

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KYLE LEAR, et al.,

Plaintiffs,

v.

IDS PROPERTY CAUSUALTY  
INSURANCE COMPANY,

Defendant.

CASE NO. C14-1040RAJ

[PROPOSED] ORDER

This matter comes before the court on Defendant IDS Property and Casualty Insurance Company's ("IDS") Motion For Protective Order. The court has reviewed each document *in camera* and considered IDS's contentions regarding the applicability of the work-product doctrine and/or attorney-client privilege.<sup>1</sup> The following principles guided the court's analysis:

**Work-Product Doctrine:**

The work-product doctrine protects "from discovery documents and tangible things prepared by a party or his representative in anticipation of litigation." *Admiral Ins.*

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<sup>1</sup> Although the court has engaged in an *in-camera* review in this instance, the court continues to question the applicability of *Cedell v. Farmers Ins. Co. of Wash.*, 176 Wash. 2d 686, 700 (2013) in federal court. Federal law, which governs the procedural aspects of this case, rests the determination of when to conduct an *in camera* review in the sound discretion of the court. See *MKB Constructors v. Am. Zurich Ins.*, 2014 WL 2526901 (W.D. Wash. May 27, 2014).

1 | *Co. v. U.S. Dist. Ct.*, 881 F.2d 1486, 1494 (9th Cir. 1989) (citing Fed. R. Civ. P.  
2 | 26(b)(3)). The work-product doctrine covers documents or the compilation of materials  
3 | prepared by agents of the attorney in preparation for litigation. *United States v. Nobles*,  
4 | 422 U.S. 225, 238 (1975).

5 | To qualify for work-product protection, documents must: (1) be “prepared in  
6 | anticipation of litigation or for trial” and (2) be prepared “by or for another party or by or  
7 | for that other party’s representative.” *In re Grand Jury Subpoena, Mark Torf/Torf Envtl.*  
8 | *Mgmt. (Torf)*, 357 F.3d 900, 907 (9th Cir. 2004). In circumstances where a document  
9 | serves a dual purpose, that is, where it was not prepared exclusively for litigation, then  
10 | the “because of” test is used. *Id.* Dual purpose documents are deemed prepared because  
11 | of litigation if “in light of the nature of the document and the factual situation in the  
12 | particular case, the document can be fairly said to have been prepared or obtained  
13 | because of the prospect of litigation.” *Id.* In applying the “because of” standard, courts  
14 | must consider the totality of the circumstances and determine whether the “document was  
15 | created because of anticipated litigation, and would not have been created in substantially  
16 | similar form but for the prospect of litigation.”” *Id.* at 908 (quoting *United States v.*  
17 | *Adlman*, 134 F.3d 1194 (2d Cir. 1998)).

#### 18 | **Attorney-Client Privilege:**

19 | The attorney-client privilege protects confidential communications between  
20 | attorneys and clients from discovery or public disclosure. RCW 5.60.060(2)(a);  
21 | *Hangartner v. City of Seattle*, 151 Wash.2d 439, 452 (2004). Because the privilege  
22 | “impedes full and free discovery of the truth,” it must be strictly construed. *United States*  
23 | *v. Gray*, 876 F.2d 1411, 1415 (9th Cir. 1989). The attorney-client privilege protects only  
24 | communications and advice between attorney and client in the context of a professional  
25 | relationship involving the attorney *as an attorney*, and not documents prepared for some  
26 | other purpose. *Schmidt v. California State Auto. Ass’n*, 127 F.R.D. 182, 183 (D.Nev.  
27 | 1989); *Krammerer v. W. Gear Corp.*, 96 Wash.2d 416, 421 (1981). The burden of

1 establishing privilege rests upon the party asserting it. *VersusLaw, Inc. v. Stoel Rives,*  
2 *LLP*, 127 Wash.App. 309, 332 (2005).

3 In Washington, “in first party insurance claims by insured’s [sic] claiming bad  
4 faith in the handling and processing of claims...there is a presumption of no attorney-  
5 client privilege.” *Cedell v. Farmers Ins. Co. of Wash.*, 176 Wash.2d 686, 700 (2013) (en  
6 banc). “In the insurance context, the question of whether a communication falls within  
7 the attorney-client privilege can often be a difficult one because of the investigatory  
8 nature of the insurance business. The line between what constitutes claim handling and  
9 the rendition of legal advice is often more cloudy than crystalline.” *HSS Enter., LLC v.*  
10 *AMCO Ins. Co.*, 2008 WL 163669 (W.D. Wash. Jan. 14, 2008). “Accordingly, to the  
11 extent that an attorney acts as a claims adjuster, claims process supervisor, or claims  
12 investigation monitor, and not as a legal advisor, the attorney-client privilege does not  
13 apply.” *Id.* at \*10. “The public policy reason behind this conclusion is that insurance  
14 companies should not be permitted to insulate the factual findings of a claims  
15 investigation by the involvement of an attorney to perform, or help perform, such work.”  
16 *Id.* at \*10–11.

17 Additionally, with respect to attorney time records and expenses, the attorney-  
18 client privilege covers those statements to the extent they reveal litigation strategy and  
19 the nature of the services provided. *In re Grand Jury Witness*, 695 F.2d 359, 362 (9th  
20 Cir. 1982). “[B]ills, ledgers statements, time records and the like which also reveal the  
21 nature of the law, also should fall within the privilege. On the other hand, a simple  
22 invoice requesting payment for unspecified services rendered reveals nothing more than  
23 the amount of the fee and would not normally be privileged.....” *Id.*

24 Bearing these principles in mind, the court has set forth below its rulings regarding  
25 each document IDS withheld as protected. The court understands that IDS is claiming a  
26 privilege only with respect to text that is highlighted in yellow. Accordingly, the court  
27 expects that IDS will produce all non-highlighted text.

1 **1. Responsive to Plaintiff’s Request for Production No. 1, Bates No. IDS\_000133-**  
2 **136.**

3 IDS Privilege Claim: The corresponding documents are post-litigation notes  
4 regarding Uninsured Motorist claim and Bad Faith. The document is protected by  
5 attorney/client privilege.

6 The Court finds that Defendant’s Motion for Protective Order is hereby:

7  GRANTED

8  DENIED

9  GRANTED IN PART AND DENIED IN PART

10 The court finds that IDS has failed to meet its burden with respect to the following  
11 entries: 11:34:32 AM; 1:23:51 AM; 10:30:04 PM; 3:54:06 PM; 2:55:57PM; 3:02:54 PM.

12 Those entries shall be produced to plaintiff as set forth at the conclusion of this order.

13 The remainder of the document may be redacted.

14 **2. Responsive to Plaintiffs’ Request for Production No. 1, Bates No. IDS\_000137-**  
15 **139.**

16 IDS Privilege Claim: The corresponding documents and information constitute  
17 correspondence between IDS and counsel just before and after receipt of Plaintiffs’  
18 Complaint. These documents are privileged communication between client and attorney  
19 and were also produced in preparation of and concerning strategy for the litigation already  
20 filed by Plaintiffs. Accordingly, the referenced documents are both protected attorney/client  
21 communications and also subject to protection under the work product doctrine.

22 The Court finds that Defendant’s Motion for Protective Order is hereby:

23  GRANTED

24  DENIED

25  GRANTED IN PART AND DENIED IN PART

26 The court finds that IDS has failed to meet its burden with respect to the following  
27 entries: 10:24:24 PM; 3:22:32 PM; 1:46:35 PM; 12:05:27 PM. Those entries shall be

1 produced to plaintiff as set forth at the conclusion of this order. The remainder of the  
2 document may be redacted.

3 **3. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000140.**

4 IDS Privilege Claim: The corresponding document is a sequence of file notes  
5 created by IDS referencing details concerning payment to counsel, legal advice from  
6 counsel concerning Plaintiffs' arbitration demand, and Plaintiffs' IFCA complaint. All  
7 three subjects entail privileged communication between attorney and client concerning  
8 legal services and advice. Accordingly, the corresponding document is protected by the  
9 asserted attorney/client privilege.

10 The Court finds that Defendant's Motion for Protective Order is hereby:

11  GRANTED

12  DENIED

13  GRANTED IN PART AND DENIED IN PART

14 The court finds that IDS has failed to meet its burden with respect to the following  
15 entries: 12:05:04 PM; 11:53:19 PM; 1:18:38 PM. Those entries shall be produced to  
16 plaintiff as set forth at the conclusion of this order. The remainder of the document may  
17 be redacted.

18 **4. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000141.**

19 IDS Privilege Claim: The corresponding document contains a file note created by  
20 IDS referencing details concerning payment to counsel. The subject of said note is  
21 protected by attorney/client privilege.

22 The Court finds that Defendant's Motion for Protective Order is hereby:

23  GRANTED

24  DENIED

25 **5. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000142.**

26 IDS Privilege Claim: The corresponding document contains direct email  
27 communication between IDS and counsel inquiring as to the status of coverage analysis.

1 Coverage analysis is legal advice provided by counsel to IDS protected by attorney/client  
2 privilege.

3 The Court finds that Defendant's Motion for Protective Order is hereby:

4  GRANTED

5  DENIED

6 6. **Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000143.**

7 IDS Privilege Claim: The corresponding document is information regarding *Milles v.*  
8 *Lear*. The information in this document is not relevant or likely to lead to the discovery of  
9 admissible evidence.

10 The Court finds that Defendant's Motion for Protective Order is hereby:

11  GRANTED

12  DENIED

13 7. **Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000143-**  
14 **144.**

15 IDS Privilege Claim: The corresponding documents contain direct email  
16 communication between IDS and counsel inquiring as to the status of coverage analysis.  
17 Coverage analysis is legal advice provided by counsel to IDS and is protected by  
18 attorney/client privilege. Defendant will provide to Plaintiffs' counsel claim note from  
19 April 14, 2014, at 4:01 PM on IDS\_000144.

20 The Court finds that Defendant's Motion for Protective Order is hereby:

21  GRANTED

22  DENIED

23  GRANTED IN PART AND DENIED IN PART

24 The court finds that IDS has failed to meet its burden with respect to the following  
25 entries: 10:356:15 AM; 10:33:18 PM; 4:41:47 PM; 6:33:42 PM. Those entries shall be  
26 produced to plaintiff as set forth at the conclusion of this order. The remainder of the  
27 document may be redacted.

1 **8. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000145-**  
2 **146.**

3 IDS Privilege Claim: The corresponding documents are a sequence of file notes  
4 created by IDS in April of 2014 referencing details concerning conversations with third  
5 party counsel regarding Plaintiff Kyle Lear's third party arbitration award. The information  
6 in this document is not relevant or likely to lead to the discovery of admissible evidence.  
7 Accordingly, the corresponding documents are privilege.

8 The Court finds that Defendant's Motion for Protective Order is hereby:

9  GRANTED

10  DENIED

11  GRANTED IN PART AND DENIED IN PART

12 The court finds that IDS has failed to meet its burden with respect to the following  
13 entries: 6:31:50 PM; 6:16:17 PM; 4:27:36 PM; 4:26:54 PM; 4:25:33 PM; 3:21:30 PM.

14 Those entries shall be produced to plaintiff as set forth at the conclusion of this order.

15 The remainder of the document may be redacted.

16 **9. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000147-**  
17 **148.**

18 IDS Privilege Claim: The corresponding documents are a sequence of file notes  
19 created by IDS in March 2014 providing a description of a conversation between IDS and  
20 third party counsel regarding details of the arbitration proceedings and Plaintiffs' counsel's  
21 subsequent demand IDS settle for the amount of the arbitration award in order to avoid  
22 preclusion. Plaintiffs had, by this time, filed an IFCA Complaint notice with the Office of  
23 the Washington Insurance Commissioner. Plaintiffs' counsel also gave notice Plaintiffs  
24 would file suit for bad faith and enforcement of Kyle Lear's Uninsured Motorist claim. IDS  
25 had reason to believe, therefore, Plaintiffs would file suit. The file notes in question were  
26 created in preparation for litigation and therefore qualify as work product and are protected  
27 by the work product doctrine. Defendant will provide to Plaintiffs' counsel claim note from

1 March 24, 2014, at 12:54 PM on IDS\_000147 and claim note from March 19, 2014, at  
2 10:35 AM on IDS\_000148. The remainder of these documents may remain withheld.

3 The Court finds that Defendant's Motion for Protective Order is hereby:

4  GRANTED

5  DENIED

6 10. **Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000149.**

7 Defendant will provide IDS\_000149 in its entirety to Plaintiffs' counsel.

8 11. **Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000150.**

9 IDS Privilege Claim: The corresponding document is a sequence of file notes  
10 created by IDS in February of 2014. The specific file note in question details payment by  
11 IDS to defense counsel. It is protected by attorney/client privilege and the work production  
12 doctrine.

13 The Court finds that Defendant's Motion for Protective Order is hereby:

14  GRANTED

15  DENIED

16 12. **Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000151-**  
17 **158.**

18 IDS Privilege Claim: The corresponding documents are a sequence of claim notes  
19 created by IDS that reflect and describe medical treatment received by third party plaintiff  
20 Troy Milles. Defendant will provide to Plaintiffs' counsel all claim notes contained in  
21 IDS\_000151. The documentation contained in IDS\_000152-IDS\_000158 was withheld  
22 upon agreement by the parties as confidential information pursuant to 158CFR§160.  
23 Therefore, the documents may remain withheld.

24 The Court finds that Defendant's Motion for Protective Order is hereby:

25  GRANTED

26  DENIED

27  GRANTED IN PART AND DENIED IN PART



1 The court finds that the following entries *are* covered by the attorney-client  
2 privilege: 4:24:24 PM; 12:04:28 PM. Those entries may be redacted. With respect to the  
3 remainder of the document, IDS contends that 158 CFR § 160 protects the entries  
4 regarding the medical treatment received by third party plaintiff Troy Milles. The court  
5 has reviewed the Code of Federal Regulations several times and believes that no such  
6 title or section exists. Accordingly, IDS may submit a two-page supplemental brief in  
7 this regard, citing applicable legal authority, on or before June 2, 2016. If IDS fails to  
8 submit a supplemental brief, IDS will be required to produce the remainder of this  
9 document as set forth at the conclusion of this order.

10 **13. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000160-**  
11 **162.**

12 IDS Privilege Claim: The corresponding documents are file notes created by IDS  
13 reflecting communications with counsel concerning settlement and litigation strategies.  
14 Accordingly, said documents are protected by both the attorney/client privilege and the  
15 work product doctrine. Therefore, the documents may remain withheld.

16 The Court finds that Defendant's Motion for Protective Order is hereby:

17  GRANTED

18  DENIED

19 **14. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000169.**

20 IDS Privilege Claim: The corresponding document is file notes created by IDS  
21 reflecting communications with counsel concerning Plaintiffs' IFCA Complaint and  
22 Uninsured Motorist demand. Receipt of both gave IDS reasonable belief Plaintiffs would  
23 file suit. Accordingly, said documents are protected by both the attorney/client privilege  
24 and the work product doctrine. Therefore, the documents may remain withheld.

25 The Court finds that Defendant's Motion for Protective Order is hereby:

26  GRANTED

27  DENIED

1           ■ GRANTED IN PART AND DENIED IN PART

2           The court finds that IDS has failed to meet its burden with respect to the following  
3 entries: 11:00:35 AM; 9:37:17 AM. Those entries shall be produced to plaintiff as set  
4 forth at the conclusion of this order. The remainder of the document may be redacted.

5 15.   **Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000170.**

6           IDS Privilege Claim: The corresponding document is claim notes created by IDS  
7 that reflect and describe medical treatment received by third party plaintiff Troy Milles. The  
8 documentation was withheld upon agreement by the parties as confidential information  
9 pursuant to 158 CFR§160.

10          The Court finds that Defendant's Motion for Protective Order is hereby:

11           GRANTED

12           DENIED

13           ■ GRANTED IN PART AND DENIED IN PART

14          IDS contends that 158 CFR § 160 protects claim notes regarding the medical  
15 treatment received by third party plaintiff Troy Milles. The court has reviewed the Code  
16 of Federal Regulations several times and believes that no such title or section exists.  
17 Accordingly, IDS may submit a two-page supplemental brief in this regard, citing  
18 applicable legal authority, on or before June 2, 2016. If IDS fails to submit a  
19 supplemental brief, IDS will be required to produce this document as set forth at the  
20 conclusion of this order.

21 16.   **Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000177-**  
22 **180.**

23          IDS Privilege Claim: The corresponding documents are file notes created by IDS in  
24 December of 2013. These notes reflect analysis, settlement strategy, and reserve setting  
25 concerning the disputed Underinsured Motorist claim. It was clear at the time based upon  
26 information accumulated through the course of IDS' claims investigation and  
27 correspondence with Plaintiffs' counsel that litigation was likely with regard the Uninsured

1 Motorist claim. The corresponding documents are protected by the work product doctrine.

2 The Court finds that Defendant's Motion for Protective Order is hereby:

3  GRANTED

4  DENIED

5  GRANTED IN PART AND DENIED IN PART

6 The court finds that the following entries *are* covered by the attorney-client  
7 privilege and/or work-product doctrine: 5:03:03 PM; 5:01:35 PM; 3:26:38 PM; 2:05:50  
8 PM. Those entries may be redacted. With respect to the remaining entries, IDS claims  
9 that they were prepared in anticipation of litigation. However, they appear to be dual  
10 purpose documents that would have been created in substantially similar form despite the  
11 prospect of litigation. *See In re Grand Jury Subpoena*, 357 F.3d at 908. Accordingly,  
12 IDS will be required to produce the remainder of this document as set forth at the  
13 conclusion of this order.

14 17. **Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000180-**  
15 **183.**

16 IDS Privilege Claim: The corresponding documents are file notes created by IDS  
17 reflecting communications with counsel concerning settlement strategies and coverage  
18 analysis.

19 The Court finds that Defendant's Motion for Protective Order is hereby:

20  GRANTED

21  DENIED

22  GRANTED IN PART AND DENIED IN PART

23 IDS has failed to meet its burden with respect to the first two entries listed on  
24 IDS\_000180. Those entries lack a time-stamp.

25 The court's prior ruling with respect to the medical records of Troy Mills applies  
26 to the following entries: 11:06:03 AM; 11:01:39 AM.

27 The court finds that the remainder of the document is covered by the attorney-

1 client privilege and/or work product doctrine. Accordingly, the remaining entries may be  
2 redacted.

3 **18. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000183.**

4 IDS Privilege Claim: The corresponding document is in the form of claim notes  
5 created by IDS that reflect and describe medical treatment received by third party plaintiff  
6 Troy Milles. The documentation was withheld upon agreement by the parties as confidential  
7 information pursuant to 158 CFR§160.

8 The Court finds that Defendant's Motion for Protective Order is hereby:

9  GRANTED

10  DENIED

11  GRANTED IN PART AND DENIED IN PART

12 IDS contends that 158 CFR § 160 protects claim notes regarding the medical  
13 treatment received by third party plaintiff Troy Milles. The court has reviewed the Code  
14 of Federal Regulations several times and believes that no such title or section exists.  
15 Accordingly, IDS may submit a two-page supplemental brief in this regard, citing  
16 applicable legal authority, on or before June 2, 2016. If IDS fails to submit a  
17 supplemental brief, IDS will be required to produce this document as set forth at the  
18 conclusion of this order.

19 **19. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000187.**

20 IDS Privilege Claim: The corresponding document is in the form of claim notes  
21 created by IDS that reflect and describe medical treatment received by third party plaintiff  
22 Troy Milles. The documentation was withheld upon agreement by the parties as  
23 confidential information pursuant to 158 CFR§160.

24 The Court finds that Defendant's Motion for Protective Order is hereby:

25  GRANTED

26  DENIED

27  GRANTED IN PART AND DENIED IN PART

1 IDS contends that 158 CFR § 160 protects claim notes regarding the medical  
2 treatment received by third party plaintiff Troy Milles. The court has reviewed the Code  
3 of Federal Regulations several times and believes that no such title or section exists.  
4 Accordingly, IDS may submit a two-page supplemental brief in this regard, citing  
5 applicable legal authority, on or before June 2, 2016. If IDS fails to submit a  
6 supplemental brief, IDS will be required to produce this document as set forth at the  
7 conclusion of this order.

8 **20. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000188-**  
9 **191.**

10 IDS Privilege Claim: The corresponding documents are in the form of claim notes  
11 created by IDS that reflect and describe medical treatment received by third party plaintiff  
12 Troy Milles. Defendant will provide to Plaintiffs' counsel claim note from November 19,  
13 2013, at 2:44 PM on IDS\_000188. The remaining documentation was withheld upon  
14 agreement by the parties as confidential information pursuant to 158 CFR§160.

15 The Court finds that Defendant's Motion for Protective Order is hereby:

16  GRANTED

17  DENIED

18  GRANTED IN PART AND DENIED IN PART

19 IDS contends that 158 CFR § 160 protects claim notes regarding the medical  
20 treatment received by third party plaintiff Troy Milles. The court has reviewed the Code  
21 of Federal Regulations several times and believes that no such title or section exists.  
22 Accordingly, IDS may submit a two-page supplemental brief in this regard, citing  
23 applicable legal authority, on or before June 2, 2016. If IDS fails to submit a  
24 supplemental brief, IDS will be required to produce this document as set forth at the  
25 conclusion of this order.

26 **21. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000199.**

27 Defendant will provide IDS\_000199 in its entirety to Plaintiffs' counsel.

1 **22. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000201.**

2 IDS Privilege Claim: The corresponding document contains file notes created by  
3 IDS in August of 2013. Redacted portions concern defense costs. Accordingly, said  
4 document is protected by both the attorney/client privilege and the work product doctrine.  
5 The Court finds that Defendant's Motion for Protective Order is hereby:

6  GRANTED

7  DENIED

8 **23. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000202-**  
9 **204.**

10 IDS Privilege Claim: The corresponding documents are file notes created by IDS in  
11 July of 2013. Redacted portions concern defense costs. Additionally, Plaintiff Richard Lear  
12 had already filed a complaint with the Department of Insurance. Defendant will provide  
13 claim note from July 30, 2013, at 10:20 AM and claim note from July 29, 2013, at 6:45 PM  
14 from IDS\_000203. Additionally, Defendant will provide to Plaintiffs' counsel claim note  
15 from July 29, 2013, at 5:45 PM from IDS\_000204. The remainder of documents  
16 IDS\_000202-IDS\_000204 are protected by both the attorney/client privilege and the work  
17 product doctrine.

18 The Court finds that Defendant's Motion for Protective Order is hereby:

19  GRANTED

20  DENIED

21 **24. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000205.**

22 IDS Privilege Claim: The corresponding redacted portions of the document are file  
23 notes created by IDS in July of 2013. Redacted portions concern defense costs.  
24 Accordingly, said documents are protected by the attorney/client privilege.

25 The Court finds that Defendant's Motion for Protective Order is hereby:

26  GRANTED

27  DENIED

1 **25. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000208.**

2 IDS Privilege Claim: The corresponding redacted portions of the document are file  
3 notes created by IDS in June and July of 2013. Redacted portions concern defense costs.  
4 Accordingly, said documents are protected by both the attorney/client privilege and the  
5 work product doctrine.

6 The Court finds that Defendant's Motion for Protective Order is hereby:

7  GRANTED

8  DENIED

9 **26. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000211.**

10 IDS Privilege Claim: The corresponding redacted portions of the document are file  
11 notes created by IDS in June of 2013. Redacted portions concern defense costs.  
12 Accordingly, said documents are protected by both the attorney/client privilege and the  
13 work product doctrine.

14 The Court finds that Defendant's Motion for Protective Order is hereby:

15  GRANTED

16  DENIED

17 **27. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000238-**  
18 **239, 000249-259.**

19 IDS Privilege Claim: The corresponding documents are file notes created by IDS  
20 from April to May of 2013. Redacted portions concern summaries of liability evaluations  
21 and written correspondence from counsel regarding coverage analysis and status of the  
22 Special Investigations' Unit ("SIU") investigation into Plaintiffs' PIP and Uninsured  
23 Motorist claim. By April 2013, there was sufficient information to question the PIP and  
24 Uninsured Motorist claim. Additionally, Plaintiff Richard Lear had already filed a  
25 complaint with the Department of Insurance. Defendant will provide to Plaintiffs' counsel  
26 IDS\_000238-IDS\_000239 and IDS\_000249-IDS\_000250. The remaining documents,  
27 IDS\_000251-IDS\_000259, are protected by both the attorney/client privilege and the work

1 product doctrine. Therefore, the documents may remain withheld.

2 The Court finds that Defendant's Motion for Protective Order is hereby:

3  GRANTED

4  DENIED

5 **28. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000260-**  
6 **261.**

7 IDS Privilege Claim: The corresponding redacted portions of the document are file  
8 notes created by IDS in March of 2013. Redacted portions concern summaries of liability  
9 evaluations, telephone conversations, and written correspondence from counsel regarding  
10 coverage analysis and status of the SIU's investigation into Plaintiffs' Uninsured Motorist  
11 claim. By March 2013, there was sufficient information to question the Uninsured Motorist  
12 and PIP claims. Additionally, Plaintiff Richard Lear had already filed a complaint with the  
13 Department of Insurance. Accordingly, said documents are protected by both the  
14 attorney/client privilege and the work product doctrine.

15 The Court finds that Defendant's Motion for Protective Order is hereby:

16  GRANTED

17  DENIED

18  GRANTED IN PART AND DENIED IN PART

19 IDS has failed to meet its burden with respect to the following entry: 11:27:01  
20 AM. That entry shall be produced to plaintiff as set forth at the conclusion of this order.  
21 The remainder of the document may be redacted.

22 **29. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000266.**

23 Defendant will provide IDS\_000266 in its entirety to Plaintiffs' counsel.

24 **30. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000272.**

25 Defendant will provide IDS\_000272 in its entirety to Plaintiffs' counsel.

26 **31. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000299-**  
27 **300.**



1 IDS Privilege Claim: The corresponding documents are in the form of claim notes  
2 created by IDS that reflect and describe medical treatment received by third party plaintiff  
3 Troy Milles. The documentation was withheld upon agreement by the parties as confidential  
4 information pursuant to 158 CFR§160.

5 The Court finds that Defendant’s Motion for Protective Order is hereby:

6  GRANTED

7  DENIED

8  GRANTED IN PART AND DENIED IN PART

9 IDS contends that 158 CFR § 160 protects claim notes regarding the medical  
10 treatment received by third party plaintiff Troy Milles. The court has reviewed the Code  
11 of Federal Regulations several times and believes that no such title or section exists.  
12 Accordingly, IDS may submit a two-page supplemental brief in this regard, citing  
13 applicable legal authority, on or before June 2, 2016. If IDS fails to submit a  
14 supplemental brief, IDS will be required to produce this document as set forth at the  
15 conclusion of this order.

16 **32. Responsive to Plaintiffs’ Request for Production No. 1, Bates No. IDS\_000312.**

17 IDS Privilege Claim: The corresponding document is in the form of claim notes  
18 created by IDS that reflect and describe medical treatment received by third party plaintiff  
19 Troy Milles. The documentation was withheld upon agreement by the parties as confidential  
20 information pursuant to 158 CFR§160.

21 The Court finds that Defendant’s Motion for Protective Order is hereby:

22  GRANTED

23  DENIED

24  GRANTED IN PART AND DENIED IN PART

25 IDS contends that 158 CFR § 160 protects claim notes regarding the medical  
26 treatment received by third party plaintiff Troy Milles. The court has reviewed the Code  
27 of Federal Regulations several times and believes that no such title or section exists.

1 Accordingly, IDS may submit a two-page supplemental brief in this regard, citing  
2 applicable legal authority, on or before June 2, 2016. If IDS fails to submit a  
3 supplemental brief, IDS will be required to produce this document as set forth at the  
4 conclusion of this order.

5 **33. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000314.**

6 Defendant will provide IDS\_000314 in its entirety to Plaintiffs' counsel.

7 **34. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000317.**

8 IDS Privilege Claim: The corresponding document is information regarding *Milles v.*  
9 *Lear*. The information in this document is not relevant or likely to lead to the discovery of  
10 admissible evidence. Therefore, the document may remain withheld.

11 The Court finds that Defendant's Motion for Protective Order is hereby:

12  GRANTED

13  DENIED

14 **35. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000318.**

15 Defendant will provide IDS\_000318 in its entirety to Plaintiffs' counsel.

16 **36. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000324-**  
17 **325.**

18 Defendant will provide IDS\_000324-IDS\_000325 in its entirety to Plaintiffs'  
19 counsel.

20 **37. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000346-**  
21 **347.**

22 Defendant will provide IDS\_000346-IDS\_000347 to Plaintiffs' counsel in its  
23 entirety.

24 **38. Not Responsive to Plaintiffs' Requests for Production, Bates No. IDS\_000383-**  
25 **391.**

26 IDS Privilege Claim: The corresponding documents are medical bills for treatment  
27 received by third party plaintiff Tory Milles. The documents were withheld upon

1 agreement by the parties as confidential information pursuant to 158 CFR§160. Therefore,  
2 the documents may remain withheld.

3 The Court finds that Defendant’s Motion for Protective Order is hereby:

4  GRANTED

5  DENIED

6  GRANTED IN PART AND DENIED IN PART

7 IDS contends that 158 CFR § 160 protects claim notes regarding the medical  
8 treatment received by third party plaintiff Troy Milles. The court has reviewed the Code  
9 of Federal Regulations several times and believes that no such title or section exists.  
10 Accordingly, IDS may submit a two-page supplemental brief in this regard, citing  
11 applicable legal authority, on or before June 2, 2016. If IDS fails to submit a  
12 supplemental brief, IDS will be required to produce this document as set forth at the  
13 conclusion of this order.

14 **39. Not Responsive to Plaintiffs’ Requests for Production, Bates No. IDS\_000439-**  
15 **455.**

16 IDS Privilege Claim: The corresponding documents are medical bills for treatment  
17 received by third party plaintiff Tory Milles. The documents were withheld upon  
18 agreement by the parties as confidential information pursuant to 158 CFR§160. Therefore,  
19 the documents may remain withheld.

20 The Court finds that Defendant’s Motion for Protective Order is hereby:

21  GRANTED

22  DENIED

23  GRANTED IN PART AND DENIED IN PART

24 IDS contends that 158 CFR § 160 protects claim notes regarding the medical  
25 treatment received by third party plaintiff Troy Milles. The court has reviewed the Code  
26 of Federal Regulations several times and believes that no such title or section exists.  
27 Accordingly, IDS may submit a two-page supplemental brief in this regard, citing

1 applicable legal authority, on or before June 2, 2016. If IDS fails to submit a  
2 supplemental brief, IDS will be required to produce this document as set forth at the  
3 conclusion of this order.

4 **40. Responsive to Plaintiffs' Request for Production Nos. 33, 34, and 36; Bates No.**  
5 **IDS\_000606-607.**

6 IDS Privilege Claim: The corresponding documents are written correspondence  
7 dated July 22, 2013, from defense counsel to IDS concerning payment related to legal and  
8 coverage analysis services. Accordingly, said documents are protected by both the  
9 attorney/client privilege and the work product doctrine. Therefore, the documents may  
10 remain withheld.

11 The Court finds that Defendant's Motion for Protective Order is hereby:

12  GRANTED

13  DENIED

14 **41. Responsive to Plaintiffs' Request for Production Nos. 33 and 34, Bates No.**  
15 **IDS\_000776-782.**

16 IDS Privilege Claim: The corresponding documents are written communications  
17 between defense counsel and reconstruction expert David Wells between July 2013 and  
18 January 2014. By July 2013, there was sufficient information to question the PIP and  
19 Uninsured Motorist claims. Additionally, Plaintiff Richard Lear had already filed a  
20 complaint with the Department of Insurance. Accordingly, said documents are protected by  
21 work product doctrine. Therefore, the documents may remain withheld.

22 The Court finds that Defendant's Motion for Protective Order is hereby:

23  GRANTED

24  DENIED

25 These communications begin January 2013 rather than July 2013, as claimed by  
26 IDS. Additionally, they appear to be dual purpose documents that would have been  
27 created in substantially similar form despite the prospect of litigation. *See*

1 *Jury Subpoena*, 357 F.3d at 908. Accordingly, IDS will be required to produce these  
2 documents.

3 **42. Responsive to Plaintiffs' Request for Production Nos. 33 and 34, Bates No.**  
4 **IDS\_000783-784.**

5 IDS Privilege Claim: The corresponding documents are written communication  
6 dated May of 2013 between defense counsel and IDS. Redacted portions reflect updates of  
7 communications with Plaintiffs' counsel. By May 2013, there was sufficient information to  
8 question the PIP and Uninsured Motorist claims and suspect Plaintiffs could file suit.  
9 Additionally, Plaintiff Richard Lear had already filed a complaint with the Department of  
10 Insurance. Accordingly, said documents are protected by both the attorney/client privilege  
11 and work product doctrine.

12 The Court finds that Defendant's Motion for Protective Order is hereby:

13  GRANTED

14  DENIED

15 **43. Responsive to Plaintiffs' Request for Production Nos. 33 and 34, Bates No.**  
16 **IDS\_000788-789.**

17 IDS Privilege Claim: The corresponding documents are written communication from  
18 February to April 2013 between defense counsel and IDS. Redacted portions reflect legal  
19 analysis and strategy relative to IDS' claims investigation. By February 2013, there was  
20 sufficient information to question the PIP and Uninsured Motorist claims and suspect  
21 Plaintiffs could file suit. Additionally, Plaintiff Richard Lear had already filed a complaint  
22 with the Department of Insurance. Accordingly, said documents are protected by both the  
23 attorney/client privilege and work product doctrine.

24 The Court finds that Defendant's Motion for Protective Order is hereby:

25  GRANTED

26  DENIED

27 ///

1 44. **Responsive to Plaintiffs' Request for Production Nos. 33, 34, and 36; Bates No.**  
2 **IDS\_000792-793.**

3 IDS Privilege Claim: The corresponding documents are written communication  
4 dated March 4, 2013, between defense counsel and IDS. Redacted portions concern  
5 Plaintiffs' examinations under oath and related legal analysis. By March 2013, there was  
6 sufficient information to question the PIP and Uninsured Motorist claim and suspect  
7 Plaintiffs could file suit. Additionally, Plaintiff Richard Lear had already filed a complaint  
8 with the Department of Insurance. Accordingly, said documents are protected by both the  
9 attorney/client privilege and work product doctrine.

10 The Court finds that Defendant's Motion for Protective Order is hereby:

11  GRANTED

12  DENIED

13 45. **Responsive to Plaintiffs' Request for Production Nos. 33, 34, and 36; Bates No.**  
14 **IDS\_000794-796.**

15 IDS Privilege Claim: The corresponding documents are a February 25, 2013,  
16 internal memo summary generated by defense counsel after conducting Plaintiffs'  
17 examinations under oath regarding the facts surrounding Kyle Lear's PIP and Uninsured  
18 Motorist claims. By February 2013, there was sufficient information to question the PIP and  
19 Uninsured Motorist claim. Additionally, Plaintiff Richard Lear had already filed a  
20 complaint with the Department of Insurance. Accordingly, said document is protected by  
21 the attorney/client and work product doctrine.

22 The Court finds that Defendant's Motion for Protective Order is hereby:

23  GRANTED

24  DENIED

25 46. **Responsive to Plaintiffs' Request for Production Nos. 33, 34, and 36; Bates No.**  
26 **IDS\_000797.**

27 IDS Privilege Claim: The corresponding document is a screenshot from the file

1 assignment program used by IDS to assign files to counsel and not likely to lead to  
2 discoverable information.

3 The Court finds that Defendant's Motion for Protective Order is hereby:

4  GRANTED

5  DENIED

6 47. **Responsive to Plaintiffs' Request for Production Nos. 33 and 34, Bates No.**  
7 **IDS\_000798-800.**

8 IDS Privilege Claim: The corresponding documents are written communications  
9 between defense counsel and reconstruction expert David Wells between January and  
10 February 2013. By January 2013, there was sufficient information to question the PIP and  
11 Uninsured Motorist claims and suspect Plaintiffs could file suit. Additionally, Plaintiff  
12 Richard Lear had already filed a complaint with the Department of Insurance. Accordingly,  
13 said documents are protected by work product doctrine.

14 The Court finds that Defendant's Motion for Protective Order is hereby:

15  GRANTED

16  DENIED

17 48. **Responsive to Plaintiffs' Request for Production Nos. 33 and 34, Bates No.**  
18 **IDS\_000801-803.**

19 IDS Privilege Claim: The corresponding documents are written communications  
20 dated February 24 and 25, 2013 between defense counsel and IDS concerning legal analysis  
21 of the ongoing claims investigation as well as recent communication with Plaintiffs'  
22 counsel. By February 2013, there was sufficient information to question the PIP and  
23 Uninsured Motorist claims and suspect Plaintiffs could file suit. Additionally, Plaintiff  
24 Richard Lear had already filed a complaint with the Department of Insurance. Accordingly,  
25 said documents are protected by both the attorney/client privilege and work product  
26 doctrine.

27 The Court finds that Defendant's Motion for Protective Order is hereby:

1         GRANTED

2         DENIED

3 49.     **Responsive to Plaintiffs' Request for Production No. 36, Bates No. IDS\_000804-**  
4        **805.**

5        IDS Privilege Claim: The corresponding documents are written communications  
6 dated February 13, 2013 between defense counsel and IDS concerning file materials  
7 regarding Plaintiffs' PIP and Uninsured Motorist claim. Said documents are protected by  
8 both the attorney-client privilege and work product doctrine.

9        The Court finds that Defendant's Motion for Protective Order is hereby:

10        GRANTED

11        DENIED

12 50.     **Responsive to Plaintiffs' Request for Production Nos. 33 and 34, Bates No.**  
13        **IDS\_000806-816.**

14        IDS Privilege Claim: The corresponding documents are written communications  
15 between defense counsel and reconstruction expert David Wells in January of 2013. By  
16 January 2013, there was sufficient information to question the PIP and Uninsured Motorist  
17 claim and suspect Plaintiffs could file suit. Additionally, Plaintiff Richard Lear had already  
18 filed a complaint with the Department of Insurance. Accordingly, said documents are  
19 protected by work product doctrine.

20        The Court finds that Defendant's Motion for Protective Order is hereby:

21        GRANTED

22        DENIED

23        These documents appear to be dual purpose documents regarding the investigation  
24 of Mr. Lear's claim that would have been created in substantially similar form despite the  
25 prospect of litigation. *See In re Grand Jury Subpoena*, 357 F.3d at 908. Accordingly,  
26 IDS will be required to produce these documents.

27     ///



1 **51. Responsive to Plaintiffs' Requests for Production Nos. 33, 34, and 36; Bates No.**  
2 **000817, 821, and 823.**

3 IDS Privilege Claim: The corresponding documents are a series of written  
4 communications between defense counsel and IDS in January 2013 regarding Plaintiffs'  
5 PIP and Uninsured Motorist claim for purposes of obtaining legal advice regarding IDS'  
6 claims investigation. By January 2013, there was sufficient information to question the PIP  
7 and Uninsured Motorist claim and suspect Plaintiffs could file suit. Additionally, Plaintiff  
8 Richard Lear had already filed a complaint with the Department of Insurance. Accordingly,  
9 said documents are protected by both the attorney/client privilege and the work product  
10 doctrine.

11 The Court finds that Defendant's Motion for Protective Order is hereby:

12  GRANTED

13  DENIED

14 **52. Responsive to Plaintiffs' Request for Production No. 36; Bates No. IDS\_000825.**

15 IDS Privilege Claim: The corresponding document is a written communication dated  
16 January 3, 2013 between defense counsel's office and IDS concerning file materials  
17 regarding Plaintiffs' PIP and Uninsured Motorist claims. By January 2013, there was  
18 sufficient information to question the PIP and Uninsured Motorist claims and suspect  
19 Plaintiffs could file suit. Additionally, Plaintiff Richard Lear had already filed a complaint  
20 with the Department of Insurance. Accordingly, said document is protected by both the  
21 attorney/client privilege and work product doctrine.

22 The Court finds that Defendant's Motion for Protective Order is hereby:

23  GRANTED

24  DENIED

25 **53. Responsive to Plaintiffs' Request for Production No. 37; Bates No. IDS\_000826-**  
26 **829.**

27 IDS Privilege Claim: The corresponding documents are written communications

1 between defense counsel and IDS in January of 2013 regarding Plaintiffs' PIP and  
2 Uninsured Motorist claims for purposes of obtaining legal advice regarding IDS' claims  
3 investigation. By January 2013, there was sufficient information to question the PIP and  
4 Uninsured Motorist claims and suspect Plaintiffs could file suit. Additionally, Plaintiff  
5 Richard Lear had already filed a complaint with the Department of Insurance. Accordingly,  
6 said documents are protected by both the attorney/client privilege and the work product  
7 doctrine.

8 The Court finds that Defendant's Motion for Protective Order is hereby:

9  GRANTED

10  DENIED

11 54. **Responsive to Plaintiffs' Request for Production No. 37; Bates No. IDS\_000833-**  
12 **835.**

13 IDS Privilege Claim: The corresponding documents are written communications  
14 between defense counsel and IDS from December 2012 to January 2013 regarding  
15 Plaintiffs' PIP and Uninsured Motorist claims for purposes of obtaining legal advice  
16 regarding IDS' claims investigation. By December 2012, there was sufficient information to  
17 question the PIP and Uninsured Motorist claims and suspect Plaintiffs could file suit based  
18 upon communications with Richard Lear. Accordingly, said documents are protected by  
19 both the attorney/client privilege and work product doctrine.

20 The Court finds that Defendant's Motion for Protective Order is hereby:

21  GRANTED

22  DENIED

23 55. **Responsive to Plaintiffs' Request for Production Nos. 33 and 34, Bates No.**  
24 **IDS\_000839-841.**

25 IDS Privilege Claim: The corresponding documents are attorney notes generated by  
26 defense counsel in or around February 2013 regarding the facts surrounding Kyle Lear's  
27 PIP and Uninsured Motorist claims. By February 2013, there was sufficient information to

1 question the PIP and Uninsured Motorist claims and suspect Plaintiffs could file suit.  
2 Additionally, Plaintiff Richard Lear had already filed a complaint with the Department of  
3 Insurance. Accordingly, said document is protected by the work product doctrine.

4 The Court finds that Defendant's Motion for Protective Order is hereby:

5  GRANTED

6  DENIED

7 56. **Responsive to Plaintiffs' Request for Production Nos. 33 and 34, Bates No.**  
8 **IDS\_000842-843.**

9 IDS Privilege Claim: The corresponding documents are February 25, 2013, internal  
10 memo summary generated by defense counsel after conducting Plaintiffs' examinations  
11 under oath regarding the facts surrounding Kyle Lear's PIP and Uninsured Motorist claims.  
12 By February 2013, there was sufficient information to question the PIP and Uninsured  
13 Motorist claims and suspect Plaintiffs could file suit. Additionally, Plaintiff Richard Lear  
14 had already filed a complaint with the Department of Insurance. Accordingly, said  
15 document is protected by the work product doctrine.

16 The Court finds that Defendant's Motion for Protective Order is hereby:

17  GRANTED

18  DENIED

19 57. **Responsive to Plaintiffs' Request for Production Nos. 33 and 34, Bates No.**  
20 **IDS\_000844-861.**

21 IDS Privilege Claim: The corresponding documents are attorney notes generated by  
22 defense counsel during the February 22, 2013, examinations under oath of Plaintiffs  
23 regarding the facts surrounding Kyle Lear's PIP and Uninsured Motorist claims. By  
24 February 2013, there was sufficient information to question the PIP and Uninsured Motorist  
25 claims and suspect Plaintiffs could file suit. Additionally, Plaintiff Richard Lear had  
26 already filed a complaint with the Department of Insurance. Accordingly, said documents  
27 are protected by the work product doctrine.

1 The Court finds that Defendant's Motion for Protective Order is hereby:

2  GRANTED

3  DENIED

4 58. **Responsive to Plaintiffs' Request for Production Nos. 33 and 34, Bates No.**  
5 **IDS\_000862-864.**

6 IDS Privilege Claim: The corresponding documents are attorney notes generated by  
7 defense counsel during the February 22, 2013, examinations under oath of Plaintiffs  
8 regarding the facts surrounding Kyle Lear's PIP and Uninsured Motorist claims. By  
9 February 2013, there was sufficient information to question the PIP and Uninsured Motorist  
10 claims and suspect Plaintiffs could file suit. Additionally, Plaintiff Richard Lear had  
11 already filed a complaint with the Department of Insurance. Accordingly, said documents  
12 are protected by the work product doctrine.

13 The Court finds that Defendant's Motion for Protective Order is hereby:

14  GRANTED

15  DENIED

16 59. **Responsive to Plaintiffs' Request for Production Nos. 7 and 9, Bates No.**  
17 **IDS\_000873, 876, 880, 891, 893.**

18 IDS Privilege Claim: The corresponding documents are attorney notes generated by  
19 defense counsel after being retained by IDS in January of 2013 for the purpose of assisting  
20 with examinations under oath. The notes correspond with Troy Milles recorded statements  
21 obtained previously by IDS. By January 2013, there was sufficient information to question  
22 the Uninsured Motorist claim and suspect Plaintiffs would file suit. Additionally, Plaintiff  
23 Richard Lear had already filed a complaint with the Department of Insurance. Accordingly,  
24 said document is protected by the work product doctrine.

25 The Court finds that Defendant's Motion for Protective Order is hereby:

26  GRANTED

27  DENIED

1 **60. Responsive to Plaintiffs' Request for Production No. 1, Bates No. IDS\_000969-**  
2 **001149.**

3 IDS Privilege Claim: The corresponding documents are duplicative of documents  
4 Nos. IDS\_000133-IDS\_000353. To the extent said documents were discoverable, they have  
5 already been produced. To the extent IDS has asserted privilege, those privileges have been  
6 addressed *supra* in Sections 1 through 39.

7 The Court therefore refers to its rulings on those discrete documents previously  
8 addressed.

9 **61. Responsive to Plaintiffs' Request for Production No. 36, Bates No. IDS\_001150-**  
10 **1152.**

11 IDS Privilege Claim: The corresponding documents are written communication in  
12 February of 2013 between defense counsel and IDS concerning file materials regarding  
13 Plaintiffs' PIP and Uninsured Motorist claims; as well as internal communications  
14 generated by defense counsel regarding the same. By February 2013, there was sufficient  
15 information to question the PIP and Uninsured Motorist claims and suspect Plaintiffs could  
16 file suit. Additionally, Plaintiff Richard Lear had already filed a complaint with the  
17 Department of Insurance. Accordingly, said documents are protected by both the  
18 attorney/client privilege and work product doctrine.

19 The Court finds that Defendant's Motion for Protective Order is hereby:

20  GRANTED

21  DENIED

22 **62. Responsive to Plaintiffs' Request for Production No. 3, Bates No. IDS\_001211-**  
23 **1213.**

24 IDS Privilege Claim: The corresponding documents are corporate training materials  
25 for IDS. IDS has objected to the disclosure of these materials as they are sensitive  
26 proprietary information IDS does not want circulated, not relevant to the controversy in  
27 question, inadmissible at trial, and not reasonably calculated to lead to the discovery of any

1 additional admissible evidence.

2 The Court finds that Defendant's Motion for Protective Order is hereby:

3  GRANTED

4  DENIED

5 The court is unaware of a "sensitive and proprietary" privilege or other doctrine that  
6 would prevent disclosure of these materials. Accordingly, IDS is directed to produce these  
7 documents to the plaintiff. It appears, however, that the parties have failed to agree to a  
8 protective order governing discovery. Because training manuals often involve trade secret  
9 information, the court directs the parties to treat these documents as "Attorney's Eyes Only  
10 and Confidential." To the extent either party wishes to rely on these materials in connection  
11 with any motion, they may lodge the documents under seal and file a motion to seal that  
12 complies with applicable Ninth Circuit law.

13 **63. Responsive to Plaintiffs' Request for Production Nos. 10 and 25, Bates No.**  
14 **IDS\_001734-1738.**

15 IDS Privilege Claim: The corresponding documents are notes generated by expert  
16 witness David Wells contemporaneously with his investigation of the insured vehicle  
17 beginning in January 2013. By January 2013, there was sufficient information to question  
18 Plaintiffs' PIP and Uninsured Motorist claims and suspect Plaintiffs could file suit.  
19 Additionally, Plaintiff Richard Lear had already filed a complaint with the Department of  
20 Insurance. Accordingly, said document is protected by the work product doctrine.

21 The Court finds that Defendant's Motion for Protective Order is hereby:

22  GRANTED

23  DENIED (Conditionally)

24 It is unclear whether IDS retained Mr. Wells as a consulting expert or a testifying  
25 expert. IDS is directed to file a one-page supplemental brief explaining why these  
26 documents are not discoverable. Specifically, IDS should address the applicability of  
27 Federal Rule of Civil Procedure 26(b)(4) and *Republic of Ecuador v. Mackay*, 742 F.3d 860

1 (9th Cir. 2014).

2 The Court, having reviewed Defendant's Motion for Protective Order as to the  
3 documents referenced above rules as follows:

4 1. If DENIED, Defendant will produce the corresponding information within 30  
5 days from the date of this Order;

6 2. If GRANTED, the corresponding information shall remain withheld under the  
7 privilege asserted.

8 3. If the court has ordered supplemental briefing with respect to any document,  
9 counsel shall file that briefing on or before June 2, 2016.

10 Dated this 27th day of May, 2016.

11  
12  
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14 

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