

1 HONORABLE RICHARD A. JONES  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 ANGELA HENDERSON,

11 Plaintiff,

12 v.

13 METROPOLITAN PROPERTY AND  
14 CASUALTY INSURANCE COMPANY,

15 Defendant.

CASE NO. C09-1723RAJ

ORDER

16 **I. INTRODUCTION**

17 This matter comes before the court on two related motions: Plaintiff Angela  
18 Henderson's motion (Dkt. # 35) for reconsideration of a portion of the court's July 19,  
19 2010 order, and the motion (Dkt. # 38) of Defendant Metropolitan Property and Casualty  
20 Insurance Company ("MetLife") to amend its responses to Ms. Henderson's requests for  
21 admission. The court finds oral argument unnecessary, and no party requested it. For the  
22 reasons stated herein, the court GRANTS MetLife's motion and DENIES Ms.  
23 Henderson's motion.

24 **II. BACKGROUND**

25 Jacob Feroe drove his car into Ms. Henderson's car in an October 2006 accident.  
26 Ms. Henderson suffered injuries. MetLife was Ms. Henderson's car insurance provider.  
27 Her policy included uninsured and underinsured motorist ("UIM") coverage. The parties  
28 now dispute the amount of MetLife's UIM liability.

ORDER – 1

1 In defending against Ms. Henderson’s claims for UIM benefits, MetLife will stand  
2 in Mr. Feroe’s shoes. Accordingly, it may seek at trial to offer evidence that there was an  
3 open and full can of beer in Ms. Henderson’s car when the accident occurred. It is  
4 undisputed that Ms. Henderson was not under the influence of alcohol at the time.

5 Ms. Henderson filed a motion in limine to exclude evidence of the beer. The court  
6 denied the motion in a July 19 order, finding that the evidence could be relevant to  
7 MetLife’s contributory negligence or comparative fault defense. Dkt. # 34 at 6 (“An  
8 open container of beer (or any drink) in a car is, at a minimum, a distraction for the  
9 driver.”).

10 Ms. Henderson moved for reconsideration of that order. She contends that after  
11 she filed her motion in limine, MetLife failed to timely respond to a set of requests for  
12 admission (“RFAs”) that she served on April 5, 2010. One of those RFAs was a request  
13 to admit that “[t]he sole proximate cause of the October 26, 2006 collision, which is the  
14 subject matter of this litigation, was the negligence of Jacob A. Feroe.” Ms. Henderson  
15 contends that by failing to timely respond to this RFA within 30 days, MetLife admitted  
16 it. Fed. R. Civ. P. 36(a)(3) (“A matter is admitted unless, within 30 days after being  
17 served, the party to whom the request is directed serves on the requesting party a written  
18 answer or objection . . . .”). Accordingly, she contends that MetLife no longer has a  
19 defense of comparative fault or contributory negligence, and thus the can of beer has no  
20 relevance to any issue remaining for trial.

21 Ms. Henderson filed her motion for reconsideration on July 28. At that time, her  
22 counsel had never conferred with MetLife’s counsel regarding the missing responses to  
23 the RFAs. Immediately upon receiving the motion for reconsideration, MetLife served  
24 responses to the RFAs. It denied the RFA in question. MetLife has presented  
25 unchallenged evidence that it prepared responses to the RFAs promptly after receiving  
26 them, but inadvertently neglected to serve them on Ms. Henderson. It did not discover  
27 the error until Ms. Henderson filed her motion for reconsideration.

1 On the same day MetLife responded to Ms. Henderson's motion for  
2 reconsideration, it filed a motion for leave to amend its interrogatory responses. The  
3 court now turns to both motions.

### 4 III. ANALYSIS

#### 5 A. The Court Denies Ms. Henderson's Summary Judgment Motion.

6 This court's local rules set the standard for motions for reconsideration:

7 Motions for reconsideration are disfavored. The court will ordinarily deny  
8 such motions in the absence of a showing of manifest error in the prior  
9 ruling or a showing of new facts or legal authority which could not have  
been brought to its attention earlier with reasonable diligence.

10 Local Rules W.D. Wash. CR 7(h)(1). In this case, MetLife's admission-by-default of the  
11 RFA in question took place on May 6, 2010, thirty days after Ms. Henderson served the  
12 RFAs. Fed. R. Civ. P. 36(a)(3). That was well after Ms. Henderson filed her motion in  
13 limine, and thus the court finds that she has pointed to new facts that justify the court  
14 reconsidering its order.<sup>1</sup> The court emphasizes, however, that litigants are always free to  
15 file supplemental briefing to address relevant events occurring after filing a motion, but  
16 before the court resolves the motion. A supplemental filing in this case would have  
17 obviated the need for a motion for reconsideration.

18 Ms. Henderson's prospects for success on reconsideration turn on whether the  
19 court will hold MetLife to its admission to the RFA in question. Federal Rule of Civil  
20 Procedure 36(b) governs this issue:

21 A matter admitted under this rule is conclusively established unless the  
22 court, on motion, permits the admission to be withdrawn or amended.  
23 Subject to Rule 16(e), the court may permit withdrawal or amendment if it  
would promote the presentation of the merits of the action and if the court

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25 <sup>1</sup> In her reply brief on her motion for reconsideration, Ms. Henderson asserted that even if  
26 MetLife could withdraw its admission, the court should reconsider its order because MetLife has  
27 not proffered evidence that the beer was a proximate cause of the collision. That argument is  
better suited for a summary judgment motion. Ms. Henderson did not raise the issue in her  
motion in limine, and she therefore cannot raise it in her motion for reconsideration, especially  
not in her reply brief.

1 is not persuaded that it would prejudice the requesting party in maintaining  
2 or defending the action on its merits.

3 The court has discretion to grant or deny a request to withdraw or modify a response to  
4 an RFA. *Asea, Inc. v. S. Pac. Transp. Co.*, 669 F.2d 1242, 1248 (9th Cir. 1981). It must  
5 “be cautious” in exercising that discretion to permit withdrawal or modification. *999 v.*  
6 *C.I.T. Corp.*, 776 F.2d 866, 869 (9th Cir. 1985). Rule 36(b) itself guides the court as it  
7 exercises discretion. The court must consider whether permitting the amendment would  
8 “promote the presentation of the merits of the action” and whether the amendment would  
9 “prejudice the requesting party in maintaining or defending the action on its merits.”  
10 Fed. R. Civ. P. 36(b); *see also Gallegos v. City of Los Angeles*, 308 F.3d 987, 993 (9th  
11 Cir. 2002) (considering materially identical prior version of Rule 36). Rule 36 serves  
12 “two important goals: truthseeking in litigation and efficiency in dispensing justice.”  
13 *Conlon v. United States*, 474 F.3d 616, 622 (9th Cir. 2007). A court must accordingly  
14 consider both goals before resolving a motion to amend a response to an RFA. *Id.*

15 The court begins by noting that MetLife has provided uncontroverted evidence  
16 that its failure to respond to the RFAs was inadvertent. MetLife apparently prepared  
17 responses promptly, but forgot to serve them on Ms. Henderson. This is negligence, to  
18 be sure, but it is not gamesmanship or litigation misconduct. At least one Ninth Circuit  
19 panel has suggested that a court *must* permit amendment of an inadvertent admission to  
20 an RFA. *Asea*, 669 F.2d at 1248 (“In a proper case, of course, such as when an  
21 admission has been made inadvertently, Rule 36(b) might well require the district court to  
22 permit withdrawal.”). That MetLife’s failure to respond to the admissions was  
23 inadvertent (and corrected the same day that Ms. Henderson first notified MetLife of the  
24 error) weighs heavily in favor of granting its request to amend.

25 The court also notes that the RFA at the heart of Ms. Henderson’s motion for  
26 reconsideration was only one of 33 RFAs that she served, along with requests to admit  
27 the genuineness of medical records from ten of her providers. The RFAs are largely

1 devoted to the amount and reasonableness of her medical expenses, in addition to her  
2 claim for lost wages.

3 The court's interest in truthseeking and resolution of cases on their merits weighs  
4 in MetLife's favor. As the court has already noted in its prior order, it is possible (at least  
5 on this record) that the beer contributed to the accident. Holding MetLife to an  
6 inadvertent admission to the contrary would subvert the presentation of this issue to a  
7 factfinder. As to the remaining RFAs, holding MetLife to its inadvertent admissions  
8 would mean that it has admitted that Ms. Henderson's lost wages and medical expenses  
9 were reasonable in their entirety, which would be fatal to its defense against Ms.  
10 Henderson's breach of policy and bad faith claims. *See Conlon*, 474 F.3d at 622 (holding  
11 that merits prong of Rule 36(b) test is satisfied where "upholding the deemed admissions  
12 [would] eliminate[] any need for a presentation on the merits").

13 Finally, Ms. Henderson has not shown that she would suffer prejudice if MetLife  
14 amended its responses. *See id.* (noting that party relying on admissions bears burden of  
15 proving prejudice). Prejudice for purposes of Rule 36(b) means that a party will face  
16 difficulty proving its case, either because witnesses have become unavailable or because  
17 discovery is unavailable on the matters previously deemed admitted. *Gallegos*, 308 F.2d  
18 at 993. The court focuses on the prejudice the nonmoving party would suffer *at trial*,  
19 because most pretrial prejudice is curable. *Conlon*, 474 F.3d at 623. It is not enough, for  
20 example, that a party might need additional discovery, as the court can extend the  
21 discovery deadline if appropriate. *Id.* at 624 ("[W]e are reluctant to conclude that a lack  
22 of discovery, without more, constitutes prejudice."). The only prejudice to which Ms.  
23 Henderson points is the time and expense associated with discovery on the subjects of the  
24 requests for admission. This is insufficient.

25 The court will allow MetLife's amended RFA responses. The court notes that the  
26 parties have some disputes over the substance of MetLife's responses. The parties shall  
27 meet and confer about those disputes. If they are unable to resolve them, Ms. Henderson

1 may file a motion to determine the sufficiency of MetLife's answers. Fed. R. Civ.  
2 P.36(a)(6). Discovery in this matter closed on October 4. If Ms. Henderson wishes to  
3 take additional discovery as a result of MetLife's amended RFA responses, she should  
4 meet and confer in an attempt to agree on an extension of discovery. She must file any  
5 motion relating to the sufficiency of MetLife's RFA responses or the need for additional  
6 discovery no later than October 14.

7 **IV. CONCLUSION**

8 For the reasons stated above, the court GRANTS MetLife's motion (Dkt. # 38) to  
9 amend its responses to Ms. Henderson's RFAs, and DENIES Ms. Henderson's motion  
10 (Dkt. # 35) for reconsideration.

11 DATED this 5th day of October, 2010.

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14 The Honorable Richard A. Jones  
15 United States District Judge  
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