doc. #49).

Plaintiff's Requests to Admit

Plaintiff's Request to Admit number 6 states: "Admit Allstate served the Plaintiff with an Offer of Judgment for $135,000.00 signed on January 18, 2011." (Doc. #49-1 at 19). Defendant Allstate answered: "Denied as stated. Allstate states that the Offer of Judgment speaks for itself . . ." (Doc. #49-1 at 19). Defendant Allstate is directed to provide Plaintiff with an amended clear and straightforward answer to Request to Admit number 6. See Fed. R. Civ. P. 36(a)(6).

Plaintiff's Request to Admit number 7 states: "Admit Jose W. Valle had no authority to make any offers of judgment on behalf of Allstate." (Doc. #49-1 at 19). Defendant Allstate answered: "Denied as stated. While Jose W. Valle had no authority to make any offers of judgment on behalf of Allstate, he did have the authority to make offers of judgment on his own behalf." (Doc. #49-1 at 20). Defendant Allstate's response is not sufficiently clear. Defendant Allstate is directed to provide Plaintiff with an amended clear and straightforward answer to Request to Admit number 7. See Fed. R. Civ. P. 36(a)(6).

Plaintiff's Interrogatories

Plaintiff's Interrogatory number 2 seeks information regarding the individuals employed by Allstate that were involved in the "processing, evaluating, reviewing and adjusting of Plaintiff's claim." (Doc. #49-1 at 2). Defendant Allstate provided a partial response to Plaintiff's Interrogatory number 2. (Doc. #49-1 at 2-3). Defendant Allstate is ordered to provide the business address and contact information of the individuals identified in its answer.

Interrogatories number 3 and 4 seek information relating to "any incentive contest bonus quota, goal or evaluation system applicable" to each adjuster responsible for handling Plaintiff's claim and the adjuster's supervisors. (Doc. #49-1 at 3). Defendant Allstate objects to both Interrogatory number 3 and 4 on the same ground: "[S]eeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. . . [and] is unduly burdensome and overbroad." (Doc. #49-1 at 3). Defendant Allstate is ordered to answer Interrogatory number 3 and Interrogatory number 4.

Plaintiff's Interrogatory number 5 seeks information regarding "other bad faith actions in the state of South Carolina in which the Defendant [Allstate] has been involved in the last five years." (Doc. #49-1 at 4). Defendant Allstate objects to Interrogatory number 5 because it "seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. . . [and] is unduly burdensome and overbroad." (Doc. #49-1 at 4). Defendant Allstate is ordered to answer Interrogatory number 5.

Plaintiff's Interrogatory number 6 requests information about "the outcome of all cases" Defendant Allstate provided in its answer to Interrogatory number 5. (Doc. #49-1 at 4). Defendant Allstate objects to Interrogatory number 5 because: "Allstate refers Plaintiff to its answer to Interrogatory No. 5, which it incorporates as if fully stated herein." (Doc. #49-1 at 4). Defendant Allstate is ordered to answer Interrogatory number 6.

Plaintiff's Interrogatory number 7 requests information relating to the loss reserves. (Doc. #49-1 at 4). Defendant Allstate objects because "it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence." (Doc. #49-1 at 4). The above-captioned case alleges a cause of action for bad faith. South Carolina courts have found that a claim against an insurance company for bad faith requires an examination of the evidence

before the insurance company at the time it denied the claim or, if the insurance company did not specifically deny the claim, the evidence it had before it at the time the suit was filed." Howard v. State Farm Mut. Auto. Ins. Co., 316 S.C. 445, 448, 450 S.E.2d 582, 584 (1994). The relevance of reserve information depends on the facts and circumstances of each case. This Court concludes that the reserve loss information requested in Interrogatory number 7 may be relevant to the issue of bad faith in this case and is subject to discovery. Defendant Allstate is ordered to answer Interrogatory number 7.

Interrogatory number 8 requests information regarding the settlement authority provided to the adjuster or adjusters handling the Plaintiff's claim. (Doc. #49-1 at 4). Defendant Allstate objects to Interrogatory number 8 because "it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence," and further refers the Plaintiff to documents "which may contain information responsive to this Interrogatory." (Doc. #49-1 at 4-5). Defendant Allstate is directed to answer Interrogatory number 8.

Plaintiff's Interrogatory number 9 asks Defendant Allstate to identify any software or computer program used by Defendant Allstate in adjusting the claim of the Plaintiff. (Doc. #49-1 at 5). Defendant Allstate objects to the Interrogatory because "it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence." (Doc. #49-1 at 5). This Court concludes that information about the computer programs involved in the processing of claims could lead to the discovery of admissible evidence. Defendant Allstate is ordered to answer Interrogatory number 9.

CONCLUSION

The Court concludes that the discovery sought by the Plaintiff is relevant to the claims and defenses at issue in the above-captioned lawsuit and is reasonably calculated to lead to the discovery of admissible evidence. See Fed. R. Civ. P. 26(b). The Court expects that counsel will comply with the Federal Rules of Civil Procedure and Local Rules of this Court which require the parties to fully engage in discovery and to confer in good faith to resolve discovery issues without the Court's assistance when possible.

After careful consideration, **IT IS ORDERED** that Plaintiff's First Motion to Compel (Doc. #49) is **GRANTED** as outlined and limited herein. Defendant Allstate is directed to provide full and complete answers to the Plaintiff's Interrogatories number 2, 3, 4, 5, 6, 7, 8 and 9 and Requests to Admit number 6 and 7 within fourteen (14) days of entry of this Order.

IT IS SO ORDERED.

s/ Terry L. Wooten
Terry L. Wooten
Chief United States District Judge

October 22, 2015
Columbia, South Carolina

by Defendant Frisky-Nineteen LLC d/b/a Frisky Shoes to Plaintiff's First Set of Requests to Produce numbers 42 and 46 through 49 be, and hereby is, **GRANTED in part,** and to the following extent: Defendant Frisky Shoes is directed to respond to Plaintiff's Requests for Production numbers 46, 48, and 49.

IT IS FURTHER ORDERED that Plaintiff's Second Motion to Compel (Doc. #61) is **DENIED in part**, as to Plaintiff's Request for Production number 42 as the Court finds that Defendant Frisky Shoes has responded fully to Request for Production number 42 and Plaintiff's Request for Production number 47 as the Court finds that Defendant Frisky Shoes does not maintain the records sought in the ordinary course of business and as such, requiring the creation of such records would be unduly burdensome.

Defendant Frisky-Nineteen LLC d/b/a Frisky Shoes is hereby directed to respond to the Plaintiff's Requests for Production numbers 46 through 49 as outlined herein within fourteen (14) days of entry of this Order.

General objections to discovery requests for production of documents, without more, do not satisfy the burden of the responding party under the Federal Rules of Civil Procedure to justify objections to discovery because they cannot be applied with sufficient specificity to enable courts to evaluate their merits. Moreover, Defendant Allstate failed to provide a sufficient privilege log, which has precluded the court from holding an in-camera review and making an independent decision as to the disputed documents.

Number 42 of Plaintiff's Requests to Produce seeks documentation regarding prior incidents or injuries as a result of the products sold by Defendant Frisky Shoes. (Docs. #61 at 1; #61-1 at 13). Plaintiff's motion notes that Defendant Frisky Shoes has responded to this request and did identify a prior incident; however, Plaintiff alleges that this response was insufficient because Defendant Frisky Shoes did not produce any specific documentation regarding the incident or any other incident. Defendant Frisky Shoes' Response makes clear that it "does not possess any other discoverable documents" or information responsive to this request. (Doc. #62 at 2). Accordingly, this Court finds that Defendant Frisky Shoes has fully complied with Request for Production Number 42.

Requests for Production numbers 46 through 49 seek numerous financial information and documentation from Defendant Frisky Shoes. Plaintiff argues that the information sought is discoverable because it is reasonably calculated to lead to the discovery of admissible evidence, Fed. R. Civ. P. 26(b)(1), for two reasons: (1) it is relevant for purposes of the traditional risk-utility test; and (2) it is relevant to the issue of punitive damages. (See Doc. #61 at 2).

#5, #6

Defendant Allstate objects to the discovery requests related to the claim file and the information contained within the claim file and argues that the file is protected under the work product doctrine set forth in Fed. R. Civ. P. 26(b)(3). Further, Defendant Allstate argues that any work product protection that applies to the claim file also applies to protect information relating to Allstate's internal software program, Colossus. Plaintiff's Request for Production of Documents #5 seeks: "Any document concerning "COLOSSUS" and the Claim, Valle, or the damages claimed by Plaintiff arising out of the "Accident," including any document related to COLLOSUS analysis of the claim and the offer made on or about January 19, 2011." Request for Production #6 seeks "Documents describing what the COLLOSUS program is, who manages it, the guidelines and standards governing itss use, and any COLLOSUS-related financial goals, targets, results, or savings achieved from 2008 to 2012." Defendant Allstate asserts that not only is any report produced relating to Plaintiff's insurance claim protected, but that protection reaches general information regarding the Colossus program. This Court disagrees. General information about the Colossus program and the processing of claims could lead to the discovery of admissible evidence. The parties are reminded that discovery is broad under the Federal Rules of Civil Procedure.

Bonus information:

Interrogatories #3 and #4: Defendant Allstate is ordered to provide answers to interrogatories.

General objections to discovery requests for production of documents, without more, do not satisfy the burden of the responding party under the Federal Rules of Civil Procedure to justify objections to discovery because they cannot be applied with sufficient specificity to enable courts to evaluate their merits. Moreover, Defendant Allstate failed to provide a sufficient privilege log,

which has precluded the court from holding an in-camera review and making an independent decision as to the disputed documents.

Defendant Allstate argues that the same protections and privileges protecting the claim file also protect the reserve information sought by the Plaintiff. Defendant Allstate further argues that the reserve information is irrelevant and "not reasonably calculated to lead to discovery." (Doc. #53 at 7) that the reserve information sought by and argues that: risky Shoes objects to Requests for Production numbers 46 through 49 and argues that: (1) as a distributor of the product at issue in this case, Defendant Frisky Shoes cannot be held liable on the theory of negligent design; thus, Defendant Frisky Shoes asserts, relevance based on the risk-utility test should not apply to it; and (2) there has been no evidence that punitive damages should be triggered in this case; thus, Defendant Frisky Shoes asserts, relevance based on the issue of punitive damages should not apply. (See Doc. #62). Additionally, Defendant Frisky Shoes further asserts that the information sought by Requests for Production numbers 46 through 49 would be unfairly prejudicial to Defendant Frisky Shoes as it would be potentially embarrassing and oppressive. (Doc. #62 at 5).

Under South Carolina law, the elements of the attorney-client privilege are as follows: "(1) [w]here legal advice of any kind is sought (2) from a professional legal advisor in his capacity as such, (3) the communication relating to that purpose (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal advisor, (8) except the protection be waived. *State v. Doster,* 276 S.C. 647, 284 S.E.2d 218, 219–20 (1981) (quoting 8 *Wigmore, Evidence* § 2292 (McNaughton rev.1961)).

Imperial Textiles Supplies Inc. v. Hartford Fire Ins. Co., No. 6:09-CV-03103-JMC, 2011 WL 1743751, at *2 (D.S.C. May 5, 2011)

B. Documents Withheld or Redacted Based on Classification as Reserve Information
Plaintiff also seeks to compel Hartford to produce unredacted documents withheld because they contain reserve information. Hartford objects to the production of reserve information on the basis that such information is irrelevant.
While most courts agree that reserve information is irrelevant in the context of a coverage dispute, the courts are split regarding whether reserve information is relevant in an action alleging bad faith. *See Nicholas v. Bituminous Cas. Corp.,* 235 F.R.D. 325, 331

(N.D.W.Va.2006) (finding individual loss reserve information was relevant to issues in third-party bad faith case because the loss reserves concerning the plaintiffs' individual claims would clearly be affected by the insurer's estimation of its insureds' potential liability, and by its belief about what coverage existed under its policies for such claims.); *Athridge v. Aetna Cas. and Sur. Co.*, 184 F.R.D. 181, 193–94 (D.D.C.1998) (reserve information relevant to the plaintiffs' third-party bad faith and breach of duty claims); *but see contra, U.S. Fire Ins. Co. v. Bunge North America, Inc.*, 244 F.R.D. 638 (D.Kan.2007) (finding loss reserve information may be relevant and subject to production where the insured has asserted coverage and first-party bad faith claims against the insurer, because the measure of loss reserves and the timing of their establishment could be relevant to the insurers' positions on liability, their investigations and coverage determinations); *North River Ins. Co. v. Greater New York Mutual Ins. Co.*, 872 F.Supp. 1411 (E.D.Pa.1994) (determining that documentation of reserves was relevant, and, therefore, subject to discovery in action seeking to recover for bad faith failure to settle tort action within policy limits; amount set aside was germane to any analysis that insurer made of settlement value, and that information was relevant to whether insurer acted in bad faith during pretrial settlement negotiations).
could be relevant to the insurers' positions on liability, their investigations and coverage determinations
*4 The determination of the relevance of reserve information depends on the circumstances of each case, and is particularly influenced by whether the case presents a first-party or third-party claim of bad faith. South Carolina courts have found that a claim against an insurance company for bad faith requires an examination of the evidence before it at the time it denied the claim or, if the insurance company did not specifically deny the claim, the evidence it had before it at the time the suit was filed. *Howard v. State Farm Mut. Auto. Ins. Co.*, 316 S.C. 445, 448, 450 S.E.2d 582, 584 (1994). The fact that the insurance company established a reserve may be probative on the issue of whether there is a potential for liability in considering a third-party bad faith claim, and thus reserve information may be relevant to the issue of bad faith. *See Spearman Indus., Inc. v. St. Paul Fire and Marine Ins. Co.*, 128 F.Supp.2d 1148, 1154 (N.D.Ill.2001) (citing *Am. Prot. Ins. Co. v. Helm Concentrates, Inc.*, 140 F.R.D. 448, 449–50 (E.D.Cal.1991)). “On the other hand, in first-party insurance, the policy either provides coverage or does not. Thus, the potential for liability-and therefore reserve information—is irrelevant to a bad faith claim. Rather, in first-party insurance, the insurer's good faith is determined (1) by the manner and depth of its investigation, and (2) the determination of whether there was a good faith factual or legal question as to whether the loss was covered.” *Id.*
Hartford has produced its claim files which indicate the circumstances concerning its coverage determination. Primarily withheld from production is simply the specific amounts set for loss reverses. The matter at issue in this case focuses largely on Hartford's decision to deny coverage as opposed to any dispute over Hartford's determination of the amount of potential liability. Therefore, Plaintiffs have not demonstrated that the loss reserve information withheld by Hartford is relevant to any determination of Hartford's alleged bad faith in denying coverage. Accordingly, the court denies Plaintiff's request to compel Hartford's production of reserve information.

Imperial Textiles Supplies Inc. v. Hartford Fire Ins. Co., No. 6:09-CV-03103-JMC, 2011 WL 1743751, at *3-4 (D.S.C. May 5, 2011)

In cases where a party has brought a bad-faith insurance claim, reserve evidence has been held admissible, when it "is relevant to show the insurer's state of mind in relation to its claim settlement practices." *First Nat'l Bank of Louisville v. Lustig,* 1993 WL 411377, *1 (E.D.La.); *Cf. Culbertson v. Shelter Mutual In. Co.,* 1998 WL 743592 *1 (E.D.La.) (stating that discovery of reserve information may lead to admissible evidence with respect for the thoroughness with which defendant investigated and considered the plaintiff's complaint); *Athridge Aetna Cas. & Surety Co.,* 184 F.R.D. 181, 192 (D.D.C.1998) (stating that where a case involves fiduciary duties by the insurance company on behalf of the insured evidence of a reserve is relevant). Here, the Stones submit that notwithstanding the fact that Allstate was on notice as to the seriousness of Mrs. Stone's injuries, it failed to set a reserve at the policy limits and did not raise the amount until well after it had been established that the other driver was 100% at fault and that Mrs. Stone was a paraplegic. The Stones have submitted evidence showing that Allstate and its employees were aware of the value of the claim far in advance of the increase of the reserve to the policy limits. Thus, evidence of the time of the increase is relevant circumstantial evidence for a showing of bad faith, and is probative. Accordingly, the defendant's motion to prohibit reference to the reserve calculations is **DENIED.**

Stone v. Allstate Ins. Co., No. CIVA 2:00-0059, 2000 WL 35609369, at *4 (S.D.W. Va. July 24, 2000)