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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Duane Romney,

No. CV-23-01936-PHX-ROS

Plaintiff,

ORDER

V.

Progressive Preferred Insurance Company,
Defendant.

Plaintiff Duane Romney (“Plaintiff”) and Defendant Progressive Preferred Insurance Company (“Defendant”) filed a Joint Statement of Discovery Dispute on October 1, 2024. (Doc. 66).

BACKGROUND

On November 14, 2023, the Court set the Rule 16 Scheduling Order adopting the parties' proposed deadline of March 29, 2024, for the completion of "[a]ll discovery, including answers to interrogatories, production of documents, depositions, and requests to admit." (Doc 13). The Court was skeptical the parties would be able to comply with this deadline, but the Court entered it because of the parties' agreement.

On February 29, 2024, Defendant filed for Summary Judgment. (Doc. 17). On March 28, 2024, the parties stipulated to extend Plaintiff's deadline to respond to Defendant's Motion because Plaintiff believed additional discovery would be "pertinent to the motion." (Doc. 24). On March 29, 2024, in lieu of extending Plaintiff's time to respond to the Motion, the Court denied Defendant's Motion for Summary Judgment

1 without prejudice, allowing Defendant to refile “once the parties ha[d] completed more
2 discovery such that Plaintiff could respond to the motion in a more timely manner.” (Doc
3 25).

4 On April 19, 2024, the parties filed a First Notice of Discovery and Settlement.
5 (Doc. 29). The Court noted the parties’ filing indicated fact discovery and numerous
6 discovery disputes remained and did not address the now passed March 29, 2024
7 discovery deadline. (Doc. 30). The Court thus ordered the parties to file a statement
8 explaining why they believed the expired fact discovery deadline did not apply to most of
9 the discovery identified in their April 19 filing and to propose a new deadline for the
10 completion of fact discovery. (*Id.*). On April 25, 2024, the parties responded by
11 explaining their disputes and asking for a new fact discovery and deposition deadline of
12 June 30, 2024. (Doc 32). On April 30, 2024, the Court adopted the parties’ stipulation
13 and extended the discovery and deposition deadline to June 30, 2024, while leaving the
14 other deadlines in the Rule 16 Order in place. (Doc. 37). Having reviewed the parties’
15 discovery disputes, the Court additionally noted, “Many of the parties’ discovery disputes
16 appear to be caused by Defendants’ refusal to cooperate in discovery” and “Defendants
17 made boilerplate objections to requests where no plausible objection existed.” (*Id.*).
18 Defendant was also informed not to make “ripeness” objections without including
19 authority recognizing this objection. (*Id.*).

20 On May 13, 2024, Defendant refiled for Summary Judgment as to Plaintiff’s
21 claims of uninsured motorist benefits, breach of contract, and declaratory relief. (Doc.
22 40). Plaintiff responded on June 13, 2024. (Doc. 46). This matter is still before the Court
23 and a ruling is forthcoming.

24 On June 27, 2024, the Court granted the parties’ stipulation to extend the
25 deposition deadline through August 16, 2024, due to Plaintiff’s inability to depose
26 witness Adam Chidester until his return from paternity leave on August 9, 2024. (Doc.
27 55; Doc 57).

28 On July 19, 2024, the Court granted the parties stipulated Protective Order in part.

1 (Doc. 59). The following documents were considered Confidential Material:

2 a. Any available Claim Manuals in effect at the time the Plaintiff's claim was
3 being handled;

4 b. Any available practice and procedure manuals in the administration of claims in
5 effect at the time Plaintiff's claim was being handled;

6 c. Any available uninsured and underinsured motorist claims training manuals in
7 effect at the time Plaintiff's claim was being handled;

8 d. Any available investigation claims manuals in effect at the time Plaintiff's claim
9 was being handled;

10 e. If requested any employee transcripts, employee performance evaluation
11 documents, disciplinary actions, etc., for any identified Adjuster and/or
12 Representative, if ordered to be produced by the Court.

13 On August 19 and 20, 2024, the parties separately provided the Court with a
14 Second Notice of Discovery and Settlement informing the Court of several continuing
15 discovery disputes. (Doc. 62; Doc 63).

16 On October 1, 2024, the parties filed a Joint Statement of Dispute. (Doc. 66). The
17 parties have asked for resolution on two issues: Personnel Files, Compensation and
18 Profitability, and Documentation Pertaining to Claims Handling. The Court will address
19 each in turn.

20 **ANALYSIS**

21 **I. Personnel Files, Compensation, and Profitability**

22 Plaintiff states Defendant has refused to provide any information "pertaining to
23 decision-maker pay, bonus structures or incentives or the rationale behind these structure
24 [sic]." Plaintiff contends these issues are relevant to a claim of bad faith citing deposition
25 testimony wherein Progressive employee Adam Chidester testified profit-sharing bonuses
26 have increased as he was promoted to handling larger claims at Progressive and two
27 authorities. *See Rawlings v. Apodaca*, 151 Ariz. 149 (Ariz. 1986); *Zilisch v. State Farm*
28 *Auto Ins. Co.*, 196 Ariz. 234 (Ariz. 2000).

1 Defendant argues if its Motion for Summary Judgment is granted on the issue of
 2 uninsured motorist coverage, “discovery on a dismissed claim would be rendered moot”
 3 and cites to *Lennar Corp. v. Transamerica Ins. Co.*, 227 Ariz. 238, 244, 256 P.3d 635
 4 (Ariz. Ct. App. 2011). Defendant further argues the “sensitive nature of employee
 5 personnel files” poses “legitimate privacy concerns.” Lastly, Defendant argues Plaintiff
 6 refuses to narrow requests for employment files and financial data to uninsured motorist
 7 claims, and thus the requests are “unduly burdensome, overbroad, and seek[ing]
 8 information not proportional to the needs of the case.”

9 Fed. R. Civ. P. 26(b)(1) states, “Parties may obtain discovery regarding any
 10 nonprivileged matter that is relevant to any party’s claim or defense and proportional to
 11 the needs of the case.” Under Fed. R. Civ. P. 26(g)(1)(B), discovery objections should be,

12 “i) consistent with these rules and warranted by existing law or by a nonfrivolous
 13 argument for extending, modifying, or reversing existing law, or for establishing new
 14 law;

15 ii) not interposed for any improper purpose, such as to harass, cause unnecessary
 16 delay, or needlessly increase the cost of litigation; and

17 iii) neither unreasonable nor unduly burdensome or expensive, considering the
 18 needs of the case, prior discovery in the case, the amount in controversy, and the
 19 importance of the issues at stake in the action.”

20 Rule 37 of the Federal Rules of Civil Procedure “authorizes the district court, in its
 21 discretion, to impose a wide range of sanctions when a party fails to comply with the
 22 rules of discovery.” *Wyle v. R.J. Reynolds Indus., Inc.*, 709 F.2d 585, 589 (9th Cir. 1983).
 23 The district court’s discretion has “particularly wide latitude” in the Ninth Circuit. *Yeti by
 24 Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001).

25 Plaintiff has well-established from case law that its inquiry is relevant under Rule
 26(b)(1). *See Zillich*, 196 Ariz. at 238 (“The appropriate inquiry [for bad faith] is whether
 27 there is sufficient evidence from which reasonable jurors could conclude in the
 28 investigation, evaluation, and processing of the claim, the insurer acted unreasonably and

1 either knew or was conscious of the fact that its conduct was unreasonable.”); *see also*
 2 *Barten v. State Farm Mut. Auto Ins. Co.*, 2024 WL 2890246 (D. Ariz. 2024) (“If
 3 Defendant’s adjustors have financial incentives to deny valid claims, information about
 4 those incentives is proof that Defendant acted in bad faith.”).

5 Defendant once again appears to be delaying discovery. Defendant was previously
 6 warned for objecting to discovery on grounds of “ripeness” without citing authority. In
 7 this dispute, Defendant cites *Lennar Corp. v. Transamerica Ins. Co.*, 227 Ariz. 238, 244,
 8 256 P.3d 635 (Ariz. Ct. App. 2011), arguing Plaintiff’s bad faith claim will be moot if
 9 Defendant prevails at Summary Judgment. But the case fails to support Defendant that
 10 discovery relevant to bad faith should be requested after ruling on liability. Because of
 11 the previous warning for committing the same discovery violation, Defendant may be
 12 subject to sanctions under Rule 37.

13 Defendant’s concerns regarding the “sensitive nature” of employee personnel files
 14 posing “legitimate privacy concerns” are well-taken. While additional disclosures should
 15 come under the existing protective order, if any do not, the parties should confer and
 16 request an appropriate modification of the protective order.

17 II. Documentation Pertaining to Claims Handling

18 Plaintiff argues Defendant should produce more than 12 pieces of redacted paper
 19 in response to its request for “Progressive Preferred Insurance Company’s practices and
 20 procedures in the administration of claims” including “the processing of uninsured and
 21 underinsured motorist claims.” Plaintiff cites authority from other districts in the Ninth
 22 Circuit to establish courts have held similar material to be within the scope of discovery
 23 in bad-faith actions. *See Martinez v. James River Ins. Co.*, 2020 U.S. Dist. LEXIS 72911,
 24 (D. Nev. Apr. 24 2020) (“The case law is well settled that claims manuals are generally
 25 relevant and discoverable both for bad faith and breach of contract insurance claims”);
 26 *Hovsepyan v Geico Gen Ins. Co.*, 2020 U.S. Dist. LEXIS 86129 (E.D. Cal. May 15,
 27 2020).

28 Defendant contends they produced all the relevant portions of the redacted Claims

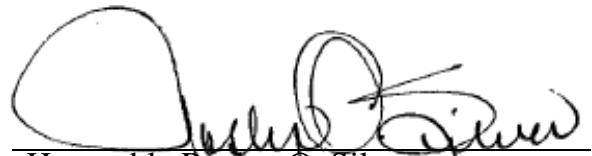
1 Standard Handling Manual, which was in effect during Plaintiff's October 7, 2020 loss.
2 Further, Defendant argues Plaintiff's request is overly broad given it is without regard to
3 whether personnel have handled uninsured motorist claims in Arizona. Defendant also
4 argues Plaintiff has failed to establish the relevance of claims manuals beyond those used
5 for uninsured motorists.

6 Plaintiff has established the relevance of uninsured motorist claims for a claim of
7 bad faith under Fed. R. Civ. P. 26(b)(1). To the extent such claims are relevant,
8 Defendant is required to provide manuals to Plaintiff. But because Defendant's objection
9 that the manuals beyond those used for uninsured motorists is plainly vague and
10 ambiguous, the Court is unable to resolve this dispute. *See Barten*, 2024 WL 2890246 at
11 4 ("Plainly, any information Defendant has regarding its handling of the claim will tend
12 to prove or disprove Plaintiff's allegation [of bad faith]. This is true regardless of whether
13 the information is within or outside the claim file.").

14 **IT IS ORDERED** Plaintiff's request for Personnel Files, Compensation, and
15 Profitability is **GRANTED** and denying without prejudice Plaintiff's second request for
16 Documentation Pertaining to Claims Handling. The parties are ordered to confer within
17 10 days from entry of this order and make every good faith effort to resolve this dispute.

18 Dated this 16th day of October, 2024.

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Honorable Roslyn O. Silver
Senior United States District Judge