

IN THE SUPREME COURT OF THE STATE OF NEVADA

UNITED SERVICES AUTOMOBILE
ASSOCIATION, an Unincorporated
Association;

Petitioner,

v.

EIGHTH JUDICIAL DISTRICT COURT FOR
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF CLARK; THE HONORABLE
NADIA KRALL, DISTRICT COURT JUDGE,

Respondents,

and

JOHN ROBERTS

Real Party in Interest.

Supreme Court No. _____
Electronically Filed
Aug 11 2021 02:54 p.m.
District Court Case No. 2021-01208
Elizabeth A. Brown
Clerk of Supreme Court

**APPENDIX IN SUPPORT OF PETITION FOR WRIT OF PROHIBITION
OR MANDAMUS**

Volume II of II

Robert W. Freeman, Esq.
Nevada Bar No. 3062
Priscilla L. O'Briant, Esq.
Nevada Bar No. 10171
Lewis Brisbois Bisgaard & Smith LLP
6835 S. Rainbow Blvd., Suite 600
Las Vegas, NV 89118
Telephone: 702-893-3383
Facsimile: 702-893-3789
Attorneys for Petitioner

INDEX TO PETITIONER'S APPENDICES

Chronological

Vol.	No.	Document	Date	Page
I	1	Certified Declarations Page, Policy 00562 55 57U 7101 3	3/5/14	1-3
I	2	Traffic Accident Report	5/9/14	4-10
I	3	Complaint	3/8/19	11-16
I	4	United Services Automobile Association's Answer to Plaintiff's Complaint	7/31/19	17-25
I	5	Defendant United Services Automobile Association's Answers to Plaintiff's First Set of Interrogatories	8/7/20	26-59
I	6	Defendant United Services Automobile Association's Responses to Plaintiff's First Set of Requests for Production	8/7/20	60-101
I	7	Defendant United Services Automobile Association's Responses to Plaintiff's First Set of Requests for Admission	8/7/20	102-110
I	8	Defendant United Services Automobile Association's Supplemental Answers to Plaintiff's First Set of Interrogatories	10/5/20	111-145
I	9	Defendant United Services Automobile Association's Supplemental Responses to Plaintiff's First Set of Requests for Production	10/5/20	146-177
I	10	Defendant's Responses to Plaintiff's Second Set of Requests for Production	11/6/20	178-184
I	11	Plaintiff's Motion to Compel Defendant's Responses to Interrogatories and Requests for Admission	1/14/21	185-204
I	12	Plaintiff's Motion to Compel Defendant's Requests for Production Responses	1/14/21	205-232

II	13	Opposition to Plaintiff's Motion to Compel Defendant's Responses to Interrogatories and Requests for Admission	2/1/21	233-245
II	14	Opposition to Plaintiff's Motion to Compel Defendant's Requests for Production Responses	2/2/21	246-264
II	15	Plaintiff's Reply to Opposition to Motion to Compel Defendant's Requests for Production Responses and Motion to Compel Defendant's Responses to Interrogatories and Requests for Admission	2/25/21	265-272
II	16	Court Minutes, All Pending Motions	3/4/21	273-274
II	17	Discovery Commissioner's Report and Recommendations on Plaintiff's Motion to Compel Defendant's Request for Production Responses and Plaintiff's Motion to Compel Defendant's Responses to Interrogatories and Requests for Admission	4/15/21	275-279
II	18	Defendant's Objection to Discovery Commissioner's Report and Recommendations as to Plaintiff's Motions to Compel	4/29/21	280-301
II	19	Order Re: Discovery Commissioner's Report and Recommendations	5/12/21	302-309
II	20	Docket, Case No. A-19-790757-C	8/10/21	310-311

Alphabetical

Vol.	No.	Document	Date	Page
I	1	Certified Declarations Page, Policy 00562 55 57U 7101 3	3/5/14	1-3
I	3	Complaint	3/8/19	11-16

II	16	Court Minutes, All Pending Motions	3/4/21	273-274
I	5	Defendant United Services Automobile Association's Answers to Plaintiff's First Set of Interrogatories	8/7/20	26-59
I	6	Defendant United Services Automobile Association's Responses to Plaintiff's First Set of Requests for Production	8/7/20	60-101
I	7	Defendant United Services Automobile Association's Responses to Plaintiff's First Set of Requests for Admission	8/7/20	102-110
I	8	Defendant United Services Automobile Association's Supplemental Answers to Plaintiff's First Set of Interrogatories	10/5/20	111-145
I	9	Defendant United Services Automobile Association's Supplemental Responses to Plaintiff's First Set of Requests for Production	10/5/20	146-177
II	18	Defendant's Objection to Discovery Commissioner's Report and Recommendations as to Plaintiff's Motions to Compel	4/29/21	280-301
I	10	Defendant's Responses to Plaintiff's Second Set of Requests for Production	11/6/20	178-184
II	17	Discovery Commissioner's Report and Recommendations on Plaintiff's Motion to Compel Defendant's Request for Production Responses and Plaintiff's Motion to Compel Defendant's Responses to Interrogatories and Requests for Admission	4/15/21	275-279
II	20	Docket, Case No. A-19-790757-C	8/10/21	310-311
II	14	Opposition to Plaintiff's Motion to Compel Defendant's Requests for Production Responses	2/2/21	246-264
II	13	Opposition to Plaintiff's Motion to Compel Defendant's Responses to Interrogatories and Requests for Admission	2/1/21	233-245

II	19	Order Re: Discovery Commissioner's Report and Recommendations	5/12/21	302-309
I	12	Plaintiff's Motion to Compel Defendant's Requests for Production Responses	1/14/21	205-232
I	11	Plaintiff's Motion to Compel Defendant's Responses to Interrogatories and Requests for Admission	1/14/21	185-204
II	15	Plaintiff's Reply to Opposition to Motion to Compel Defendant's Requests for Production Responses and Motion to Compel Defendant's Responses to Interrogatories and Requests for Admission	2/25/21	265-272
I	2	Traffic Accident Report	5/9/14	4-10
I	4	United Services Automobile Association's Answer to Plaintiff's Complaint	7/31/19	17-25

CERTIFICATE OF SERVICE

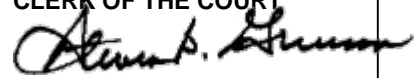
Pursuant to Nev. R. App. P. 25, I certify that I am an employee of LEWIS BRISBOIS BISGAARD & SMITH LLP, that, in accordance therewith, I caused a copy of the **APPENDIX IN SUPPORT OF PETITION FOR WRIT OF PROHIBITION OR MANDAMUS, Volume II of II**, to be delivered by United States Postal Service, First Class mail, in a sealed envelope, on the date and to the addressee(s) shown below:

The Honorable Nadia Krall
The Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101
Respondent

Jordan P. Schnitzer, Esq.
THE SCHNITZER LAW FIRM
9205 W. Russell Road, Ste. 240
Las Vegas, NV 89148
Attorneys for Plaintiff/Real Party in Interest

Dated this 10th date of August, 2021.

By: /s/ Anne Cordell
An employee of
Lewis Brisbois Bisgaard & Smith LLP



1 ROBERT W. FREEMAN
Nevada Bar No. 3062
2 Robert.Freeman@lewisbrisbois.com
PRISCILLA L. O'BRIANT
3 Nevada Bar No. 010171
Priscilla.OBriant@lewisbrisbois.com
4 JENNIFER A. TAYLOR
Nevada Bar No. 6141
5 Jennifer.A.Taylor@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
6 6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
7 702.893.3383
FAX: 702.893.3789
8 *Attorneys for Defendant United Services*
Automobile Association

9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 JOHN ROBERTS, an individual,
13
14 Plaintiff,

15 vs.

16 UNITED SERVICES AUTOMOBILE
ASSOCIATION, an unincorporated entity
17 and/or a reciprocal insurance exchange with
members residing in the State of Nevada;
DOES 1 through 10; and ROE
18 CORPORATIONS 11 through 25, inclusive,
19 Defendants.

CASE NO. A-19-790757-C
Dept. No.: IV

**OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL DEFENDANT'S
RESPONSES TO INTERROGATORIES
AND REQUESTS FOR ADMISSION**

20
21 COMES NOW Defendant UNITED SERVICES AUTOMOBILE ASSOCIATION,
22 ("USAA"), by and through its attorneys, Lewis Brisbois Bisgaard & Smith LLP, and hereby files
23 its *Opposition to Plaintiff's Motion to Compel Defendant's Responses to Interrogatories and*
24 *Requests for Admission* ("Opposition") and *Countermotion for Protective Order* on the grounds
25 that Plaintiff seeks over broad discovery and discovery that is not proportional to the needs of the
26 case.

27 ///

28 ///

1 This Opposition is made and based upon the following Memorandum of Points and
2 Authorities, the papers and pleadings on file herein, and any oral argument that this Court hears
3 on this matter.

4 DATED this 1st day of February, 2021.

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6
7 By */s/ Priscilla L. O'Briant*

8 ROBERT W. FREEMAN

9 Nevada Bar No. 3062

PRISCILLA L. O'BRIANT

10 Nevada Bar No. 010171

JENNIFER A. TAYLOR

11 Nevada Bar No. 6141

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

12 Telephone: 702.893.3383

13 Fax: 702.893.3789

Attorneys for Defendant United Services

Automobile Association

14
15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I.**

17 **INTRODUCTION**

18 This action arises from a claim by USAA insured John Roberts ("Plaintiff") for damages
19 arising from a May 9, 2014 automobile accident that occurred in Las Vegas. Plaintiff was
20 traveling southbound on Nellis Blvd. in the number one left turn lane entering the intersection on a
21 green light. A vehicle driven by Oscar Zazueta-Espinoza (the "tortfeasor") was traveling west on
22 Russell Road in the number 2 travel lane approaching the intersection of Nellis on a red traffic
23 signal. The tortfeasor failed to stop and continued traveling into the intersection where the front of
24 his vehicle struck the left side of Robert's vehicle. The traffic accident report indicates moderate
25 damage to the left side of Roberts' vehicle. Roberts was transported from the scene of the
26 accident to Sunrise Hospital.

27 ///

1 On the date of the reported loss, Plaintiff was insured under a policy of insurance with
2 USAA, Policy No. 00562 55 57U 7101 3. Robert's USAA policy includes UIM limits of
3 \$300,000 per person/\$500,000 per occurrence with \$10,000 in medical payments benefits. The
4 tortfeasor was insured with Primero Insurance Company with bodily injury limits of \$15,000.

5 Plaintiff made a claim under his USAA automobile policy for underinsured motorists and
6 medical payments benefits for injuries claimed sustained in the May 9, 2017 MVA. USAA
7 investigated the claim and evaluated the claim for an amount less than the full policy and made
8 offers to settle the claim. Plaintiff disputed USAA's claim evaluation and filed the instant action
9 on March 8, 2019.

10 Plaintiff's complaint alleges that he "made a valid covered claim under his USAA
11 insurance policy." (See **Exhibit A**, Plaintiff's Complaint at ¶ 25.) The Complaint further alleges
12 that "USAA refused to pay monies owed under the policy." (*Id.* at ¶ 26.) The complaint further
13 alleges that Plaintiff "sustained damages as a result of USAA's refusal to pay monies owed under
14 the policy." (*Id.* at ¶ 27.)

15 The complaint alleges claims against USAA for 1) Breach of Contract; (2) Breach of the
16 Implied Duty of Good Faith and Fair Dealing - Tortious and 3) Tortious Breach of the Implied
17 Duty of Good Faith and Fair Dealing. (See Generally Plaintiff's Complaint.) Within the claims
18 for tortious bad faith claims handling, Plaintiffs allege upon information and belief:

19 1) that USAA failed to acknowledge and act reasonably promptly upon communications with
20 respect to claims arising under Plaintiff's insurance policy in violation of NRS 686A.310(1)(b)
(*Id.* at ¶¶ 35 & 50.);

21 2) that USAA failed to affirm or deny coverage of claims within a reasonable time after
22 Plaintiff completed and submitted proof of loss requirements, a violation of NRS
23 686A.310(1)(d) (*Id.* at ¶¶ 36 & 51.);

24 3) that USAA failed to effectuate prompt, fair and equitable settlement of claims in which
25 liability of USAA became reasonably clear, a violation of NRS 686A.310(1)(e) (*Id.* at ¶¶ 37 &
26 52.);

26 4) that USAA failed to settle Plaintiff's claims promptly, where liability has become clear,
27 under Plaintiff's portion of the insurance policy coverage in order to influence settlement
28 under his portion of the insurance policy, a violation of NRS 686A.310. (*Id.* at ¶¶ 38 & 53.)

///

1 II.

2 LEGAL ARGUMENT

3 A. Legal Standard

4 NRCP 26(b)(1) permits “discovery regarding any non-privileged matter that is **relevant to**
5 **any party’s claim or defense and proportional to the needs of the case**, considering the
6 importance of the issues at stake in the action, the amount in controversy, the parties’ relative
7 access to relevant information, the parties’ resources, the importance of the discovery in resolving
8 the issues, and whether the burden or expense of the proposed discovery outweighs its likely
9 benefit.”

10 The purpose of the rule revision in 2015 were to emphasize the need to impose “reasonable
11 limitations on discovery through increased reliance on the common-sense concept of
12 proportionality.” *See Roberts v. Clark Cnty. Sch. Dist.*, 312 F.R.D. 594, 602-04 (D.Nev. 2016)
13 (discussing 2015 amendments to FRCP Rule 26, citing John Roberts, Chief Justice, 2015 Year-
14 End Report on the Federal Judiciary (Dec. 31, 2015), available at
15 <http://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>) (emphasis added).

16 The party opposing discovery has the burden of showing that it is irrelevant, overly broad,
17 or unduly burdensome. *Fosbre v. Las Vegas Sands Corp.*, 2016 U.S. Dist. LEXIS 1073, 2016 WL
18 54202, at *4 (D.Nev. Jan. 5, 2016); *Izzo v. Wal-Mart Stores, Inc.*, 2016 U.S. Dist. LEXIS 17701,
19 2016 WL 593532, at *2 (D.Nev. Feb. 11, 2016). When a request is overly broad on its face or
20 when relevancy is not readily apparent, however, the party seeking discovery has the burden to
21 show the relevancy of the request. *Desert Valley Painting & Drywall, Inv. v. United States*, 2012
22 U.S. Dist. LEXIS 145771, 2012 WL 4792913, at *2 (D.Nev. Oct. 9, 2012) (citing *Marook v. State*
23 *Farm Mut. Auto. Ins. Co.* 259 F.R.D. 388, 394-95 (N.D. Iowa 2009)). The 2015 amendments to
24 Rule 26(b) have not changed these basic rules, although they must now be applied with a greater
25 emphasis on proportionality. *McCall v. State Farm Mut. Auto. Ins. Co.*, No. 2:16-cv-01058-JAD-
26 GWF, 2017 U.S. Dist. LEXIS 117250, at *15 (D. Nev. July 26, 2017). The *McCall* Court quoted
27 a recent 9th Circuit court case discussing proportionality:

28 ///

1 Relevancy alone is no longer sufficient—discovery must also be proportional to
2 the needs of the case. The Advisory Committee Note makes clear, however, that
3 the amendment does not place the burden of proving proportionality on the party
4 seeking discovery. The amendment "does not change the existing responsibilities
5 [*16] of the court and the parties to consider proportionality, and the change does
6 not place on the party seeking discovery the burden of addressing all
7 proportionality considerations." Rule 26, Advis. Comm. Notes for 2015 Amends.
8 Rather, "[t]he parties and the court have a collective responsibility to consider the
9 proportionality of all discovery and consider it in resolving discovery disputes."

10 *Id.* at *16 (quoting *In re Bard IVC Filters Prods. Liab. Litig.*, 317 F.R.D. 562, 563 (D.Ariz.
11 2016)).

12 Under the amended rules, discovery must be proportional to the needs of the case. NRC
13 26(b)(1). While information requested by a party may be relevant in the broad sense, discovery
14 must also be proportional and tailored to the claims at issue in the lawsuit. *Abueg v. State Farm*
15 *Mut. Auto. Ins. Co.*, No. 2:14-CV-00635-GMN-GWF, 2014 U.S. Dist. LEXIS 154681, at *16 (D.
16 Nev. Oct. 30, 2014) (citing *Leksi, Inc. v. Federal Ins. Co.*, 129 F.R.D. 99, 105 (D.N.J. 1989)
17 (quoting Advisory Committee Notes to the 1983 Amendments to Rule 26) ("The rule of
18 proportionality is intended to 'guard against redundant or disproportionate discovery by giving the
19 court authority to reduce the amount of discovery that may be directed to matters that are
20 otherwise proper subjects of inquiry.'")). The purpose behind a renewed emphasis on
21 proportionality is set forth best by Chief Justice Roberts:

22 The amended rule states, as a fundamental principle, that lawyers must size and
23 shape their discovery requests to the requisites of a case. **Specifically, the pretrial
24 process must provide parties with efficient access to what is needed to prove a
25 claim or defense, but eliminate unnecessary or wasteful discovery. The key
26 here is careful and realistic assessment of actual need.** That assessment may, as
27 a practical matter, require the active involvement of a neutral arbiter—the federal
28 judge—to guide decisions respecting the scope of discovery.

John Roberts, Chief Justice, 2015 Year-End Report on the Federal Judiciary (Dec. 31, 2015),
available at <http://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf> (emphasis
added).

One United District Court Magistrate has described the Court's role in such a discovery
dispute as "not dissimilar to that of a referee whose job it is to ensure that both sides are adhering

1 to Rule 30(b)(6)'s objective of fair access to corporate information and, at the same time, to guard
2 against overreaching by the party seeking discovery and failure of the corporate party to satisfy its
3 obligations under the rule.” *Grahl v. Circle K Stores, Inc.*, No. 2:14-cv-305-RFB-VCF, 2017 U.S.
4 Dist. LEXIS 141190, at *16-17 (D. Nev. Aug. 31, 2017). The Court further noted that in this
5 endeavor, it is “guided by several objectives, including Rule 30(b)(6)'s objectives to ‘streamline’
6 discovery and curb ‘bandying,’ and at a more general level, the common-sense concept of
7 proportionality and the need to actively manage discovery ‘to secure the just, speedy, and
8 inexpensive determination of every action and proceeding.’” *Id.* As the *McCall* court also noted,
9 “[i]f the requirement for proportionality in discovery means anything, however, it must mean that
10 burdensome, tangential discovery should not be permitted based on the mere possibility that
11 something may turn up to support what is otherwise only speculation.” *McCall*, No. 2:16-cv-
12 01058-JAD-GWF, 2017 U.S. Dist. LEXIS 117250, at *26-27.

13 The most recent amendments to the discovery rules were specifically intended to curb the
14 culture of scorched earth litigation tactics by emphasizing the importance of ensuring that the
15 discovery process "provides parties with efficient access to what is needed to prove a claim or
16 defense, but eliminate unnecessary or wasteful discovery."¹ *Roberts v. Clark Cty. School Dist.*,
17 312 F.R.D. 594, 603-04 (D. Nev. 2016).

18 “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any
19 party's claim or defense and proportional to the needs of the case, considering the
20 importance of the issues at stake in the action, the amount in controversy, the parties’
21 relative access to relevant information, the parties’ resources, the importance of the
discovery in resolving the issues, and whether the burden or expense of the proposed
discovery outweighs its likely benefit.”

22 NRCP 26(b)(1).

23 "In deciding whether to restrict discovery under Rule 26(b)(2)(C), the court should
24 consider the totality of the circumstances, weighing the value of the material sought against the
25

26 ¹ Where Nevada statutes track their federal counterparts, federal cases interpreting the rules can be instructive.
27 *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002); *Middleton v. State*, 114 Nev.
1089, 1107, 968 P.2d 296, 309 & n.4 (1998).

1 burden of providing it, and taking into account society's interest in furthering the truth-seeking
2 function in the particular case before the court." *Roberts v. Clark Cty. Sch. Dist.*, 312 F.R.D. 594,
3 602 (D. Nev. 2016). Thus, "courts have the duty to pare down overbroad discovery requests under
4 Rule 26(b)(2)." *Id.* (*emphasis added*).

5 **B. USAA Has Meaningfully Replied to Plaintiff's Interrogatories**

6 **1. Interrogatory No. 2:**

7 This request is overbroad in seeking "every person known by you or any third-party
8 administrator" who undertook any review of the claim. USAA properly identified the claims
9 representative and manager as the persons who reviewed and evaluated Plaintiff's claim and
10 participated in recommending the actions taken by Defendant, along with their job titles and the
11 fact that they were employed by Defendant. Plaintiff mistakenly asserts that this information was
12 not provided but also that they are entitled to their last known address, social security number and
13 date of birth. However, this information is the private, confidential information of USAA's
14 employees and is not relevant to any claim or defense asserted in this litigation.

15 **2. Interrogatories No. 12, 13 and 14:**

16 Plaintiff's counsel seek information regarding other lawsuits filed against for violations of
17 the Unfair Claims Practices Act, "bad faith", or violation of the covenant of good faith and fair
18 dealing. USAA timely objected to these interrogatories on the grounds that they improperly seek
19 information that is irrelevant to this case, is not reasonably calculated to lead to the discovery of
20 admissible evidence, and is not proportional to the needs of this litigation. USAA further objected
21 to these interrogatories as vague as to the term "who contended" and to the extent that the
22 interrogatory calls for information protected by the attorney client and/or work product privileges.

23 During discussions between counsel, Plaintiff's counsel did not articulate any basis as to
24 why information regarding other claims somehow affects this case. Notably, Plaintiff's counsel
25 has notably not done so in the Motion either. Instead, Plaintiff relies on outdated case law
26 describing the "broad" discovery boundaries. However, cases allowing such discovery are exactly
27 what prompted the various amendments to the civil procedures rules which now require judges to
28 pare down overbroad discovery requests.

1 The Supreme Court of Nevada adopted the cause of action called "bad faith" in *United*
2 *States Fidelity & Guar. Co. v. Peterson*, 91 Nev. 617, 540 P.2d 1070 (1975). Nevada's definition
3 of bad faith is: (1) an insurer's *denial of (or refusal to pay) an insured's claim*; (2) without any
4 reasonable basis; and (3) the insurer's knowledge or awareness of the lack of any reasonable basis
5 to deny coverage, or the insurer's reckless disregard as to the unreasonableness of the denial.
6 *Pioneer*, 863 F. Supp. at 1247 (emphasis added), *American Excess*, 729 P.2d at 1354 ("Bad faith
7 involves an actual or implied awareness of the absence of a reasonable basis for *denying* the
8 benefits of the policy"); *see also, Pemberton v. Farmers Insurance Exchange*, 109 Nev. 789, 858
9 P.2d 380 (1993) ("[a]n insurer fails to act in good faith when it refuses 'without proper cause' to
10 compensate the insured for a loss covered by the policy."). Thus, the focus of common law bad
11 faith, and indeed the conduct for which liability is imposed, is on an unreasonable *denial* of the
12 benefits of the policy. *Hart v. Prudential Prop. & Cas. Ins. Co.*, 848 F. Supp. 900, 904 (D. Nev.
13 1994).

14 Thus, the issue to be resolved on these claims is whether USAA had a reasonable basis for
15 denying or delaying payment of this particular claim, and whether it knew or recklessly
16 disregarded the lack of a reasonable basis. The existence of other "bad faith" claims will not
17 prove or disprove any of the issues relevant to Plaintiff's bad faith claims. As such, this discovery
18 is not proportional to the needs of the case.

19 Additionally, Plaintiff's primary allegations concern USAA's failure to settle. This will
20 depend on an objective analysis of the particular facts of this claim. Thus, to determine whether
21 any other "bad faith" claim bears any relevance to this claim, would require a determination
22 whether those claims had any merit based on an objective analysis of the particular facts of each
23 claim, i.e., the question is not whether there are any other bad faith claims but whether there are
24 any meritorious claims. Thus, if this discovery is allowed, it will necessarily implicate a "mini-
25 trial" on every other claim in which an insured alleges bad faith. Finally, the mere fact that a
26 claim is asserted is a questionable basis upon which to allow the type of extensive discovery
27 Plaintiff seeks here.

28 ///

1 Applying the factors set forth in NRCP 26(b)(1), the requested discovery is neither
2 relevant to any **party's claim or defense** nor proportional to the needs of this case. This
3 discovery is simply not necessary to resolve any of the issues presented in Plaintiff's Complaint.
4 Based on all of the above, no further response should be ordered to these interrogatories.

5 **3. Interrogatory No. 28**

6 Plaintiff's counsel seek information regarding USAA's net worth. USAA timely objected
7 to this interrogatory as premature. In fact, during meet and confer sessions, the parties agreed that
8 it USAA timely objected to these interrogatories on the grounds that they improperly seek
9 information that is irrelevant to this case, is not reasonably calculated to lead to the discovery of
10 admissible evidence, and is not proportional to the needs of this litigation. USAA further objected
11 to these interrogatories as vague as to the term "who contended" and to the extent that the
12 interrogatory calls for information protected by the attorney client and/or work product privileges.

13 The Nevada Supreme Court has recognized that a defendant's financial status is not
14 available for the mere asking. See *Hetter v. Dist. Ct.*, 110 Nev. 513, 874 P.2d 762 (1994). The
15 Hetter court recognized that "[c]laims for punitive damages can be asserted with ease and can
16 result in abuse and harassment if their assertion alone entitles plaintiff to financial discovery." *Id.*
17 The Hetter court therefore found that before financial records are discoverable, a plaintiff must
18 demonstrate some factual basis for its punitive damage claim. *Id.* Based on the finding in Hetter,
19 the prior Discovery Commissioner's general rule has been that this information is discoverable
20 only 30 days before trial or after a summary judgment motion on punitive damages is denied.
21 USAA does not believe Plaintiff will be able to support this claim and intends to file a motion for
22 summary judgment on the punitive damages claim upon the close of discovery. If the motion is
23 denied, USAA already agree that it would provide Plaintiff the information within a reasonable
24 timeframe. However, at this time Plaintiff has not presented any evidence sufficient to entitle him
25 to this information. Thus, USAA's response is proper and no further response should be ordered
26 at this time.

27 ///

28 ///

1 **4. Interrogatory No. 31 to 33:**

2 Courts have repeatedly found that reserve information is not discoverable. In *American*
3 *Protection Insurance Co. v. Helm Concentrates, Inc.*, the court held that reserve information was
4 not discoverable, reasoning that "the policy either provides coverage for the loss or does not, the
5 insurer's good faith is determined by the manner and depth of its investigation and the
6 determination of whether there was a good faith factual and/or legal question as to whether the
7 loss was covered." *American Protection Ins. Co. v. Helm Concentrates, Inc.*, 140 F.R.D. 448, 450
8 (E.D. Cal. 1991).

9 Subsequent courts have determined that loss reserve information "may or may not be
10 relevant in a subsequent bad faith action, depending on the issues presented." *Lipton v. Superior*
11 *Court*, 48 Cal. App. 4th 1599, 1614, 56 Cal. Rptr. 2d 341, 349 (1996) (recognizing that reserve
12 information does not reflect the value assigned to a claim or settlement authority). However, the
13 *Lipton* court noted the relevance of the requested information must be tied to the specific issues
14 presented, and the issue determined on a case-by-case basis. Plaintiffs have not asserted how such
15 information would be relevant to the claim of bad faith in this matter except that it reflects
16 USAA's valuation of the claim, which is incorrect. The As such, USAA's relevancy objections
17 are proper. Nonetheless, after meet and confer efforts, USAA agreed to produced the claim file
18 with unredacted reserve information. Reserve information is contained within the claim file and
19 Plaintiff was sufficiently able to locate the "redacted" reserve information (which was also set
20 forth in USAA's privilege log) to object.

21 Moreover, USAA adequately responded to Interrogatories 32 and 33 by responding that it
22 does not have a "formula" for determining reserves and by identifying the factors that impacted its
23 setting of reserves. USAA responses are proper and no further response should be ordered.

24 **C. USAA Has Meaningfully Replied to Plaintiff's Requests for Admissions**

25 Plaintiff also requests that USAA be ordered to meaningfully respond to its Requests for
26 Admissions, Nos. 6-11 and 13, 12, 14, and 15. USAA objected to each and every one of these
27 Requests as improper under NRCP 36. NRCP 36 provides that a party may serve a written request
28 to admit "the truth of any matters within the scope of Rule 26(b)(1) relating to: (A) facts, the

1 application of law to fact, or opinions about either.” However, these requests simply state
2 conclusions of law without any application to facts. Under well-established case law, USAA is
3 not required to admit or deny these Requests.

4 While requests for admission may be used to seek an admission of the application of law to
5 the facts of the case, they may not be used to compel an admission of a conclusion of law. *Playboy*
6 *Enterps., Inc. v. Welles*, 60 F. Supp. 2d 1050, 1057 (S.D. Cal. 1999); see also *Marchand v. Mercy*
7 *Med. Ctr.*, 22 F.3d 933, 937 n.4 (9th Cir. 1994). While courts have recognized that "the distinction
8 between the application of law to fact and a legal conclusion is not always easy to draw" *Benson*
9 *Tower Condo. Owners Ass'n v. Victaulic Co.*, 105 F. Supp. 3d 1184, 1196 (D. Or. 2015) (citation
10 and internal quotations omitted), it is easy here as Plaintiff made no effort to tie the conclusions of
11 law asserted in the Requests to the facts of this case. USAA responses are proper and no further
12 response should be ordered.

13 **D. Plaintiffs Is Not Entitled to Any Award of Sanctions.**

14 Plaintiff's Motion indicates a request for an unspecific amount of "sanctions." Plaintiff's
15 counsel generally cite to the general rule that provides a theoretical basis for an award of
16 sanctions. However, they make no factual argument in support of this request, other than their
17 conclusory assertion that Defendant failed to provide adequate discovery disclosures as required
18 by the applicable Nevada Rules of Civil Procedure. However, as outlined in Plaintiff's motion,
19 USAA participate in meet and confer sessions with Plaintiff's counsel and provided supplemental
20 responses (even when it continued to believe the requested information was not relevant).

21 Additionally, as outlined above, USAA's meaningfully responded to Plaintiff's discovery.
22 Notwithstanding, the parties continued to disagree on the relevance and proportionality of the
23 information requested, leading to the subject motion. However, this does not support the

24 ///

25 ///

26 ///

27 ///

28 ///

1 imposition of sanctions against USAA. Therefore, there simply is no factual basis that would
2 support any award of sanctions or attorneys' fees in favor of Plaintiff.

3 DATED 1st day of February, 2021.

4 LEWIS BRISBOIS BISGAARD & SMITH LLP

5
6 By /s/ Priscilla L. O'Briant

7 ROBERT W. FREEMAN

8 Nevada Bar No. 3062

9 PRISCILLA L. O'BRIANT

10 Nevada Bar No. 010171

11 JENNIFER A. TAYLOR

12 Nevada Bar No. 6141

13 6385 S. Rainbow Boulevard, Suite 600

14 Las Vegas, Nevada 89118

15 Telephone: 702.893.3383

16 Fax: 702.893.3789

17 *Attorneys for Defendant United Services*

18 *Automobile Association*

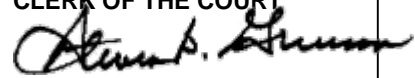
1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCp 5(b), A.O. 14-2 and N.E.F.C.R. 9, I certify that I am an employee of
3 LEWIS BRISBOIS BISGAARD & SMITH LLP, and that on this 21st day of February, 2021, I did
4 cause a true and correct copy of **OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL**
5 **DEFENDANT'S RESPONSES TO INTERROGATORIES AND REQUESTS FOR**
6 **ADMISSION** in *John Roberts v. United Services Automobile Association*, Clark County District
7 Court Case No. A-19-790757-C, to be served by electronic service with the Eighth Judicial
8 District Court filing system to the parties on the Electronic Service List addressed as follows:

9 Jordan P. Schnitzer, Esq.
10 THE SCHNITZER LAW FIRM
11 9205 W. Russell Road, Ste. 240
12 Las Vegas, NV 89148
13 Tel: (702) 960-4050
14 Fax: (702) 960-4092
15 *Attorney for Plaintiff*
16 Jordan@theschnitzerlawfirm.com

Jordan@theschnitzerlawfirm.com

17
18
19
20
21
22
23
24
25
26
27
28
By s/ Priscilla L. O'Briant
LEWIS BRISBOIS BISGAARD & SMITH LLP



1 ROBERT W. FREEMAN
Nevada Bar No. 3062
2 Robert.Freeman@lewisbrisbois.com
PRISCILLA L. O'BRIANT
3 Nevada Bar No. 010171
Priscilla.OBriant@lewisbrisbois.com
4 JENNIFER A. TAYLOR
Nevada Bar No. 6141
5 Jennifer.A.Taylor@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
6 6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
7 702.893.3383
FAX: 702.893.3789
8 *Attorneys for Defendant United Services*
Automobile Association

9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 JOHN ROBERTS, an individual,
13
14 Plaintiff,

15 vs.

16 UNITED SERVICES AUTOMOBILE
ASSOCIATION, an unincorporated entity
17 and/or a reciprocal insurance exchange with
members residing in the State of Nevada;
DOES 1 through 10; and ROE
18 CORPORATIONS 11 through 25, inclusive,
19 Defendants.

CASE NO. A-19-790757-C
Dept. No.: IV

**OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL DEFENDANT'S
REQUESTS FOR PRODUCTION
RESPONSES**

20
21 COMES NOW Defendant UNITED SERVICES AUTOMOBILE ASSOCIATION,
22 ("USAA"), by and through its attorneys, Lewis Brisbois Bisgaard & Smith LLP, and hereby files
23 its *Opposition to Plaintiff's Motion to Compel Defendant's Requests for Production Responses*
24 ("Opposition") on the grounds that Plaintiff seeks over broad discovery and discovery that is not
25 proportional to the needs of the case.

26 ///

27 ///

28 ///

1 This Opposition is made and based upon the following Memorandum of Points and
2 Authorities, the papers and pleadings on file herein, and any oral argument that this Court hears
3 on this matter.

4 DATED this 2nd day of February, 2021.

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6
7 By /s/ Priscilla L. O'Briant

8 ROBERT W. FREEMAN

9 Nevada Bar No. 3062

10 PRISCILLA L. O'BRIANT

11 Nevada Bar No. 010171

12 JENNIFER A. TAYLOR

13 Nevada Bar No. 6141

14 6385 S. Rainbow Boulevard, Suite 600

15 Las Vegas, Nevada 89118

16 Telephone: 702.893.3383

17 Fax: 702.893.3789

18 *Attorneys for Defendant United Services*

19 *Automobile Association*

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I.**

22 **INTRODUCTION**

23 This action arises from a claim by USAA insured John Roberts ("Plaintiff") for damages
24 arising from a May 9, 2014 automobile accident that occurred in Las Vegas. Plaintiff was
25 traveling southbound on Nellis Blvd. in the number one left turn lane entering the intersection on a
26 green light. A vehicle driven by Oscar Zazueta-Espinoza (the "tortfeasor") was traveling west on
27 Russell Road in the number 2 travel lane approaching the intersection of Nellis on a red traffic
28 signal. The tortfeasor failed to stop and continued traveling into the intersection where the front of
his vehicle struck the left side of Robert's vehicle. The traffic accident report indicates moderate
damage to the left side of Roberts' vehicle. Roberts was transported from the scene of the
accident to Sunrise Hospital.

///

1 On the date of the reported loss, Plaintiff was insured under a policy of insurance with
2 USAA, Policy No. 00562 55 57U 7101 3. Robert's USAA policy includes UIM limits of
3 \$300,000 per person/\$500,000 per occurrence with \$10,000 in medical payments benefits. The
4 tortfeasor was insured with Primero Insurance Company with bodily injury limits of \$15,000.

5 Plaintiff made a claim under his USAA automobile policy for underinsured motorists and
6 medical payments benefits for injuries claimed sustained in the May 9, 2017 MVA. USAA
7 investigated the claim and evaluated the claim for an amount less than the full policy and made
8 offers to settle the claim. Plaintiff disputed USAA's claim evaluation and filed the instant action
9 on March 8, 2019.

10 Plaintiff's complaint alleges that he "made a valid covered claim under his USAA
11 insurance policy." (See **Exhibit A**, Plaintiff's Complaint at ¶ 25.) The Complaint further alleges
12 that "USAA refused to pay monies owed under the policy." (*Id.* at ¶ 26.) The complaint further
13 alleges that Plaintiff "sustained damages as a result of USAA's refusal to pay monies owed under
14 the policy." (*Id.* at ¶ 27.)

15 The complaint alleges claims against USAA for 1) Breach of Contract; (2) Breach of the
16 Implied Duty of Good Faith and Fair Dealing - Tortious and 3) Tortious Breach of the Implied
17 Duty of Good Faith and Fair Dealing. (See Generally Plaintiff's Complaint.) Within the claims
18 for tortious bad faith claims handling, Plaintiffs allege upon information and belief:

19 1) that USAA failed to acknowledge and act reasonably promptly upon communications with
20 respect to claims arising under Plaintiff's insurance policy in violation of NRS 686A.310(1)(b)
(*Id.* at ¶¶ 35 & 50.);

21 2) that USAA failed to affirm or deny coverage of claims within a reasonable time after
22 Plaintiff completed and submitted proof of loss requirements, a violation of NRS
23 686A.310(1)(d) (*Id.* at ¶¶ 36 & 51.);

24 3) that USAA failed to effectuate prompt, fair and equitable settlement of claims in which
25 liability of USAA became reasonably clear, a violation of NRS 686A.310(1)(e) (*Id.* at ¶¶ 37 &
26 52.);

26 4) that USAA failed to settle Plaintiff's claims promptly, where liability has become clear,
27 under Plaintiff's portion of the insurance policy coverage in order to influence settlement
28 under his portion of the insurance policy, a violation of NRS 686A.310. (*Id.* at ¶¶ 38 & 53.)

///

1 II.

2 LEGAL ARGUMENT

3 A. Legal Standard

4 NRCP 26(b)(1) permits “discovery regarding any non-privileged matter that is **relevant to**
5 **any party’s claim or defense and proportional to the needs of the case**, considering the
6 importance of the issues at stake in the action, the amount in controversy, the parties’ relative
7 access to relevant information, the parties’ resources, the importance of the discovery in resolving
8 the issues, and whether the burden or expense of the proposed discovery outweighs its likely
9 benefit.”

10 The purpose of the rule revision in 2015 were to emphasize the need to impose “reasonable
11 limitations on discovery through increased reliance on the common-sense concept of
12 proportionality.” *See Roberts v. Clark Cnty. Sch. Dist.*, 312 F.R.D. 594, 602-04 (D.Nev. 2016)
13 (discussing 2015 amendments to FRCP Rule 26, citing John Roberts, Chief Justice, 2015 Year-
14 End Report on the Federal Judiciary (Dec. 31, 2015), available at
15 <http://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>) (emphasis added).

16 The party opposing discovery has the burden of showing that it is irrelevant, overly broad,
17 or unduly burdensome. *Fosbre v. Las Vegas Sands Corp.*, 2016 U.S. Dist. LEXIS 1073, 2016 WL
18 54202, at *4 (D.Nev. Jan. 5, 2016); *Izzo v. Wal-Mart Stores, Inc.*, 2016 U.S. Dist. LEXIS 17701,
19 2016 WL 593532, at *2 (D.Nev. Feb. 11, 2016). When a request is overly broad on its face or
20 when relevancy is not readily apparent, however, the party seeking discovery has the burden to
21 show the relevancy of the request. *Desert Valley Painting & Drywall, Inv. v. United States*, 2012
22 U.S. Dist. LEXIS 145771, 2012 WL 4792913, at *2 (D.Nev. Oct. 9, 2012) (citing *Marook v. State*
23 *Farm Mut. Auto. Ins. Co.* 259 F.R.D. 388, 394-95 (N.D. Iowa 2009)). The 2015 amendments to
24 Rule 26(b) have not changed these basic rules, although they must now be applied with a greater
25 emphasis on proportionality. *McCall v. State Farm Mut. Auto. Ins. Co.*, No. 2:16-cv-01058-JAD-
26 GWF, 2017 U.S. Dist. LEXIS 117250, at *15 (D. Nev. July 26, 2017). The *McCall* Court quoted
27 a recent 9th Circuit court case discussing proportionality:

28 ///

1 Relevancy alone is no longer sufficient—discovery must also be proportional to
2 the needs of the case. The Advisory Committee Note makes clear, however, that
3 the amendment does not place the burden of proving proportionality on the party
4 seeking discovery. The amendment "does not change the existing responsibilities
5 [*16] of the court and the parties to consider proportionality, and the change does
6 not place on the party seeking discovery the burden of addressing all
7 proportionality considerations." Rule 26, Advis. Comm. Notes for 2015 Amends.
8 Rather, "[t]he parties and the court have a collective responsibility to consider the
9 proportionality of all discovery and consider it in resolving discovery disputes."

10 *Id.* at *16 (quoting *In re Bard IVC Filters Prods. Liab. Litig.*, 317 F.R.D. 562, 563 (D.Ariz.
11 2016)).

12 Under the amended rules, discovery must be proportional to the needs of the case. NRC
13 26(b)(1). While information requested by a party may be relevant in the broad sense, discovery
14 must also be proportional and tailored to the claims at issue in the lawsuit. *Abueg v. State Farm*
15 *Mut. Auto. Ins. Co.*, No. 2:14-CV-00635-GMN-GWF, 2014 U.S. Dist. LEXIS 154681, at *16 (D.
16 Nev. Oct. 30, 2014) (citing *Leksi, Inc. v. Federal Ins. Co.*, 129 F.R.D. 99, 105 (D.N.J. 1989)
17 (quoting Advisory Committee Notes to the 1983 Amendments to Rule 26) ("The rule of
18 proportionality is intended to 'guard against redundant or disproportionate discovery by giving the
19 court authority to reduce the amount of discovery that may be directed to matters that are
20 otherwise proper subjects of inquiry.'")). The purpose behind a renewed emphasis on
21 proportionality is set forth best by Chief Justice Roberts:

22 The amended rule states, as a fundamental principle, that lawyers must size and
23 shape their discovery requests to the requisites of a case. **Specifically, the pretrial
24 process must provide parties with efficient access to what is needed to prove a
25 claim or defense, but eliminate unnecessary or wasteful discovery. The key
26 here is careful and realistic assessment of actual need.** That assessment may, as
27 a practical matter, require the active involvement of a neutral arbiter—the federal
28 judge—to guide decisions respecting the scope of discovery.

John Roberts, Chief Justice, 2015 Year-End Report on the Federal Judiciary (Dec. 31, 2015),
available at <http://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf> (emphasis
added).

One United District Court Magistrate has described the Court's role in such a discovery
dispute as "not dissimilar to that of a referee whose job it is to ensure that both sides are adhering

1 to Rule 30(b)(6)'s objective of fair access to corporate information and, at the same time, to guard
2 against overreaching by the party seeking discovery and failure of the corporate party to satisfy its
3 obligations under the rule.” *Grahl v. Circle K Stores, Inc.*, No. 2:14-cv-305-RFB-VCF, 2017 U.S.
4 Dist. LEXIS 141190, at *16-17 (D. Nev. Aug. 31, 2017). The Court further noted that in this
5 endeavor, it is “guided by several objectives, including Rule 30(b)(6)'s objectives to ‘streamline’
6 discovery and curb ‘bandying,’ and at a more general level, the common-sense concept of
7 proportionality and the need to actively manage discovery ‘to secure the just, speedy, and
8 inexpensive determination of every action and proceeding.’” *Id.* As the *McCall* court also noted,
9 “[i]f the requirement for proportionality in discovery means anything, however, it must mean that
10 burdensome, tangential discovery should not be permitted based on the mere possibility that
11 something may turn up to support what is otherwise only speculation.” *McCall*, No. 2:16-cv-
12 01058-JAD-GWF, 2017 U.S. Dist. LEXIS 117250, at *26-27.

13 The most recent amendments to the discovery rules were specifically intended to curb the
14 culture of scorched earth litigation tactics by emphasizing the importance of ensuring that the
15 discovery process "provides parties with efficient access to what is needed to prove a claim or
16 defense, but eliminate unnecessary or wasteful discovery."¹ *Roberts v. Clark Cty. School Dist.*,
17 312 F.R.D. 594, 603-04 (D. Nev. 2016).

18 “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any
19 party's claim or defense and proportional to the needs of the case, considering the
20 importance of the issues at stake in the action, the amount in controversy, the parties’
21 relative access to relevant information, the parties’ resources, the importance of the
discovery in resolving the issues, and whether the burden or expense of the proposed
discovery outweighs its likely benefit.”

22 NRCP 26(b)(1).

23 "In deciding whether to restrict discovery under Rule 26(b)(2)(C), the court should
24 consider the totality of the circumstances, weighing the value of the material sought against the
25

26 ¹ Where Nevada statutes track their federal counterparts, federal cases interpreting the rules can be instructive.
27 *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002); *Middleton v. State*, 114 Nev.
1089, 1107, 968 P.2d 296, 309 & n.4 (1998).

1 burden of providing it, and taking into account society's interest in furthering the truth-seeking
2 function in the particular case before the court." *Roberts v. Clark Cty. Sch. Dist.*, 312 F.R.D. 594,
3 602 (D. Nev. 2016). Thus, "courts have the duty to pare down overbroad discovery requests under
4 Rule 26(b)(2)." *Id.* (*emphasis added*).

5 **B. USAA Should Not be Compelled to Produce Irrelevant and Unproportional**
6 **Information**

7 **1. Request Nos. 2, 15, 16 and 18 - Underwriting**

8 In considering whether the requested discovery is relevant and proportional to the needs of
9 the case, USAA stresses that this Court should consider the allegations of the Complaint –
10 Plaintiff's causes of action are premised on allegations that USAA owed coverage for but did not
11 pay Plaintiff's claim and did not timely communicate with Plaintiff.

12 Plaintiff's Request No. 2 seeks all documents that underwriting my use for reference,
13 training, and guidelines in underwriting policies. Plaintiff's Requests Nos. 15 and 16 seek
14 documents related to USAA's processing of insurance applications and issuance of policies as
15 well as "processing manuals and other materials available to your personnel for reference or
16 training in their duties of processing applications or issuing policies. Request No. 18 seeks
17 documents relating to the sale of insurance. USAA timely objects to this discovery based on
18 relevance and proportionality. The requested discovery is "unnecessary" and "wasteful
19 discovery," and should not be allowed for several reasons. There is no dispute that the Policy was
20 issued and in effect at the time of the claimed loss. Plaintiff has not alleged any facts that would
21 place USAA's underwriting guidelines at issue in this litigation. The issues involved in this
22 litigation are whether USAA 1) owed UM benefits for this loss based on the value of Plaintiff's
23 claim and 2) properly handled Plaintiff's claim. The underwriting and guidelines governing
24 underwriting are not relevant to, and will not resolve, either issue. This is nothing more than a
25 "fishing expedition" and is not relevant to the claims or defenses in this matter.

26 District courts need not condone the use of discovery to engage in fishing expeditions.
27 *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1072 (9th Cir. 2004). It is axiomatic that a party is not
28 entitled to make accusations without basis and then use the discovery process in the hope of

1 uncovering such a basis. See, e.g., *Rodriguez v. Quality Loan Serv. Corp.*, 2010 U.S. Dist. LEXIS
2 47556, 2010 WL 1644695, at *2 (D. Ariz. Apr. 22, 2010). This is even more true where, as here,
3 the party did not even make such an accusation. This already-settled proposition was re-enforced
4 by the 2015 amendments to the discovery rules, which were meant to curb the culture of scorched
5 earth litigation tactics by emphasizing the importance of ensuring that the discovery process
6 "provide[s] parties with efficient access to what is needed to prove a claim or defense, but
7 eliminate unnecessary or wasteful discovery." *Roberts v. Clark County School Dist.*, 312 F.R.D.
8 594, 603-04 (D. Nev. 2016) (emphasis added).

9 A Nevada District Court recently noted that this issue arises most commonly when a
10 plaintiff seeks discovery without a sufficient factual basis alleged in the complaint. *Bank of Am.,*
11 *N.A. v. Azure Manor/Rancho de Paz Homeowners Ass'n*, No. 2:16-cv-00764-GMN-GWF, 2018
12 U.S. Dist. LEXIS 44095, at *9, FN 2 (D. Nev. Mar. 19, 2018) (ref. *Ashcroft v. Iqbal*, 556 U.S.
13 662, 678-79, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (U.S. 2009) (Rule 8 "does not unlock the doors of
14 discovery for a plaintiff armed with nothing more than conclusions")). Discovery is an improper
15 fishing expedition when the party is searching for something improper that might give rise to a
16 potential claim. See e.g., *MP Nexlevel, of Cal., Inc. v. CVIN, LLC*, 2016 U.S. Dist. LEXIS 48621,
17 2016 WL 1408459, at *4 (E.D. Cal. Apr. 11, 2016). This is exactly the case here.

18 Plaintiff cites to cases which allowed discovery of underwriting material, however, as the
19 citations by Plaintiff demonstrate, those materials were relevant as to the coverage that was
20 included in the issued policy. Again, here there is no dispute that the policy was in force on the
21 date of the subject accident and that UM coverage applies. In fact, USAA evaluated the claim and
22 made offers.

23 Even assuming Plaintiff can make some attenuated argument that this information is
24 relevant to the claims or defenses in this action, the topic should not be allowed as it is not
25 proportional to the needs of the case considering the importance of the issues at stake in the action
26 and the importance of this discovery in resolving the issues. As set forth above, USAA's
27 underwriting and underwriting guidelines will not impact resolution of the issues in this case.

28 ///

1 When this is the case, the burden and expense of the proposed discovery far outweighs any
2 potential benefit.

3 Plaintiff further argues that these requests are relevant based on the allegations that USAA
4 committed acts that are unfair claims practices, and such acts could stem as far back as the
5 underwriting of the policy. However, NRS §686A.310 by its express language applies to the
6 handling of “claims” arising under insurance policies not to the issuance of such policies. The
7 requested documents have nothing to do with claims. As such, USAA’s objections were proper
8 and no further response should be ordered.

9 **2. Request 17 – Agent Steven Lucent**

10 Plaintiff seeks all documents and writings pertaining to “agent Steve Lucent” including
11 specifically the agent application, appointment of agency, contracts between USAA and Steve
12 Lucent, approved sales material used by Steve Lucent, commission schedule, etc. This Request is
13 patently overbroad in seeking all documents and writings pertaining to agent Steve Lucent.”
14 USAA timely objected on the bases that the Request was overbroad, compound, vague and
15 ambiguous, as well as that the requested information was not relevant or proportional (again the
16 requested documents pertain to the issuance of the policy, which is not disputed, rather than the
17 claims handling), and sought confidential and sensitive information of USAA’s employees.
18 Nonetheless, USAA substantively responded that Steve Lucent is not an insurance agent as the
19 Request asserted and as such, the requested documents did not exist. USAA also substantively
20 advised that all of Steven Lucent’s communications regarding the claim had been produced with
21 the claim file. Finally, USAA also advised that materials related to the handling of UM claims in
22 Nevada as well as relevant information within Steve Lucent’s employee file would be produced
23 upon entry of a protective order.²

24 Nonetheless, Plaintiff includes this request in his motion to compel. Plaintiff recognizes
25 that Steve Lucent is an “adjuster” and argues, as such, he will have discoverable information

26 _____
27 ² USAA proposed a stipulated Confidentiality and Protective Order which Plaintiff subsequently
28 rejected and will be proceeding with a Motion for Protective Order on these issues.

1 related to the allegations and USAA should be compelled to respond to this Request. USAA
2 asserts that it not only responded to Plaintiff's request but went beyond its duties in responding by
3 identifying information it would produce that was responsive to the information it *appeared*
4 Plaintiff was seeking in this Request.

5 **3. Requests 7, 16, 18, 21, 22,**

6 These Requests generally seek USAA's manual, policies, guidelines, etc. on handling
7 claims. USAA timely asserted objections to each as warranted by the individual Request but also
8 substantively responded advising that it does not have claims manuals but provides guidance to its
9 claims handler s through its Knowledge Delivery online search tool and would produce relevant
10 information contained therein upon entry of a Confidentiality and Protective Order. Plaintiff
11 refused. USAA will seek protection of these documents though a Protective Order. As such, no
12 supplemental response should be ordered until entry of the Protective Order.

13 **4. Request No. 27**

14 This Request seeks all documents, writings, and communications used by USAA's
15 personnel for solicitation of underinsured motorist policies. USAA timely asserted objects as to
16 relevance and proportionality but also substantively responded that USAA does not use agents for
17 the sale of insurance and thus no responsive documents exist.

18 **5. Request No. 28**

19 This Request seeks Defendant's "policies, procedures, manuals or other training for
20 evaluating claims" including all training courses given or required for adjuster that were taken
21 within 5 years prior to the claim through the present time. This request is patently overbroad and
22 seeks the training provided to every adjuster employed by Defendant from May 9, 2009 to present.
23 It is not limited to similar claims (UM), not limited in geography, and not sufficiently limited in
24 time. Thus, Plaintiff has the burden to show the relevancy of the request.

25 Again, this discovery is not relevant and is "unnecessary" and "wasteful discovery" which
26 constitutes a fishing expedition, and is not proportional to the needs of the case considering the
27 importance of the issues at stake in the action and the importance of the discovery in resolving the
28 issues. Plaintiff has sought information related to USAA's policies and procedures, manuals, etc.,

1 information which USAA has agreed to produce upon entry of a protective order, but training in
2 and of itself is not proportional to the claims and defenses in this matter. Based on the allegations
3 pleaded in the Complaint, appropriate discovery would pertain to USAA's investigation and
4 evaluation of Plaintiff's UM/UIM claims, and whether its claim decision(s) was reasonable. What
5 training its claims handlers have received over the last 12 years does not relate to how well they
6 handled Plaintiff's UM/UIM claims. That is, a claims adjuster may have had excellent training,
7 but could have handled a particular claim in an unreasonable manner, and conversely, a claims
8 adjuster with limited or poor training could have handled a claim well with a reasonable basis for a
9 particular claim decision. Plaintiff did not allege that USAA provided insufficient training to its
10 employees or that the claims personnel assigned to this claim were not appropriately trained.

11 Finally, as written, this request implicate proprietary concerns and may call for testimony
12 as to information which is confidential and would only be provided pursuant to a Protective Order
13 as to any USAA materials implicated by this topic.

14 Despite all of the above, USAA again responded and indicated it would provide relevant
15 Knowledge Delivery documents upon entry of a protective order. As such, USAA's objections
16 were proper and it should not be required to provide an additional response.

17 **6. Request Nos. 24, 34, 39, 40, 41, 42, 43 and 47:**

18 Request No. 24 seeks documents evidencing payments received by Plaintiff for insurance
19 premiums.

20 Request No. 34 Plaintiff seeks the personnel file of each employee, manager, supervisor or
21 other agent who was involved, had supervisory capacity over Plaintiff's claim or audited the
22 claim. This Request is patently overbroad.

23 Request 39 seeks any testimony USAA has offered regarding UM and UIM claims from
24 January 1, 2010 to present. Again, this Request is patently overbroad.

25 Request No. 40 seeks information regarding regulatory actions. Again, this Request is
26 patently overbroad.

27 ///

28 ///

1 Request No. 41 seeks any and all company newsletter designed to inform employees of
2 industry or company news or developments related to uninsured or underinsured motorist
3 coverage or policies in Nevada since January 1, 2001. Again, this Request is patently overbroad.

4 Request No. 42 seeks any and all transcripts and recordings of speeches or presentations in
5 any form on the subject of uninsured or underinsured motorist coverage in (sic) since January 1,
6 2010. Again, this Request is patently overbroad.

7 Request No. 43 seeks marketing materials. Again, this Request is patently overbroad.

8 Request No. 47 seeks the personnel file of the adjuster(s) and supervisors directly involved
9 in handling and evaluating Plaintiff's claim regarding performance evaluation, audits, disciplinary
10 actions, and performance under a bonus or incentive plan. Again, this Request is patently
11 overbroad.

12 In *Cranmer v. Colorado Cas. Ins. Co.*, 2:14-cv-645-MMD-VCF, 2014 U.S. Dist. LEXIS
13 163585, WL 11352806, (Nov. 20, 2014), a claim for breach of contract and bad faith allegations
14 including similar allegations, the Court addressed a motion to compel similar discovery. The
15 Court noted that:

16 Cranmer's Interrogatories ask, for instance, (1) whether Colorado Casualty "has
17 ever been a party to any legal action in the State of Nevada, whether in federal or
18 state court . . . during the last 5 years" and (2) Colorado Casualty to "[d]escribe the
19 experience, training, and educational background of each person who evaluated,
20 managed, and supervised the handling of Plaintiff's claim." (Pl.'s Mot. to Compel
21 (#20) at 10:23-28, 12:23-28). His Requests for Production of Documents demand,
22 in part, (1) "[c]opies of all personnel files of Defendant's employees," (2) [a]ny and
all transcripts and recordings of speeches or presentations . . . on the subject of
insurance," and (3) documents from January 1, 2004 to the present, despite the fact
that the underlying accident occurred on February 13, 2012. These requests
misunderstand the scope of discovery under Rule 26(b)(1).

23 *Cranmer*, 2014 U.S. Dist. LEXIS 163585 at *7 (internal quotations omitted). The *Cranmer* court
24 denied plaintiff's motion to compel regarding this discovery. The *Cranmer* court specifically
25 found that this discovery sought information that was not relevant to any party's claims or
26 defense, and that there was not good cause sufficient to inquire into the general subject matter of
27 the action: bad faith insurance claims. *Cranmer*, 2014 U.S. Dist. LEXIS 163585 at **6, 12-14.

28 ///

1 Plaintiff relies heavily on *McCall v. State Farm Mut. Auto. Ins. Co.*, No. 2:16-cv-01058-
2 JAD-GWF, 2017 U.S. Dist. LEXIS 117250, at *29 (D. Nev. July 26, 2017) in support of his
3 request for employee file and personnel information. However, *McCall* undercuts Plaintiff's
4 request as written, it the court in *McCall* specifically limited the request to the claims employees
5 who actually handled the claim at issue, and also noted that the Court must ensure the irrelevant,
6 private and confidential information in the files is not disclosed, thus the Court limited the
7 discovery to the background qualifications and performance of the adjusters directly involved in
8 handling the claim and required the information to be produced under a protective order.
9 Although USAA objected to the Requests as written as Plaintiff's Requests failed to meet the
10 standard set forth in NRCP 26 (USAA did respond and agree to provide relevant information from
11 the claims adjuster's personnel file upon entry of a protective order. Although Plaintiff's requests
12 as written requested information that was not relevant to any party's claims or defense, USAA
13 substantively responded by identifying information that was relevant to the claims and defenses
14 and agreeing to provide pursuant to a protective order.

15 Plaintiff's request for documentation of insurance premiums is not relevant to any claim or
16 defense as there is no dispute that the coverage was in force on the date of the accident. Thus it is
17 axiomatic that this discovery is not proportional to the needs of the case.

18 **7. Request No. 36 – Bonus Information**

19 As in *Cranmer* above, this discovery is not relevant to any party's claims or defenses and
20 there is not good cause sufficient to inquire into this general subject matter. *Cranmer*, 2014 U.S.
21 Dist. LEXIS 163585 at **6, 12-14. Even if this information is tangentially relevant to the claims
22 in this matter, relevancy alone is no longer sufficient—discovery must also be proportional to the
23 needs of the case. Here, USAA does not have a bonus or incentive plan tied to the payment or
24 non-payment of claims. Since at least 2010, Defendant's Board of Directors has approved a
25 holiday bonus that is paid to all employees in December of each year. Employees who are
26 actively employed at the end of November receive an amount equal to their then-current bi-weekly
27 base pay, prorated for any partial period of employment. Additionally, since at least 2010,
28 Defendant's Board of Directors has awarded an enterprise-wide performance bonus paid in

1 February of the following year. In order to be eligible for the bonus, employees must have been
2 hired prior to October and still employed as of February (or retired from Defendant on or after
3 January) of the payment year. With limited exceptions noted below, every employee working
4 with USAA, regardless of job title, job duties, or job location, received a bonus equal to a
5 percentage of their eligible earnings. Employees whose individual performance required a form of
6 corrective action during the year may have received a reduced bonus or no bonus at all. Other
7 bonus opportunities afforded to Defendant employees include cash awards for referring external
8 candidates who are hired for designated, open positions, as well as awards for employees who
9 show extraordinary efforts in their job duties or in the implementation of new ideas. These awards
10 may involve gratitude notes, gift certificates, or actual cash awards. The incentive program is
11 company wide not specifically tied to payment or non payment of claims. Thus, to require USAA
12 to produce all documents related to its incentive program is not proportional to the needs of the
13 case. Moreover, following the 2015 amendments, Nevada courts have specifically found that
14 “where responsive information can be provided more accurately and with less burden through one
15 method of discovery, that method should be used. Duplicative discovery methods should be
16 avoided.” *Security Ballentine v. Las Vegas Metro. Police Dep’t*, No. 2:14-cv-01584-APG-GWF,
17 2016 U.S. Dist. LEXIS 62362, at *23 (D. Nev. May 9, 2016). Thus, if the Court finds that this
18 information is relevant to the claims and defenses alleged in his litigation, USAA should be
19 allowed to describe its compensation plan in a verified interrogatory rather than produce all
20 documents relating to its company wide compensation plan.

21 **8. Request 32 – Reports and Invoices Generated by Vendors or Medical**
22 **Providers**

23 Again, this is “unnecessary” and “wasteful discovery” which constitutes a fishing
24 expedition, and is not proportional to the needs of the case considering the importance of the
25 issues at stake in the action and the importance of the discovery in resolving the issues. Plaintiff
26 did not allege that any of the medical opinions obtained by USAA were the result of bias.

27 *Abueg v. State Farm Mut. Auto. Ins. Co.*, 2:14-cv-635-GMN-GWF, 2014 U.S. Dist. LEXIS
28 154681, WL 5503114 (D.Nev. Oct. 30, 2014) is instructive as to the issue of relevance and

1 proportionality of the types of information and documents that Plaintiff seeks from USAA. In
2 *Abueg*, the plaintiff sued her insurer for breach of contract, breach of the implied covenant of good
3 faith and fair dealing, and violation of the Nevada Unfair Claims Practices Act. *Abueg*, 2014 U.S.
4 Dist. LEXIS at *2. The insured alleged that “State Farm engaged in unreasonable delay in
5 investigating her claim and has improperly relied on the biased opinion of a non-treating
6 physician, Dr. Benenati, that her foot injury was not entirely caused by the accident.” *Id.* at *4. In
7 the course of discovery, the insured sought, *inter alia*:

8 [A]ny and all reports, correspondences, invoices, contracts, e-mails, electronic communications,
9 computer printouts, screen shots and other documents pertaining to Integrated Medical Evaluations
10 being retained by State Farm to perform independent medical evaluations or records reviews of or in
11 regards to Nevada resident or Nevada based bodily injury or underinsured motorist claimants within
12 the last five (5) years.

13 *Id.* at *10. In the court’s careful analysis, it reasoned that:

14 It is, of course, conceivable that an analysis of the requested reports may show that a high
15 percentage of the opinions were favorable to State Farm’s position that the claimants’ injuries were
16 not caused by the accident. **Such a finding, however, is not necessarily evidence of unreasonable
17 or biased medical opinions. If the insurer requests medical records reviews when it has a
18 reasonable doubt regarding causation, the fact that the reports support the insurer’s position
19 on causation does not establish that the doctors were biased or their opinions were not
20 objectively reasonable. The reasonableness of physicians’ opinions can only be determined by
21 evaluating them in light of the medical and other evidence in the claim.** Contrary to *Kelly*, this
22 Court does not believe that collateral ‘mini-trials’ regarding medical opinions rendered in other
23 claims can be easily avoided if the validity or invalidity of those opinions is to be fairly considered.

24 *Id.* at **15-16 (emphasis added). Significantly, the court noted that “[w]hile the information
25 requested by Plaintiff may be relevant in the broad sense, discovery must also be proportional and
26 tailored to the claims at issue in the lawsuit.” *Id.* at *16 (citing *Leksi, Inc. v. Fed. Ins. Co.*, 129
27 F.R.D. 99, 105 (D.N.J. 1989) (“The rule of proportionality is intended to guard against redundant
28 or disproportionate discovery by giving the court authority to reduce the amount of discovery that
may be directed to matters that are otherwise proper subjects of inquiry.”). The court explained
that:

Plaintiff has the ability to contest the validity and reasonableness of Dr. Benenati’s opinion
regarding her foot injury based on the medical records and the opinions of her own treating
physicians. Plaintiff can also contest Dr. Benenati’s credibility based on the fact that he has been
compensated by State Farm for providing his records review. If Dr. Benenati has provided medical
records reviews for State Farm in other underinsured motorist or bodily injury claims, then Plaintiff
is entitled to obtain copies of his reports in those claims. The identities of the claimants, however,
should be initially redacted. The Court concludes, however, that requiring IME, Inc. or State Farm
to produce all medical records review reports regarding Nevada uninsured motorist or bodily injury

1 claimants is of only marginal relevance and would likely result in additional collateral and
2 burdensome discovery.

3 Id. at **18-19. Thus, the court denied the insured's inquiry into all of the various communications
4 and documents "pertaining to IME being retained by State Farm," and compelled only the
5 production of any records review reports for the past three years that the subject physician had
6 provided for State Farm through IME in Nevada. In short, even when courts have found this
7 information relevant to the claims and defenses of a case, such discovery must be proportional to
8 the needs of the case. The information sought by Plaintiff is not. Thus, USAA's objection was
9 proper and it will be seeking protection from the broad scope of discovery sought by Plaintiff in
10 this Request.

11 **9. Request No. 10 – Financial Condition**

12 Plaintiff's counsel seek information regarding USAA's net worth. USAA timely objected
13 to this Request as premature. In fact, during meet and confer sessions, the parties agreed that this
14 discovery sought information that was premature.

15 The Nevada Supreme Court has recognized that a defendant's financial status is not
16 available for the mere asking. See *Hetter v. Dist. Ct.*, 110 Nev. 513, 874 P.2d 762 (1994). The
17 *Hetter* court recognized that "[c]laims for punitive damages can be asserted with ease and can
18 result in abuse and harassment if their assertion alone entitles plaintiff to financial discovery." Id.
19 The *Hetter* court therefore found that before financial records are discoverable, a plaintiff must
20 demonstrate some factual basis for its punitive damage claim. Id. Based on the finding in *Hetter*,
21 the prior Discovery Commissioner's general rule has been that this information is discoverable
22 only 30 days before trial or after a summary judgment motion on punitive damages is denied.
23 USAA does not believe Plaintiff will be able to support this claim and intends to file a motion for
24 summary judgment on the punitive damages claim upon the close of discovery. If the motion is
25 denied, USAA already agree that it would provide Plaintiff the information within a reasonable
26 timeframe. However, at this time Plaintiff has not presented any evidence sufficient to entitle him
27 to this information. Thus, USAA's response is proper and no further response should be ordered
28 at this time.

1 **Request No. 9 – Documents Relating to Outsourcing**

2 This request seeks documents relating to the contracting of third party administration or
3 outsourcing of any operations related to new business processing, policy issue, policyholder
4 services, claims processing, billing, collection and payment receipt. USAA timely objects that
5 that this request seeks information that is neither relevant to the claims or defenses of either party
6 nor proportional to the needs of the case. Specifically, the requested topics have no bearing on the
7 issues in this case. Nonetheless, USAA substantively responded with the only issue that
8 potentially has any bearing on this case – the claims handling – and represented that USAA does
9 not outsource its claims handling. Thus, USAA’s response is proper and no further response
10 should be ordered at this time.

11 **C. Plaintiffs Is Not Entitled to Any Award of Sanctions.**

12 Plaintiff’s Motion indicates a request for an unspecific amount of "sanctions." Plaintiff’s
13 counsel generally cite to the general rule that provides a theoretical basis for an award of
14 sanctions. However, they make no factual argument in support of this request, other than their
15 conclusory assertion that Defendant failed to provide adequate discovery disclosures as required
16 by the applicable Nevada Rules of Civil Procedure. However, as outlined in Plaintiff’s motion,
17 USAA participated in meet and confer sessions with Plaintiff’s counsel and provided
18 supplemental responses (even when it continued to believe the requested information was not
19 relevant).

20 Additionally, as outlined above, USAA meaningfully responded to much of Plaintiff’s
21 discovery, including numerous Requests which are nonetheless contained within the motion to
22 compel. While the parties continued to disagree on the relevance and proportionality of the
23 information requested, leading to the subject motion, there is nothing in Plaintiff’s Motion that

24 ///

25 ///

26 ///

27 ///

28 ///

1 would support the imposition of sanctions against USAA. There simply is no factual basis that
2 would support any award of sanctions or attorneys' fees in favor of Plaintiff.

3 DATED 2nd day of February, 2021.

4 LEWIS BRISBOIS BISGAARD & SMITH LLP

5
6 By /s/ Priscilla L. O'Briant

7 ROBERT W. FREEMAN

8 Nevada Bar No. 3062

9 PRISCILLA L. O'BRIANT

10 Nevada Bar No. 010171

11 JENNIFER A. TAYLOR

12 Nevada Bar No. 6141

13 6385 S. Rainbow Boulevard, Suite 600

14 Las Vegas, Nevada 89118

15 Telephone: 702.893.3383

16 Fax: 702.893.3789

17 *Attorneys for Defendant United Services*

18 *Automobile Association*

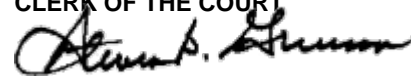
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), A.O. 14-2 and N.E.F.C.R. 9, I certify that I am an employee of LEWIS BRISBOIS BISGAARD & SMITH LLP, and that on this 2nd day of February, 2020, I did cause a true and correct copy of **OPPOSITION TO PLAINTIFF’S MOTION TO COMPEL DEFENDANT’S REQUESTS FOR PRODUCTION RESPONSES** in *John Roberts v. United Services Automobile Association*, Clark County District Court Case No. A-19-790757-C, to be served by electronic service with the Eighth Judicial District Court filing system to the parties on the Electronic Service List addressed as follows:

Jordan P. Schnitzer, Esq. Jordan@theschnitzerlawfirm.com
THE SCHNITZER LAW FIRM
9205 W. Russell Road, Ste. 240
Las Vegas, NV 89148
Tel: (702) 960-4050
Fax: (702) 960-4092
Attorney for Plaintiff
Jordan@theschnitzerlawfirm.com

By /s/ Priscilla L. O’Briant
LEWIS BRISBOIS BISGAARD & SMITH LLP



JORDAN P. SCHNITZER, ESQ.
Nevada Bar No. 10744
THE SCHNITZER LAW FIRM
9205 W. Russell Road, Suite 240
Las Vegas, Nevada 89148
Telephone: (702) 960-4050
Facsimile: (702) 960-4092
Jordan@TheSchnitzerLawFirm.com
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOHN ROBERTS, an individual,

Plaintiff,

Case No.: A-19-790757-C
Dept. No.: IV

vs.

UNITED SERVICES AUTOMOBILE
ASSOCIATION, an unincorporated entity
and/or a reciprocal insurance exchange with
members residing in the State of Nevada;
DOES 1 through 10; and ROE
CORPORATIONS 11 through 25, inclusive,

Defendants.

**PLAINTIFF'S REPLY TO OPPOSITION
TO MOTION TO COMPEL
DEFENDANT'S REQUESTS FOR
PRODUCTION RESPONSES AND
MOTION TO COMPEL DEFENDANT'S
RESPONSES TO INTERROGATORIES
AND REQUESTS FOR ADMISSION**

Hearing Date: March 4, 2021
Hearing Time: 9:30 a.m.

COMES NOW, Plaintiff John Roberts, by and through his attorney of record, THE SCHNITZER LAW FIRM, and hereby files his Reply to Opposition to Motion to Compel Defendant's Requests for Production Responses and Motion to Compel Defendant's Responses to Interrogatories and Requests for Admission.

//

//

//


//

//

1 This Reply is based on the Points and Authorities submitted herewith, together with the
2 papers and pleadings on file herein, exhibits attached hereto and oral arguments at the time of
3 hearing.

4 DATED this 25th day of February 2021.

5 THE SCHNITZER LAW FIRM

6
7 By: 
8 JORDAN P. SCHNITZER, ESQ.
9 Nevada Bar No. 10744
10 9205 West Russell Road, Suite 240
11 Las Vegas, NV 89148
12 *Attorney for Plaintiff*
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant UNITED SERVICES AUTOMOBILE ASSOCIATION (“Defendant” or “USAA”) has improperly objected to a number of requests for production of documents. USAA claimed the information sought is privileged, irrelevant to this action, or the request is overbroad, among others. All of Plaintiff’s requests have been reasonable and are regarding relevant information, and USAA’s cited objections and privilege do not apply to the information Plaintiff requests. The objections appear to be an effort to obstruct Plaintiff from receiving information directly related to his claims that his injuries were foreseeable by Defendant.

Plaintiff, through his attorney, and USAA have conducted telephonic meet and confer conferences, but to no avail. USAA many times uses the same objections to several different requests in an attempt to simply refuse to respond with any substantive information to Plaintiff. Plaintiff has no other option than to seek relief from the Court in the form of an Order compelling USAA to respond to Plaintiff’s propounded discovery including 24 requests for production. Therefore, the Court should grant this motion and award monetary sanctions.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

Plaintiff filed his *Complaint* on March 8, 2019, in Nevada State Court. The *Complaint* alleges that Plaintiff was injured from a vehicle accident on or about May 9, 2014. *See Exhibit 1* at ¶¶ 10-14. Plaintiff made demand upon Defendants for payment of the claim. *Id.* at ¶¶ 17. Plaintiff alleges that Defendants did not pay the undisputed portions of the claim and did not reasonably evaluate the claim. *Id.* at ¶¶ 18-20. Plaintiff alleges that these actions are the basis for a breach of contract, breach of the implied covenant of good faith and fair dealing, tortious breach of the implied covenant of good faith and fair dealing and request declaratory relief. *Id.* at ¶¶ 18-22.

Plaintiff has sent to USAA Interrogatories, Requests for Admissions, and Requests for Production of Documents. USAA returned responses to the Requests for Production of Documents on August 7, 2020, but some of USAA’s responses were either inadequate or merely objections with no answer. *See Exhibit 2.* Plaintiff sent correspondence to USAA on September 10, 2020 outlining the deficient responses. *See Exhibit 3.*

Plaintiff, through his attorney, met and conferred with Defendant on June 4, 2020, and again on October 7, 2020 to attempt to resolve these issues. *See Exhibit 4.* Defendant sent supplemental responses on October 6, 2020 and additional responses to Plaintiff's Request for Production of Documents on November 6, 2020. *See Exhibit 5.* However, such responses did not resolve the issues that remained at the time of the latest telephonic meet and confer.

III. LEGAL ARGUMENT

A. Requests for Production 2, 15, 16 and 18 Should Be Compelled

USAA claims that underwriting is irrelevant and unduly burdensome/not proportional without making any attempt to analyze any of the proportionality factors or explaining to the Court the burden. USAA does not cite any specific case law supporting its position. To the contrary, Plaintiff cited several cases supporting the required production of this material. Defendant made no attempt to distinguish any of these cases. As a result, the reasoning in those cases is not in dispute and the Motion should be granted.

B. Requests for Production 17

Plaintiff will withdraw its request to compel production number 17 as it is repetitive of other requests.

C. Requests for Production 7, 16, 18, 21 and 22

Defendant acknowledges these requests are relevant and that Plaintiff is entitled to the information. Yet, Defendant impermissibly refuses to produce the documents without a protective order. Defendant has not sought a protective order nor provided the required analysis to obtain a protective order. As a result, the documents should be compelled.

D. Requests for Production 27

Defendants responses does not answer the question. The fact that USAA does not use agents does not mean there are no responsive documents. USAA certainly solicits business and the documentation regarding such solicitation should be produced.

E. Requests for Production 28

Again, Defendant cites no case law to support its position and does not attempt to distinguish any cases supporting the position that training of claims adjusters is relevant. As a result, the documents must be produced.

F. Requests for Production 24, 34, 39, 40, 41, 42, 43 and 47

Yet again, Defendant provides no analysis with regard to these requests other than to say that are “patently overbroad.” The only case Defendant cites is *Cranmer*, although the WL citation appears to be from the insurance company’s briefing making it difficult to address if this was an actual holding by the Court or the basis for the holding.

G. Requests for Production 36

Again, the citation to *Cranmer* appears to be to a brief and not a court ruling. Regardless, the quoted text does not state that bonus information is not discoverable. Conversely, Defendant does not address the Court’s holding in *Am. Auto. Ins. Co. v. Haw. Nut & Bolt, Inc.*, 2017 U.S. Dist. LEXIS 3033, at *12 (D. Haw. Jan. 9, 2017) regarding the discoverability of bonus information. Additionally, Plaintiff is not required to rely upon USAA’s description of the bonus program. If the bonus program is so simply as USAA claims, it should be able to produce a 1-page document outlining that program.

H. Requests for Production 32

Defendant’s response to this request improperly refers Plaintiff to over 4700 pages of records, none of which are actually responsive to the request. Defendant does not address any of the case law cited by Plaintiff. The sole case cited by Defendant appears to be an aberration and blatantly incorrect ruling. The opinion itself even noted that it was ruling contrary to clearly established case law. Yet, the Court in that case eventually gave the Plaintiff all reports authored by that particular doctor to State Farm.

I. Requests for Production 10

While Plaintiff understands the *Hetter* decision, Plaintiff is required to seek discovery during the discovery period. Plaintiff requests this Court order financial information be provided after the Court hears any dispositive motions, if any, on punitive damages.

J. Requests for Production 9

USAA’s response to RPD No. 9 is simply untrue. USAA utilizes a 3rd party named Auto Injury Solutions or “AIS” to analyze medical billing. *See* USAA004725. Therefore, the documents must be produced.

K. USAA Should Be Compelled to Meaningfully Respond to Plaintiff's Interrogatories

i. Interrogatory 2

Defendant's answer is unclear whether or not there are other individuals who participated in reviewing or evaluating the claim. Plaintiff also requires the address to serve witnesses with subpoenas. Plaintiff acknowledges he does not need any other personal identifying information at this time.

ii. Interrogatories 12, 13 and 14

Defendant's attempts to limit the scope of the issues brought in this case are both incorrect and improper. One of the allegations is that USAA failed to adopt appropriate standards for the resolution of claims. A history of other issues with other insureds would tend to support those allegations. As a result, the evidence is relevant and should be compelled.

iii. Interrogatory 28

Plaintiff is aware of this Court's general protocol on financials. Plaintiff would ask that such documentation be produced and prepared under seal to be revealed prior to trial.

iv. Interrogatory 31 through 33

Defendant's response is confusing because the answer to the interrogatory indicates the information is in the disclosures, but points to thousands of pages rather than specific pages for the information. Defendant should be required to give the information.

With regard to the cases, Plaintiff's citation to random California cases is not persuasive and not the law in Nevada.

L. USAA Should Be Compelled to Meaningfully Respond to Requests for Admissions

i. Request for Admission Nos. 6 – 11, and 13

The requests for admission properly deal with the facts, namely what is and is not reasonable (a fact, not a law) under certain situations. Therefore, responses should be compelled.

//

//

//

M. Sanctions Awarding Plaintiff Attorneys' Fees Are Appropriate


USAA blatantly disregarded the discovery rules in making blanket, boilerplate objections. Additionally, USAA has refused to provide documents under the guise of requiring a protective order without actually seeking a protective order. As a result, sanctions are warranted.

IV. CONCLUSION

Based upon the foregoing, Plaintiff requests this Court compel answers to production of documents. Plaintiff further requests the Court grant Plaintiff's attorney's fees and costs for having to prepare this Motion.

DATED this 25th day of February 2021.

THE SCHNITZER LAW FIRM

By: 
 JORDAN P. SCHNITZER, ESQ.
 Nevada Bar No. 10744
 9205 West Russell Road, Suite 240
 Las Vegas, NV 89148
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of February 2021, I served a true and correct copy of the foregoing **PLAINTIFF'S REPLY TO OPPOSITION TO MOTION TO COMPEL DEFENDANT'S REQUESTS FOR PRODUCTION RESPONSES AND MOTION TO COMPEL DEFENDANT'S RESPONSES TO INTERROGATORIES AND REQUESTS FOR ADMISSION** to the above-entitled Court for electronic filing and service upon the Court's Service List to the following counsel.

ROBERT W. FREEMAN
Nevada Bar No. 3062
PRISCILLA L. O'BRIANT
Nevada Bar No. 010171
LEWIS BRISBOIS BISGAARD & SMITH, LLP.
6385 S. Rainbow Blvd., Suite 600
Las Vegas, NV 89119
Attorney for Defendants



An employee of
THE SCHNITZER LAW FIRM

A-19-790757-C John Roberts, Plaintiff(s)
vs.
United Services Automobile Association, Defendant(s)

March 04, 2021 09:30 AM All Pending Motions

HEARD BY: Truman, Erin **COURTROOM:** RJC Level 5 Hearing Room

COURT CLERK: Lott, Jennifer

RECORDER: Haak, Francesca

REPORTER:

PARTIES PRESENT:

Jennifer A Taylor Attorney for Defendant

Jordan Schnitzer Attorney for Plaintiff

JOURNAL ENTRIES

(1) Plaintiff's Motion to Compel Defendant's Requests for Production Responses

(2) Plaintiff's Motion to Compel Defendant's Responses to Interrogatories and Request for Admissions

MATTER TRAILED AND RECALLED: Counsel present. COMMISSIONER RECOMMENDED, (1) Plaintiff's Motion to Compel Defendant's Requests for Production Responses is GRANTED IN PART and DENIED IN PART; RFP 15 supplement within 30 days; Ms. Taylor stated certified copies were already provided; SUPPLEMENT ALL DISCOVERY as a result of today's Hearing within 30 days; RFP 16 supplement with policies, processing manuals, and other materials under an Order of Protection pursuant to NRCP 26(c) for use in this litigation only; no dissemination to Third Parties or other entities; the documents will be viewed by attorneys, experts, and necessary witnesses; the documents must be destroyed, or returned to Deft at the end of litigation.

COMMISSIONER RECOMMENDED, the timeframe is from the date of the incident in 2014 through the present time. Mr. Schnitzer requested the most recent training, however, Commissioner stated counsel must ask for specific individuals. COMMISSIONER RECOMMENDED, RFP 17 Plaintiff WITHDREW the request; RFP 18 no further response except for the information Ordered subject to a Protective Order; RFP 2 provide what was in place at the time of the incident at issue, subject to a Protective Order under NRCP 26(c); RFP 7 is COMPELLED, and documents are PROTECTED under NRCP 26(c); RFP 21 and 22 provide under an Order of Protection; RFP 27 supplement under an Order of Protection; RFP 28 and 34 provide under an Order of Protection.

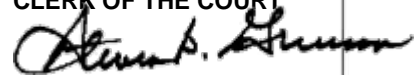
COMMISSIONER RECOMMENDED, RFP 36 provide documents under an Order of Protection referencing bates numbers for the Bonus Program from the time of the incident to the present time (anyone who had authority over the UIM claim); RFP 41 any UIM policy updates from the date of the incident forward related to UIM handling from the date of the incident forward. When Mr. Schnitzer finds out specific individuals involved with specific hire dates, counsel can request it again for three years prior to the incident. COMMISSIONER

RECOMMENDED, RFP 42 is PROTECTED; RFP 47 limited to individuals involved in this litigation as Directed on the record under PROTECTION pursuant to NRCP 26(c); RFP 32 is PROTECTED as written as specific medical experts can do discovery on prior expert testimony according to the Rules. Colloquy regarding RFP 32. COMMISSIONER RECOMMENDED, RFP 40 is PROTECTED except for any actions taken on the claim at issue; RFP 43 is PROTECTED; RFP 39 is PROTECTED as Directed on the record; RFP 24 supplement for UIM premiums.

COMMISSIONER RECOMMENDED, if the punitive damages claim remains in this case 30 days before Trial, Deft is required to produce three years worth of financial statements; RFP 9 if any portion of the claims handling process in this case was out-sourced to a Third Party, it needs to be supplemented. Colloquy.

COMMISSIONER RECOMMENDED, (2) Plaintiff's Motion to Compel Defendant's Responses to Interrogatories and Request for Admissions is GRANTED IN PART and DENIED IN PART; Interrogatory 2 name the position of the employee, and business address of the Claims Handlers in this case; if they are no longer employed by Deft, provide the last know address, and contact information; for Interrogatories 12, 13, and 14, UIM claims in Nevada only, for three years. Colloquy. Mr. Schnitzer requested UIM claims in the State of Nevada for three years prior to the date of the injury. COMMISSIONER SO RECOMMENDED; Interrogatory 27 is PROTECTED for now, however, if the punitive damages claim remains in this case 30 days before Trial, Deft is required to produce three years worth of financial statements; Interrogatory 31 disclose reserve amount for the First Party claim in this case; Interrogatory 32 is PROTECTED; Interrogatory 33 no further response; SUPPLEMENT ALL DISCOVERY as a result of today's Hearing within 30 days.

COMMISSIONER RECOMMENDED, Request for Admissions 6 through 15 violate the Morgan versus DeMille case; OBJECTIONS STAND, and no further responses are necessary. Mr. Schnitzer stated his Motion included a Request for Sanctions. Argument by Ms. Taylor. COMMISSIONER RECOMMENDED, Commissioner DECLINED SANCTIONS in this case as there was a good faith dispute, and some discovery requests were protected. Mr. Schnitzer to prepare one Report and Recommendation for two Motions, and Ms. Taylor to approve as to form and content. Comply with Administrative Order 20-10, and submit the DCRR to DiscoveryInbox@clarkcountycourts.us. A proper report must be timely submitted within 14 days of the hearing. Otherwise, counsel will pay a contribution.



1 **DCRR**
ROBERT W. FREEMAN
2 Nevada Bar No. 3062
Robert.Freeman@lewisbrisbois.com
3 **PRISCILLA L. O'BRIANT**
Nevada Bar No. 010171
4 Priscilla.OBriant@lewisbrisbois.com
JENNIFER A. TAYLOR
5 Nevada Bar No. 6141
Jennifer.A.Taylor@lewisbrisbois.com
6 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
6385 S. Rainbow Boulevard, Suite 600
7 Las Vegas, Nevada 89118
702.893.3383
8 FAX: 702.893.3789
Attorneys for Defendant United Services
9 *Automobile Association*

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA
12

13 JOHN ROBERTS, an individual,

14 Plaintiff,

15 vs.

16 UNITED SERVICES AUTOMOBILE
ASSOCIATION, an unincorporated entity
17 and/or a reciprocal insurance exchange with
members residing in the State of Nevada;
18 DOES 1 through 10; and ROE
CORPORATIONS 11 through 25, inclusive,

19 Defendants.
20

CASE NO. A-19-790757-C
Dept. No.: IV

**DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS
ON PLAINTIFF'S MOTION TO COMPEL
DEFENDANT'S REQUEST FOR
PRODUCTION RESPONSES AND
PLAINTIFF'S MOTION TO COMPEL
DEFENDANT'S RESPONSES TO
INTERROGATORIES AND REQUESTS
FOR ADMISSION**

21 Hearing Date: March 4, 2021

22 Hearing Time: 9:30 a.m.

23 Attorney for Plaintiff: Jordan P. Schnitzer, Esq. of The Schnitzer Law Firm

24 Attorneys for Defendant: Jennifer A. Taylor, Esq. of the law firm Lewis Brisbois
25 Bisgaard & Smith, LLP.

26 **I.**

27 **FINDINGS**

28 These two matters came before the Honorable Erin Lee Truman, on March 4, 2021,

1 pursuant to Plaintiff's Motion to Compel Defendant's Request for Production Responses and
2 Plaintiff's Motion to Compel Defendant's Responses to Interrogatories and Requests for
3 Admission. The Discovery Commissioner having entertained oral argument of counsel and being
4 informed in the premises, finds as follows:

5 1. This is a lawsuit involving claims of breach of contract and extra-
6 contractual insurance claims;

8 2. Some of the material requested by Plaintiff is proprietary and confidential in
9 nature.

10 II.

11 RECOMMENDATIONS

12 Plaintiff's Motion to Compel Defendant's Request for Production Responses is
13 **GRANTED IN PART and DENIED IN PART** and *the Discovery Commissioner* recommends the following: *ED*

- 14 1. Request for Production 15 must be supplemented within 30 days;
- 15 2. Request for Production 16 must be supplemented with policies, processing manuals, and other
16 materials from 2014 through the present under an Order of Protection pursuant to NRCP 26(c) for
17 use in this litigation only; no dissemination to Third Parties or other entities; the documents will be
18 viewed by attorneys, experts, and necessary witnesses; the documents must be destroyed, or
19 returned to Defendant at the end of litigation;
- 20 3. Request for Production 17, the issue is withdrawn;
- 21 4. Request for Production 18 no further response except for the information Ordered subject to a
22 Protective Order;
- 23 5. Request for Production 2 must be provided what was in place at the time of the incident at issue,
24 pertaining to UM/UIM and Medical Payments coverage subject to a Protective Order under NRCP
25 26(c);
- 26 6. Request for Production 7 is COMPELLED, and documents are PROTECTED under NRCP 26(c);
27 7. Request for Productions 21 and 22 are COMPELLED under an Order of Protection *pursuant to NRCP* for documents *26(c)*
28 in effect in 2014 for use in handling UM/UIM and Medical Payments claims in Nevada;

8. Request for Production 27 is COMPELLED under an Order of Protection;
9. Request for Production 28 COMPELLED under an Order of Protection in 2014 to the present for use in handling UM and Medical Payments claims in Nevada.
10. Request for Production 34 is COMPELLED under an Order for Protection for employees who handled the subject claim and only documents pertaining to employee evaluations and disciplines related to claims handling with other private information redacted.
11. Request for Production 36 is COMPELLED under an Order of Protection for the Bonus Program from the time of the incident to the present time for anyone who had authority over the UIM claim;
12. Request for Production 41 is COMPELLED regarding any UIM policy updates from the date of the incident forward related to UIM handling from the date of the incident forward.
13. Request for Production 42 is PROTECTED;
14. Request for Production 47 in COMPELLED limited to individuals involved in this litigation as Directed on the record under PROTECTION pursuant to NRCP 26(c); and only for information pertaining to performance evaluations, audits, and disciplinary reports related to claims handling with other private and/or personally identifiable information redacted.
15. Request for Production 32 is PROTECTED as written; modified to COMPEL production of 1099s or other evidence of payments made to the vendor or medical provider who rendered opinions on the subject claim for the period of five (5) years preceding the vendor or medical provider's opinions on Plaintiff's claim.
16. Request for Production 40 is PROTECTED except for any actions taken on the claim at issue;
17. Request for Production 43 is PROTECTED;
18. Request for Production 39 is COMPELLED only as to individuals involved in the handling of Plaintiff's claim;
19. Request for Production 24 is Compelled for UM/UIM and Medical Payment coverage premium payments only;
20. If the punitive damages claim remains in this case 30 days before Trial, Deft is required to produce three years' worth of financial statements;
21. Request for Production 9, if any portion of the claims handling process in this case was outsourced to a Third Party, it needs to be supplemented, including regarding med pay;

1 22. Defendant must supplement all discovery ordered as a result of today's Hearing within 30 days of
2 this Recommendation signed by the Court.

3 Plaintiff's Motion to Compel Defendant's Responses to Interrogatories and Requests for
4 Admission is **GRANTED IN PART** and **DENIED IN PART** and recommends the following.

- 5 1. Interrogatory 2 is compelled in that the name the position of the employee, and business address of
6 the Claims Handlers in this case; if they are no longer employed by Defendant, provide the last
7 known address, and contact information;
- 8 2. Interrogatories 12, 13, and 14, is compelled for UM/UIM claims in Nevada only, for three years;
- 9 3. Interrogatory 27 is PROTECTED for now, however, if the punitive damages claim remains in this
10 case 30 days before Trial, Defendant is required to produce three years' worth of financial
11 statements;
- 12 4. Interrogatory 31 is compelled;
- 13 5. Interrogatory 32 is PROTECTED;
- 14 6. Interrogatory 33, no further response;
- 15 7. Request for Admissions 6 through 15 violate the *Morgan v. DeMille* case; OBJECTIONS STAND,
16 and no further responses are necessary;
- 17 8. Defendant must supplement all discovery ordered as a result of today's Hearing within 30 days of
18 this Recommendation signed by the Court.
- 19 9. Sanctions are not warranted in this case as there was a good faith dispute, and some discovery
20 requests were protected.

21 DATED this 14th day of APRIL 2021.


DISCOVERY COMMISSIONER

22 Approved as to Form and Content:

Respectfully submitted by:

23 DATED the 7th day of APRIL 2021.

DATED the 7th day of APRIL 2021.

24 THE SCHNITZER LAW FIRM

LEWIS BRISBOIS BISGAARD & SMITH,
LLP.

25
26 BY: /s/ Jordan P. Schnitzer
JORDAN P. SCHNITZER, ESQ.
27 Nevada Bar No. 10744
9205 W. Russell Road, Suite 240
28 Las Vegas, NV 89148
Attorney for Plaintiff

BY: /s/ Jennifer A Taylor
Jennifer A. Taylor, Esq
Nevada Bar No. 6141
6385 S. Rainbow Blvd., Suite 600
Las Vegas, NV 89111
Attorney for Defendant

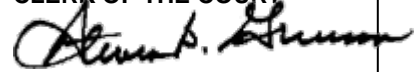
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

Objection time will expire on April 29, 2021.

A copy of the foregoing Discovery Commissioner's Report was:

✓ Electronically filed and served counsel on April 15, 2021,
pursuant to N.E.F.C.R. Rule 9.

**LEWIS
BRISBOIS
BISGAARD
& SMITH LLP**
ATTORNEYS AT LAW



1 ROBERT W. FREEMAN
Nevada Bar No. 3062
2 Robert.Freeman@lewisbrisbois.com
PRISCILLA L. O'BRIANT
3 Nevada Bar No. 10171
Priscilla.OBriant@lewisbrisbois.com
4 JENNIFER A. TAYLOR
Nevada Bar No. 6141
5 Jennifer.A.Taylor@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
6 6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
7 702.893.3383
FAX: 702.893.3789
8 *Attorneys for Defendant United Services*
Automobile Association

9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 JOHN ROBERTS, an individual,
13
14 Plaintiff,
15
16 vs.
17 UNITED SERVICES AUTOMOBILE
ASSOCIATION, an unincorporated entity
18 and/or a reciprocal insurance exchange with
members residing in the State of Nevada;
DOES 1 through 10; and ROE
CORPORATIONS 11 through 25, inclusive,
19 Defendants.

CASE NO. A-19-790757-C
Dept. No.: IV

**DEFENDANT'S OBJECTION TO
DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS
AS TO PLAINTIFF'S MOTIONS TO
COMPEL**

20
21 COMES NOW Defendant UNITED SERVICES AUTOMOBILE ASSOCIATION,
22 ("USAA"), by and through its attorneys, Lewis Brisbois Bisgaard & Smith LLP, and hereby files
23 its *Opposition to Plaintiff's Motion to Compel Defendant's Requests for Production Responses*
24 ("Opposition") on the grounds that Plaintiff seeks over broad discovery and discovery that is not
25 proportional to the needs of the case.

26 ///

27 ///

28 ///

1 This Objection is made and based upon the attached Memorandum of Points and
2 Authorities, any exhibits attached hereto, the papers and pleadings on file herein, and any oral
3 argument that the Court may entertain at the hearing

4 DATED this ____ day of April, 2021.

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6
7 By

8 ROBERT W. FREEMAN
9 Nevada Bar No. 3062
10 PRISCILLA L. O'BRIANT
11 Nevada Bar No. 10171
12 JENNIFER A. TAYLOR
13 Nevada Bar No. 6141
14 6385 S. Rainbow Boulevard, Suite 600
15 Las Vegas, Nevada 89118
16 Telephone: 702.893.3383
17 Fax: 702.893.3789
18 *Attorneys for Defendant United Services*
19 *Automobile Association*

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I.**

22 **INTRODUCTION**

23 This action arises from a claim by USAA insured John Roberts ("Plaintiff") for damages
24 arising from a May 9, 2014 automobile accident that occurred in Las Vegas. Plaintiff was
25 traveling southbound on Nellis Blvd. in the number one left turn lane entering the intersection on a
26 green light. A vehicle driven by Oscar Zazueta-Espinoza (the "tortfeasor") was traveling west on
27 Russell Road in the number 2 travel lane approaching the intersection of Nellis on a red traffic
28 signal. The tortfeasor failed to stop and continued traveling into the intersection where the front of
his vehicle struck the left side of Robert's vehicle. The traffic accident report indicates moderate
damage to the left side of Roberts' vehicle. Roberts was transported from the scene of the
accident to Sunrise Hospital.

///

1 On the date of the reported loss, Plaintiff was insured under a policy of insurance with
2 USAA, Policy No. 00562 55 57U 7101 3. Robert's USAA policy includes UIM limits of
3 \$300,000 per person/\$500,000 per occurrence with \$10,000 in medical payments benefits. The
4 tortfeasor was insured with Primero Insurance Company with bodily injury limits of \$15,000.

5 Plaintiff made a claim under his USAA automobile policy for underinsured motorists and
6 medical payments benefits for injuries claimed sustained in the May 9, 2017 MVA. USAA
7 investigated the claim and evaluated the claim for an amount less than the full policy and made
8 offers to settle the claim. Plaintiff disputed USAA's claim evaluation and filed the instant action
9 on March 8, 2019.

10 Plaintiff's complaint alleges that he "made a valid covered claim under his USAA
11 insurance policy." (*See* Plaintiff's Complaint at ¶ 25.) The Complaint further alleges that "USAA
12 refused to pay monies owed under the policy." (*Id.* at ¶ 26.) The complaint further alleges that
13 Plaintiff "sustained damages as a result of USAA's refusal to pay monies owed under the policy."
14 (*Id.* at ¶ 27.)

15 The complaint alleges claims against USAA for 1) Breach of Contract; (2) Breach of the
16 Implied Duty of Good Faith and Fair Dealing - Tortious and 3) Tortious Breach of the Implied
17 Duty of Good Faith and Fair Dealing. (*See* Generally Plaintiff's Complaint.) Within the claims
18 for bad faith claims handling, Plaintiffs allege upon information and belief:

19 1) that USAA failed to acknowledge and act reasonably promptly upon communications with
20 respect to claims arising under Plaintiff's insurance policy in violation of NRS 686A.310(1)(b)
(*Id.* at ¶¶ 35 & 50.);

21 2) that USAA failed to affirm or deny coverage of claims within a reasonable time after
22 Plaintiff completed and submitted proof of loss requirements, a violation of NRS
23 686A.310(1)(d) (*Id.* at ¶¶ 36 & 51.);

24 3) that USAA failed to effectuate prompt, fair and equitable settlement of claims in which
25 liability of USAA became reasonably clear, a violation of NRS 686A.310(1)(e) (*Id.* at ¶¶ 37 &
26 52.);

26 4) that USAA failed to settle Plaintiff's claims promptly, where liability has become clear,
27 under Plaintiff's portion of the insurance policy coverage in order to influence settlement
28 under his portion of the insurance policy, a violation of NRS 686A.310. (*Id.* at ¶¶ 38 & 53.)

///

1 II.

2 **LEGAL ARGUMENT**

3 Nevada law authorizes this Court to hear objections to a Discovery Commissioner's Report
4 and Recommendations. See NRCP 16.1(d)(2) and EDCR 2.34(f). "Upon receipt of a discovery
5 commissioner's report and any objections thereto, the court may affirm, reverse or modify the
6 commissioner's ruling, set the matter for a hearing, or remand the matter to the commissioner for
7 further action, if necessary." NRCP 16.1(d)(3).

8 Here, Defendant respectfully objects to certain of the Discovery Commissioner's
9 Recommendations on the grounds that the discovery ordered exceeds the scope of permissible
10 discovery under NRCP 26.

11 A. **Legal Standard for Permissible Discovery**

12 NRCP 26(b)(1) permits "discovery regarding any non-privileged matter that is **relevant to**
13 **any party's claim or defense and proportional to the needs of the case**, considering the
14 importance of the issues at stake in the action, the amount in controversy, the parties' relative
15 access to relevant information, the parties' resources, the importance of the discovery in resolving
16 the issues, and whether the burden or expense of the proposed discovery outweighs its likely
17 benefit." This imposes two requirements on permissible discovery – 1) that it is relevant to a
18 party's claim or defense and 2) that it is proportional to the needs of the case. Notably, the pre-
19 2019 amended language of NRCP 26 allowing discovery of "any matter relevant to the subject
20 matter involved in the action" upon a showing of good cause has been removed to bring it in
21 conformance with the language of Fed. R. Civ. P. 26.

22 The purpose of the revision in 2015 to Fed. R. Civ. P. 26 was to emphasize the need to
23 impose "reasonable limitations on discovery through increased reliance on the common-sense
24 concept of proportionality." *See Roberts v. Clark Cnty. Sch. Dist.*, 312 F.R.D. 594, 602-04
25 (D.Nev. 2016) (discussing 2015 amendments to FRCP Rule 26, citing John Roberts, Chief Justice,
26 2015 Year-End Report on the Federal Judiciary (Dec. 31, 2015), available at
27 <http://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>) (emphasis added).

28 ///

1 The party opposing discovery has the burden of showing that it is irrelevant, overly broad,
2 or unduly burdensome. *Fosbre v. Las Vegas Sands Corp.*, 2016 U.S. Dist. LEXIS 1073, 2016 WL
3 54202, at *4 (D.Nev. Jan. 5, 2016); *Izzo v. Wal-Mart Stores, Inc.*, 2016 U.S. Dist. LEXIS 17701,
4 2016 WL 593532, at *2 (D.Nev. Feb. 11, 2016).¹ When a request is overly broad on its face or
5 when relevancy is not readily apparent, however, the party seeking discovery has the burden to
6 show the relevancy of the request. *Desert Valley Painting & Drywall, Inv. v. United States*, 2012
7 U.S. Dist. LEXIS 145771, 2012 WL 4792913, at *2 (D.Nev. Oct. 9, 2012) (citing *Marook v. State*
8 *Farm Mut. Auto. Ins. Co.* 259 F.R.D. 388, 394-95 (N.D. Iowa 2009)). The 2015 amendments to
9 Rule 26(b) have not changed these basic rules, although they must now be applied with a greater
10 emphasis on proportionality. *McCall v. State Farm Mut. Auto. Ins. Co.*, No. 2:16-cv-01058-JAD-
11 GWF, 2017 U.S. Dist. LEXIS 117250, at *15 (D. Nev. July 26, 2017). The *McCall* Court quoted
12 a recent 9th Circuit court case discussing proportionality:

13 Relevancy alone is no longer sufficient—discovery must also be proportional to
14 the needs of the case. The Advisory Committee Note makes clear, however, that
15 the amendment does not place the burden of proving proportionality on the party
16 seeking discovery. The amendment "does not change the existing responsibilities
17 [*16] of the court and the parties to consider proportionality, and the change does
18 not place on the party seeking discovery the burden of addressing all
19 proportionality considerations." Rule 26, Advis. Comm. Notes for 2015 Amends.
20 Rather, "[t]he parties and the court have a collective responsibility to consider the
21 proportionality of all discovery and consider it in resolving discovery disputes."

22 *Id.* at *16 (quoting *In re Bard IVC Filters Prods. Liab. Litig.*, 317 F.R.D. 562, 563 (D.Ariz.
23 2016)).

24 Under the amended rules, discovery must now be proportional to the needs of the case.
25 NRCP 26(b)(1). While information requested by a party may be tangentially relevant to the claims
26 or defenses in the broad sense, discovery must also be proportional and tailored to the claims at
27 issue in the lawsuit. *Abueg v. State Farm Mut. Auto. Ins. Co.*, No. 2:14-CV-00635-GMN-GWF,

28 ¹ Where Nevada statutes track their federal counterparts, federal cases interpreting the rules can be
instructive. *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002);
Middleton v. State, 114 Nev. 1089, 1107, 968 P.2d 296, 309 & n.4 (1998).

1 2014 U.S. Dist. LEXIS 154681, at *16 (D. Nev. Oct. 30, 2014) (citing *Leksi, Inc. v. Federal Ins.*
2 *Co.*, 129 F.R.D. 99, 105 (D.N.J. 1989) (quoting Advisory Committee Notes to the 1983
3 Amendments to Rule 26) (“The rule of proportionality is intended to ‘guard against redundant or
4 disproportionate discovery by giving the court authority to reduce the amount of discovery that
5 may be directed to matters that are otherwise proper subjects of inquiry.’”)). The purpose behind a
6 renewed emphasis on proportionality is set forth best by Chief Justice Roberts:

7 The amended rule states, as a fundamental principle, that lawyers must size and
8 shape their discovery requests to the requisites of a case. **Specifically, the pretrial**
9 **process must provide parties with efficient access to what is needed to prove a**
10 **claim or defense, but eliminate unnecessary or wasteful discovery. The key**
11 **here is careful and realistic assessment of actual need.** That assessment may, as
12 a practical matter, require the active involvement of a neutral arbiter—the federal
13 judge—to guide decisions respecting the scope of discovery.

14 John Roberts, Chief Justice, 2015 Year-End Report on the Federal Judiciary (Dec. 31, 2015),
15 available at <http://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf> (emphasis
16 added).

17 One United District Court Magistrate has described the Court’s role in such a discovery
18 dispute as “not dissimilar to that of a referee whose job it is to ensure that both sides are adhering
19 to Rule 30(b)(6)'s objective of fair access to corporate information and, at the same time, to guard
20 against overreaching by the party seeking discovery and failure of the corporate party to satisfy its
21 obligations under the rule.” *Grahl v. Circle K Stores, Inc.*, No. 2:14-cv-305-RFB-VCF, 2017 U.S.
22 Dist. LEXIS 141190, at *16-17 (D. Nev. Aug. 31, 2017). The Court further noted that in this
23 endeavor, it is “guided by several objectives, including Rule 30(b)(6)'s objectives to ‘streamline’
24 discovery and curb ‘bandying,’ and at a more general level, the common-sense concept of
25 proportionality and the need to actively manage discovery ‘to secure the just, speedy, and
26 inexpensive determination of every action and proceeding.’” *Id.* As the *McCall* court also noted,
27 “[i]f the requirement for proportionality in discovery means anything, however, it must mean that
28 burdensome, tangential discovery should not be permitted based on the mere possibility that
something may turn up to support what is otherwise only speculation.” *McCall*, No. 2:16-cv-
01058-JAD-GWF, 2017 U.S. Dist. LEXIS 117250, at *26-27.

1 The most recent amendments to the discovery rules were specifically intended to curb the
2 culture of scorched earth litigation tactics by emphasizing the importance of ensuring that the
3 discovery process “provides parties with efficient access to what is needed to prove a claim or
4 defense, but eliminate unnecessary or wasteful discovery.” *Roberts v. Clark Cty. School Dist.*, 312
5 F.R.D. 594, 603-04 (D. Nev. 2016).

6 “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any
7 party's claim or defense and proportional to the needs of the case, considering the
8 importance of the issues at stake in the action, the amount in controversy, the parties’
9 relative access to relevant information, the parties’ resources, the importance of the
discovery in resolving the issues, and whether the burden or expense of the proposed
discovery outweighs its likely benefit.”

10 NRCP 26(b)(1).

11 “In deciding whether to restrict discovery under Rule 26(b)(2)(C), the court should
12 consider the totality of the circumstances, weighing the value of the material sought against the
13 burden of providing it, and taking into account society's interest in furthering the truth-seeking
14 function in the particular case before the court.” *Roberts v. Clark Cty. Sch. Dist.*, 312 F.R.D. 594,
15 602 (D. Nev. 2016). Thus, “courts have the duty to pare down overbroad discovery requests under
16 Rule 26(b)(2).” *Id.* (*emphasis added*).

17 While information requested by a party may be relevant in the broad sense that is no longer
18 enough. It must be relevant to the claims and defenses of the litigation as well as proportional to
19 the needs of the case. NRCP 26(b)(1). As discussed above, NRCP 26(b)(1) allows parties to
20 obtain discovery into non-privileged matters that are relevant to the party’s claim or defense and
21 proportional to the needs of the case. NRCP 26(b)(1) enumerates the following considerations for
22 the Court to assess when determining if the requested discovery is proportional to the needs of the
23 case – 1) the importance of the issues at stake in the action, 2) the amount in controversy, 3) the
24 parties’ relative access to relevant information, 4) the parties’ resources, 5) the importance of the
25 discovery in resolving the issues, and 6) whether the burden or expense of the proposed discovery
26 outweighs its likely benefit. See NRCP 26(b)(1). See also *Venetian Casino Resort, LLC v. Eighth*
27 *Judicial Dist. Court*, 2020 Nev. App. LEXIS 2, 467 P.3d 1, 136 Nev. Adv. Rep. 26, 2020 WL
28 2510923.

B. Objections to Discovery Commissioner’s Report and Recommendations (“DCCR”) Regarding Plaintiff’s Motion to Compel Defendant’s Request for Productions Responses:

1. Objection to DCCR Regarding Request Nos. 2, 15, and 16 - Underwriting REQUEST FOR PRODUCTION NO. 2:

Please produce all documents, writings, and communications that are used by field, regional, and home office underwriters for reference, training, and guidelines for the underwriting of your policies.

REQUEST FOR PRODUCTION NO. 15:

Please produce any and all files containing information regarding the processing of any insurance applications made to you by Plaintiff or any policies issued to Plaintiff.

REQUEST FOR PRODUCTION NO. 16:

Please produce any and all processing manuals and other materials available to your personnel for reference or training in their duties of processing applications or issuing policies.

Argument:

In considering whether the requested discovery is relevant and proportional to the needs of the case, USAA stresses that this Court should consider the allegations of the Complaint – Plaintiff’s causes of action are premised on allegations that USAA owed coverage for but did not pay Plaintiff’s claim and did not timely communicate with Plaintiff.

Plaintiff’s Request No. 2 seeks all documents that underwriting my use for reference, training, and guidelines in underwriting policies. Plaintiff’s Requests Nos. 15 and 16 seek documents related to USAA’s processing of insurance applications and issuance of policies as well as “processing manuals and other materials available to your personnel for reference or training in their duties of processing applications or issuing policies. Request No. 18 seeks documents relating to the sale of insurance. USAA timely objects to this discovery based on relevance and proportionality. The requested discovery is “unnecessary” and “wasteful discovery,” and should not be allowed for several reasons. There is no dispute that the Policy was issued and in effect at the time of the claimed loss. There is no dispute that coverage is owed for

1 this claim. In fact, USAA evaluated the claim and made offers. The only dispute is the amount of
2 coverage owed.

3 Plaintiff has not alleged any facts that would place USAA's underwriting guidelines at
4 issue in this litigation. The issues involved in this litigation are whether USAA 1) owed UM
5 benefits for this loss based on the value of Plaintiff's claim and 2) properly handled Plaintiff's
6 claim. The underwriting and guidelines governing underwriting are not relevant to, and will not
7 resolve, either issue. This is nothing more than a "fishing expedition" and is not relevant to the
8 claims or defenses in this matter.

9 District courts need not condone the use of discovery to engage in fishing expeditions.
10 *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1072 (9th Cir. 2004). It is axiomatic that a party is not
11 entitled to make accusations without basis and then use the discovery process in the hope of
12 uncovering such a basis. *See, e.g., Rodriguez v. Quality Loan Serv. Corp.*, 2010 U.S. Dist. LEXIS
13 47556, 2010 WL 1644695, at *2 (D. Ariz. Apr. 22, 2010). The prohibition against fishing
14 expeditions is even more crucial where, as here, the party did not even make accusations that
15 would implicate the discovery sought. This already-settled proposition was re-enforced by the
16 2015 amendments to the discovery rules, which were meant to curb the culture of scorched earth
17 litigation tactics by emphasizing the importance of ensuring that the discovery process "provide[s]
18 parties with efficient access to what is needed to prove a claim or defense, but eliminate
19 unnecessary or wasteful discovery." *Roberts*, 312 F.R.D. at 603-04.

20 A Nevada District Court recently noted that this issue arises most commonly when a
21 plaintiff seeks discovery without a sufficient factual basis alleged in the complaint. *Bank of Am.,*
22 *N.A. v. Azure Manor/Rancho de Paz Homeowners Ass'n*, No. 2:16-cv-00764-GMN-GWF, 2018
23 U.S. Dist. LEXIS 44095, at *9, FN 2 (D. Nev. Mar. 19, 2018) (ref. *Ashcroft v. Iqbal*, 556 U.S.
24 662, 678-79, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (U.S. 2009) (Rule 8 "does not unlock the doors of
25 discovery for a plaintiff armed with nothing more than conclusions")). Discovery is an improper
26 fishing expedition when the party is searching for something improper that might give rise to a
27 potential claim. *See, e.g., MP Nexlevel, of Cal., Inc. v. CVIN, LLC*, 2016 U.S. Dist. LEXIS 48621,
28 2016 WL 1408459, at *4 (E.D. Cal. Apr. 11, 2016). This is exactly the case here.

1 In his motion to compel, Plaintiff cites to cases which allowed discovery of underwriting
2 material, however, as Plaintiff's citations demonstrate, those materials were relevant as to the
3 coverage that was included in the issued policy. Again, here there is no dispute that the policy
4 was in force on the date of the subject accident and that UM coverage applies – the only dispute is
5 as to the value of Plaintiff's claim. As such, none of these requests are both "relevant to any
6 party's claim or defense" and "proportional to the needs of the case."

7 Even assuming Plaintiff can make some attenuated argument that this information is
8 relevant to the claims or defenses in this action, the topic should not be allowed as it is not
9 proportional to the needs of the case considering the importance of the issues at stake in the action
10 and the importance of this discovery in resolving the issues. As set forth above, USAA's
11 underwriting and underwriting guidelines will not impact resolution of the issues in this case.
12 When this is the case, the burden and expense of the proposed discovery far outweighs any
13 potential benefit.

14 **2. Objection to DCCR Regarding Request Nos. 7**

15 **REQUEST FOR PRODUCTION NO. 7:**

16 Please produce any and all documents, writings, and communications that are used by your
17 claims personnel for reference, training, and guidelines for the adjusting of claims. These items
18 should include, but not be limited to, all claims manuals, all information and guidelines for the
19 adjudication of claims and all other resources used by your personnel for the adjudication of
20 claims.

21 **Argument:**

22 This Request generally seek documents regarding USAA's reference materials for
23 adjusting claims. USAA timely asserted objections to each as warranted by the individual Request
24 but also substantively responded advising that it does not have claims manuals but provides
25 guidance to its claims handlers through its Knowledge Delivery online search tool and would
26 produce relevant information contained therein upon entry of a Confidentiality and Protective
27 Order. Plaintiff refused to execute Defendant's proposed Confidentiality and Protective Order.
28 The DCCR orders production of these documents under a confidential designation. USAA's only

objection to this request is that it should be limited to reference materials related to adjustment of UM/UIM claims in Nevada.

3. Objection to DCCR Regarding Request No. 9

REQUEST FOR PRODUCTION NO. 9:

Please produce any and all documents, writings, and communications, and amendments thereto, for the contracting of third-party administration and outsourcing of any operations related to new business processing, policy issue, policyholder services, claims processing, billing, collection, and payment receipt.

Argument:

This request seeks documents relating to the contracting of third-party administration or outsourcing of any operations related to new business processing, policy issue, policyholder services, claims processing, billing, collection and payment receipt. USAA timely objected that that this request seeks information that is neither relevant to the claims or defenses of either party nor proportional to the needs of the case. Specifically, the requested topics have no bearing on the issues in this case. Nonetheless, USAA substantively responded with the only issue that potentially has any bearing on this case – the claims handling – and represented that USAA does not outsource its claims handling. Nonetheless, the DCCR requires USAA to produce the contract in place with Auto Injury Solutions, Inc. (“AIS”) which provides services to USAA for initial processing of medical bills submitted under the medical payments coverage. However, here again, the provisions of the contract between USAA and AIS have no relation to the claims or defenses in this action and are not proportional to the needs of this case. Moreover, medical payments coverage is not at issue in this litigation has USAA paid the full amount of the medical payments coverage to Plaintiff.

4. Objection to DCCR Regarding Request No. 28

REQUEST FOR PRODUCTION NO. 28:

Please produce Defendant’s policies, procedures, manuals or other training for evaluating claims including but not limited to any and all training courses given or required for Defendant’s

///

1 Claims Adjusters that were taken within 5 years prior to the claim in question through the present
2 time.

3 **Argument:**

4 The DCCR requires USAA to produce all training courses from 2014 to present for use in
5 handling UM and Medical Payments claims in Nevada. Again, this discovery is not relevant and
6 is “unnecessary” and “wasteful discovery” which constitutes a fishing expedition, and is not
7 proportional to the needs of the case considering the importance of the issues at stake in the action
8 and the importance of the discovery in resolving the issues. Plaintiff has sought information
9 related to USAA’s policies and procedures, manuals, etc., information which USAA agreed to
10 produce upon entry of a protective order, but training in and of itself is not proportional to the
11 claims and defenses in this matter. Based on the allegations pleaded in the Complaint, appropriate
12 discovery would pertain to USAA’s investigation and evaluation of Plaintiff’s UM/UIM claims,
13 and whether its claim decision(s) was reasonable. What training its claims handlers have received
14 over the last 7 years does not relate to how well they handled Plaintiff’s UM/UIM claims. That is,
15 a claims adjuster may have had excellent training, but could have handled a particular claim in an
16 unreasonable manner, and conversely, a claims adjuster with limited or poor training could have
17 handled a claim well with a reasonable basis for a particular claim decision. Plaintiff did not
18 allege that USAA provided insufficient training to its employees or that the claims personnel
19 assigned to this claim were not appropriately trained.

20 Moreover, any training information should be limited to the adjuster(s) who handled
21 Plaintiff’s claim. USAA asserts that it would be proportional to require USAA to provide a
22 transcript of the adjuster(s)’ training which would allow Plaintiff to question the adjuster on his
23 training. This is in addition to the Knowledge Delivery documents which USAA agreed to
24 provide from the beginning.

25 **5. Objection to DCCR Regarding Request No. 32 – Vendor Payments**

26 **REQUEST FOR PRODUCTION NO. 32:**

27 With respect to any vendor or medical provider providing an opinion concerning Plaintiff’s
28 injuries, treatment or medical costs, please provide a copy of reports and invoices generated by

1 that vendor or medical provider for you in the five (5) years preceding your use of such vendor or
2 medical provider on Plaintiff's claim.

3 **Argument:**

4 The DDCR modifies this request to require production of 1099s or other evidence of
5 payments made to the vendor or medical provider who rendered opinions on the subject claim for
6 the period of five years preceding the opinions in this claim.

7 Again, this is "unnecessary" and "wasteful discovery" which constitutes a fishing
8 expedition, and is not proportional to the needs of the case considering the importance of the
9 issues at stake in the action and the importance of the discovery in resolving the issues. Plaintiff
10 did not allege that any of the medical opinions obtained by USAA were the result of bias. Nor do
11 payments made to the vendors have any relation to the claims or defenses in this action. As such,
12 this discovery cannot be proportional to the needs of the case.

13 *Abueg v. State Farm Mut. Auto. Ins. Co.*, 2:14-cv-635-GMN-GWF, 2014 U.S. Dist. LEXIS
14 154681, WL 5503114 (D.Nev. Oct. 30, 2014) is instructive as to the issue of relevance and
15 proportionality of the types of information and documents sought under this Request. In *Abueg*,
16 the plaintiff sued her insurer for breach of contract, breach of the implied covenant of good faith
17 and fair dealing, and violation of the Nevada Unfair Claims Practices Act. *Abueg*, 2014 U.S. Dist.
18 LEXIS at *2. The insured alleged that "State Farm engaged in unreasonable delay in investigating
19 her claim and has improperly relied on the biased opinion of a non-treating physician, Dr.
20 Benenati, that her foot injury was not entirely caused by the accident." *Id.* at *4. In the course of
21 discovery, the insured sought, *inter alia*:

22 [A]ny and all reports, correspondences, invoices, contracts, e-mails, electronic
23 communications, computer printouts, screen shots and other documents pertaining
24 to Integrated Medical Evaluations being retained by State Farm to perform
25 independent medical evaluations or records reviews of or in regards to Nevada
resident or Nevada based bodily injury or underinsured motorist claimants within
the last five (5) years.

26 *Id.* at *10.

27 The Court did not allow this discovery. Significantly, the court noted that "[w]hile the
28 information requested by Plaintiff may be relevant in the broad sense, discovery must also be

1 proportional and tailored to the claims at issue in the lawsuit.” *Id.* at *16 (citing *Leksi, Inc. v. Fed.*
2 *Ins. Co.*, 129 F.R.D. 99, 105 (D.N.J. 1989) (“The rule of proportionality is intended to guard
3 against redundant or disproportionate discovery by giving the court authority to reduce the amount
4 of discovery that may be directed to matters that are otherwise proper subjects of inquiry.”)).

5 Thus, the court denied the insured’s inquiry into all of the various communications and
6 documents pertaining to the medical review/IME, although it allowed limited discovery. In short,
7 even when courts have found this information relevant to the claims and defenses of a case, such
8 discovery must be proportional to the needs of the case. The information sought by Plaintiff is
9 not, particularly where there are no allegations that would support this discovery. Thus, this
10 discovery should not be allowed.

11 Plaintiff has the ability to contest the validity and reasonableness of any medical opinions
12 based on the medical records and the opinions of her own treating physicians. Plaintiff can also
13 contest their credibility based on the fact that they has been compensated by USAA for providing
14 his records review. However, evidence of all payments made to the vendor or medical provider
15 who rendered opinions on the subject claim for the prior five years is not relevant to the claims
16 and defenses and is certainly not proportional to the *needs* of this case as it will not resolve any of
17 the issues in this matter.

18 **6. Objection to DCCR Regarding Request No. 36 – Bonus Information**

19 **REQUEST FOR PRODUCTION NO. 36:**

20 Please produce any and all copies of documents that reference bonus programs or
21 employee award programs applicable to any and all departments or sections involved in the
22 handling of the Plaintiff’s claim for five (5) years prior to the claim through the present.

23 **Argument:**

24 The DCCR requires USAA to provide the bonus program for anyone who had authority
25 over this claim.

26 In *Cranmer v. Colorado Cas. Ins. Co.*, 2:14-cv-645-MMD-VCF, 2014 U.S. Dist. LEXIS 163585,
27 WL 11352806, (Nov. 20, 2014), a claim for breach of contract and bad faith allegations

28 ///

1 including similar allegations, the Court addressed a motion to compel similar discovery related to
2 the employees involved in the claim. The Court noted that:

3 Cranmer's Interrogatories ask, for instance, (1) whether Colorado Casualty 'has
4 ever been a party to any legal action in the State of Nevada, whether in federal or
5 state court . . . during the last 5 years' and (2) Colorado Casualty to '[d]escribe the
6 experience, training, and educational background of each person who evaluated,
7 managed, and supervised the handling of Plaintiff's claim.' (Pl.'s Mot. to Compel
8 (#20) at 10:23-28, 12:23-28). His Requests for Production of Documents demand,
9 in part, (1) '[c]opies of all personnel files of Defendant's employees,' (2) [a]ny and
all transcripts and recordings of speeches or presentations . . . on the subject of
insurance,' and (3) documents from January 1, 2004 to the present, despite the fact
that the underlying accident occurred on February 13, 2012. These requests
misunderstand the scope of discovery under Rule 26(b)(1).

10 *Cranmer*, 2014 U.S. Dist. LEXIS 163585 at *7 (internal quotations omitted). The *Cranmer* court
11 denied plaintiff's motion to compel regarding this discovery. The *Cranmer* court specifically
12 found that this discovery sought information that was not relevant to any party's claims or
13 defense, and that there was not good cause sufficient to inquire into the general subject matter of
14 the action: bad faith insurance claims. *Cranmer*, 2014 U.S. Dist. LEXIS 163585 at **6, 12-14.

15 As in *Cranmer* above, this discovery is not relevant to any party's claims or defenses and
16 there is not good cause sufficient to inquire into this general subject matter. *Cranmer*, 2014 U.S.
17 Dist. LEXIS 163585 at **6, 12-14. Even if this information is tangentially relevant to the claims
18 in this matter, relevancy alone is no longer sufficient—discovery must also be proportional to the
19 needs of the case. Here, USAA does not have a bonus or incentive plan tied to the payment or
20 non-payment of claims. Since at least 2010, Defendant's Board of Directors has approved a
21 holiday bonus that is paid to all employees in December of each year. Employees who are
22 actively employed at the end of November receive an amount equal to their then-current bi-weekly
23 base pay, prorated for any partial period of employment. Additionally, since at least 2010,
24 Defendant's Board of Directors has awarded an enterprise-wide performance bonus paid in
25 February of the following year. In order to be eligible for the bonus, employees must have been
26 hired prior to October and still employed as of February (or retired from Defendant on or after
27 January) of the payment year. With limited exceptions noted below, every employee working
28 with USAA, regardless of job title, job duties, or job location, received a bonus equal to a

1 percentage of their eligible earnings. Employees whose individual performance required a form of
2 corrective action during the year may have received a reduced bonus or no bonus at all. Other
3 bonus opportunities afforded to Defendant employees include cash awards for referring external
4 candidates who are hired for designated, open positions, as well as awards for employees who
5 show extraordinary efforts in their job duties or in the implementation of new ideas. These awards
6 may involve gratitude notes, gift certificates, or actual cash awards. The incentive program is
7 company-wide not specifically tied to payment or non-payment of claims. Thus, to require USAA
8 to produce all documents related to its incentive program is not proportional to the needs of the
9 case. Moreover, following the 2015 amendments to Fed R. Civ. P. 26, Nevada courts have
10 specifically found that “where responsive information can be provided more accurately and with
11 less burden through one method of discovery, that method should be used. Duplicative discovery
12 methods should be avoided.” *Security Ballentine v. Las Vegas Metro. Police Dep’t*, No. 2:14-cv-
13 01584-APG-GWF, 2016 U.S. Dist. LEXIS 62362, at *23 (D. Nev. May 9, 2016). Thus, if the
14 Court finds that this information is relevant to the claims and defenses alleged in his litigation,
15 USAA should be allowed to describe its compensation plan in a verified interrogatory rather than
16 produce all documents relating to its company-wide compensation plan.

17 7. **Objection to DCCR Regarding Request No. 39 – Depositions and Trial**
18 **Testimony**

19 **REQUEST FOR PRODUCTION NO. 39:**

20 Please produce any and all deposition transcripts or trial testimony transcripts of any of the
21 Defendant’s officers or personnel, since January 1, 2010, in any suit relating to bad faith claims
22 handling of uninsured or underinsured claim(s).

23 **Argument:**

24 The DCCR requires Plaintiff to provide the deposition or trial testimony transcripts of any
25 of any individual involved in the handling of Plaintiff’s claims.

26 As in *Cranmer* above, this discovery is not relevant to any party’s claims or defenses.
27 *Cranmer*, 2014 U.S. Dist. LEXIS 163585 at **6, 12-14. Nor is this discovery proportional to the
28 needs to this case which involves only the facts and circumstances of Plaintiff’s claim. While

1 Plaintiff may argue it is relevant to the general subject matter involved in the action (“bad faith”),
2 courts have made clear that “relevant to the subject matter of the action” is no longer the
3 appropriate standard, nor is this language found in the current iteration of NRCP 26(b)(1).

4 Moreover, following the 2015 amendments to the scope of discovery in Fed. R. Civ. P. 26,
5 courts have typically refused to order discovery regarding other lawsuits. See *Turner v. Paul*
6 *Revere Life Ins. Co.*, No. 2:14-cv-1205-JCM-VCF, 2015 U.S. Dist. LEXIS 116285 (D. Nev. Aug.
7 28, 2015). In *Turner*, as here, the plaintiff sought “prior testimony/deposition transcripts and/or
8 affidavits from employees who handled plaintiff’s claim.” The *Turner* court denied this request
9 finding:

10 None of these requests are both ‘relevant to any party’s claim or defense’ and
11 ‘proportional to the needs of the case.’ Fed. R. Civ. P. 26(b)(1); 26(b)(2)(C)(iii).
12 The first category of information seeks discovery regarding other lawsuits. This
information is irrelevant to Dr. Turner’s claim and only tangentially related to the
subject-matter of the action.

13 *Turner v. Paul Revere Life Ins. Co.*, No. 2:14-cv-1205-JCM-VCF, 2015 U.S. Dist. LEXIS 116285,
14 at *7 (D. Nev. Aug. 28, 2015) (emphasis added).

15 The *Turner* court denied the discovery noting that under then current Rule 26(b)(1), a party
16 could seek information that is “relevant to the subject matter of the action” and Plaintiff had not
17 argued that good cause existed to expand the scope of discovery. Importantly, in considering the
18 requested discovery, the ability to seek information “relevant to the subject matter of the action”
19 upon a showing of good cause was specifically removed from the permissible scope of discovery in
20 subsequent revisions and is not found in the current iteration of NRCP 26(b)(1). There is simply no
21 basis in NRCP 26 to allow this discovery in this case.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

C. Objections to Discovery Commissioner’s Report and Recommendations (“DCCR”) Regarding Plaintiff’s Motion to Compel Defendant’s Responses to Interrogatories and Requests for Admission:

1. Objection to DCCR Regarding Interrogatories No. 12, 13 and 14 – Other Actions:

INTERROGATORY NO. 12:

For each person **within** the past ten years, who contended that you had violated the Unfair Claims Practices Act, please state the following:

- (a) The name and last known address of the person;
- (b) Date the claim or lawsuit was made against you;
- (c) Court jurisdiction and case number of the litigation;

INTERROGATORY NO. 13:

For each person within the past ten years, who contended that you had acted in bad faith, please state the following:

- (a) The name and last known address of the person;
- (b) Date the claim or lawsuit was made against you;
- (c) Court jurisdiction and case number of the litigation;

INTERROGATORY NO. 14:

For each person within the past ten years, who contended that you violated the covenant of good faith and fair dealing, please state the following:

- (a) The name and last known address of the person;
- (b) Date the claim or lawsuit was made against you;
- (c) Court jurisdiction and case number of the litigation;

Plaintiff’s counsel seek information regarding other lawsuits filed against USAA for violations of the Unfair Claims Practices Act, “bad faith”, or violation of the covenant of good faith and fair dealing. USAA timely objected to these interrogatories on the grounds that they are not relevant to any claim or defense and not proportional to the needs of this litigation. USAA further objected to these interrogatories as vague as to the term “who contended” and to the extent

1 that the interrogatory calls for information protected by the attorney client and/or work product
2 privileges.

3 Plaintiff's Motion did not articulate any basis as to why information regarding other
4 litigation somehow affects this case. Instead, Plaintiff relies on outdated case law describing the
5 "broad" discovery boundaries. Nonetheless, the DCCR requires USAA to produce information
6 for the past 3 years for litigation involving UM Claims. However, cases allowing such discovery
7 are exactly what prompted the various amendments to the civil procedures rules which now
8 require judges to pare down overbroad discovery requests.

9 The Supreme Court of Nevada adopted the cause of action called "bad faith" in *United*
10 *States Fidelity & Guar. Co. v. Peterson*, 91 Nev. 617, 540 P.2d 1070 (1975). Nevada's definition
11 of bad faith is: (1) an insurer's *denial of (or refusal to pay) an insured's claim*; (2) without any
12 reasonable basis; and (3) the insurer's knowledge or awareness of the lack of any reasonable basis
13 to deny coverage, or the insurer's reckless disregard as to the unreasonableness of the denial.
14 *Pioneer Chlor Alkali Co. v. Nat'l Union Fire Ins. Co.*, 863 F. Supp. 1237, 1247 (D. Nev. 1994)
15 (emphasis added), *Am. Excess Ins. Co. v. MGM Grand Hotels*, 102 Nev. 601, 605, 729 P.2d 1352,
16 1354 (1986) ("Bad faith involves an actual or implied awareness of the absence of a reasonable
17 basis for *denying* the benefits of the policy"); *see also, Pemberton v. Farmers Insurance*
18 *Exchange*, 109 Nev. 789, 858 P.2d 380 (1993) ("[a]n insurer fails to act in good faith when it
19 refuses 'without proper cause' to compensate the insured for a loss covered by the policy."). Thus,
20 the focus of common law bad faith, and indeed the conduct for which liability is imposed, is on an
21 unreasonable *denial* of the benefits of the policy. *Hart v. Prudential Prop. & Cas. Ins. Co.*, 848 F.
22 Supp. 900, 904 (D. Nev. 1994).

23 Thus, the issue to be resolved on these claims is whether USAA had a reasonable basis for
24 denying or delaying payment of this particular claim, and whether it knew or recklessly
25 disregarded the lack of a reasonable basis. The existence of other "bad faith" claims will not
26 prove or disprove any of the issues relevant to Plaintiff's bad faith claims. As such, this discovery
27 is not proportional to the needs of the case. In fact, this type of information on other claims was
28 specifically disallowed in *Cranmer*.

1 Additionally, Plaintiff's primary allegations concern USAA's failure to settle. This will
2 depend on an objective analysis of the particular facts of this claim. Thus, to determine whether
3 any other "bad faith" claim bears any relevance to this claim, would require a determination
4 whether those claims had any merit based on an objective analysis of the particular facts of each
5 claim, *i.e.*, the question is not whether there are any other bad faith claims but whether there are
6 any meritorious claims. Thus, if this discovery is allowed, it will necessarily implicate a "mini-
7 trial" on every other claim in which an insured alleges bad faith. Finally, the mere fact that a
8 claim is *asserted* is a questionable basis upon which to allow the type of extensive discovery
9 Plaintiff seeks here.

10 These interrogatories seek information regarding other lawsuits. None of these
11 interrogatories are both "relevant to any party's claim or defense" and "proportional to the needs
12 of the case." Fed. R. Civ. P. 26(b)(1); 26(b)(2)(C)(iii); see also *Turner v. Paul Revere Life Ins.*
13 *Co.*, No. 2:14-cv-1205-JCM-VCF, 2015 U.S. Dist. LEXIS 116285, at *7 (D. Nev. Aug. 28, 2015).
14 This information is irrelevant to Plaintiff's claims and only tangentially related to the subject
15 matter of the action. Applying the factors set forth in NRCP 26(b)(1), the requested discovery is
16 not proportional to the needs of this case. This discovery is simply not necessary to resolve any of
17 the issues presented in Plaintiff's Complaint. Based on all of the above, no further response
18 should be ordered to these interrogatories.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 We reiterate that while Plaintiff may argue this discovery is “relevant to the subject matter
2 of the action”, “bad faith” in general, this standard was specifically removed from the permissible
3 scope of discovery and is not found in the current iteration of NRCP 26(b)(1). There is simply no
4 basis in NRCP 26 to allow this discovery in this case.

5 DATED 29th day of April, 2021.

6 LEWIS BRISBOIS BISGAARD & SMITH LLP

7
8 By /s/ Priscilla L. O'Briant

9 ROBERT W. FREEMAN

10 Nevada Bar No. 3062

11 PRISCILLA L. O'BRIANT

12 Nevada Bar No. 010171

13 JENNIFER A. TAYLOR

14 Nevada Bar No. 6141

15 6385 S. Rainbow Boulevard, Suite 600

16 Las Vegas, Nevada 89118

17 Telephone: 702.893.3383

18 Fax: 702.893.3789

19 *Attorneys for Defendant United Services*

20 *Automobile Association*

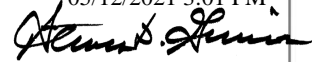
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), A.O. 14-2 and N.E.F.C.R. 9, I certify that I am an employee of LEWIS BRISBOIS BISGAARD & SMITH LLP, and that on this 29th day of April, 2021, I did cause a true and correct copy of **DEFENDANT’S OBJECTION TO DISCOVERY COMMISSIONER’S REPORT AND RECOMMENDATIONS AS TO PLAINTIFF’S MOTIONS TO COMPEL** in *John Roberts v. United Services Automobile Association*, Clark County District Court Case No. A-19-790757-C, to be served by electronic service with the Eighth Judicial District Court filing system to the parties on the Electronic Service List addressed as follows:

Jordan P. Schnitzer, Esq. Jordan@theschnitzerlawfirm.com
THE SCHNITZER LAW FIRM
9205 W. Russell Road, Ste. 240
Las Vegas, NV 89148
Tel: (702) 960-4050
Fax: (702) 960-4092
Attorney for Plaintiff
Jordan@theschnitzerlawfirm.com

By s/ Anne Cordell/
LEWIS BRISBOIS BISGAARD & SMITH LLP


CLERK OF THE COURT

1 ROBERT W. FREEMAN
Nevada Bar No. 3062
2 Robert.Freeman@lewisbrisbois.com
PRISCILLA L. O'BRIANT
3 Nevada Bar No. 010171
Priscilla.OBriant@lewisbrisbois.com
4 JENNIFER A. TAYLOR
Nevada Bar No. 6141
5 Jennifer.A.Taylor@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
6 6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
7 702.893.3383
FAX: 702.893.3789
8 *Attorneys for Defendant United Services*
Automobile Association

10 JOHN ROBERTS, an individual,
11 Plaintiff,
12 vs.

13 UNITED SERVICES AUTOMOBILE
ASSOCIATION, an unincorporated entity
14 and/or a reciprocal insurance exchange with
members residing in the State of Nevada;
15 DOES 1 through 10; and ROE
CORPORATIONS 11 through 25, inclusive,
16 Defendants.
17

CASE NO. A-19-790757-C
Dept. No.: IV

HEARING DATE: March 4, 2021

HEARING TIME: 9:30AM

18
19 **ORDER**

20 **RE: DISCOVERY COMMISSIONER'S**
21 **REPORT AND RECOMMENDATIONS**

22 The Court, having reviewed the above report and recommendations prepared by the
Discovery Commissioner and,
23

24 _____ No timely objection having been filed,

25 X After reviewing the objections to the Report and Recommendations and good
26 cause appearing,
27

28 * * *

CASE NAME: *Roberts v. USAA*
CASE NO: A-19-790757-C
Hearing Date: March 4, 2021

AND

X IT IS HEREBY ORDERED the Discovery Commissioner's Report and
Recommendations are affirmed and adopted.

IT IS HEREBY ORDERED the Discovery Commissioner's Report and
Recommendations are affirmed and adopted as modified in the following manner.
(attached hereto)

IT IS HEREBY ORDERED this matter is remanded to the Discovery Commissioner
for reconsideration or further action.

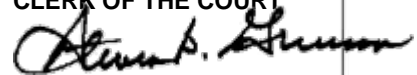
IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report
is set for _____, 20____, at _____:_____ a.m.

Dated this 12th day of May, 2021



DISTRICT COURT JUDGE

D88 D30 15DE BF92
Nadia Krall
District Court Judge



1 **DCRR**
2 ROBERT W. FREEMAN
3 Nevada Bar No. 3062
4 Robert.Freeman@lewisbrisbois.com
5 PRISCILLA L. O'BRIANT
6 Nevada Bar No. 010171
7 Priscilla.OBriant@lewisbrisbois.com
8 JENNIFER A. TAYLOR
9 Nevada Bar No. 6141
10 Jennifer.A.Taylor@lewisbrisbois.com
11 LEWIS BRISBOIS BISGAARD & SMITH LLP
12 6385 S. Rainbow Boulevard, Suite 600
13 Las Vegas, Nevada 89118
14 702.893.3383
15 FAX: 702.893.3789
16 *Attorneys for Defendant United Services*
17 *Automobile Association*

DISTRICT COURT
CLARK COUNTY, NEVADA

13 JOHN ROBERTS, an individual,
14 Plaintiff,
15 vs.
16 UNITED SERVICES AUTOMOBILE
17 ASSOCIATION, an unincorporated entity
18 and/or a reciprocal insurance exchange with
19 members residing in the State of Nevada;
20 DOES 1 through 10; and ROE
21 CORPORATIONS 11 through 25, inclusive,
22 Defendants.

CASE NO. A-19-790757-C
Dept. No.: IV

**DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS
ON PLAINTIFF'S MOTION TO COMPEL
DEFENDANT'S REQUEST FOR
PRODUCTION RESPONSES AND
PLAINTIFF'S MOTION TO COMPEL
DEFENDANT'S RESPONSES TO
INTERROGATORIES AND REQUESTS
FOR ADMISSION**

Hearing Date: March 4, 2021

Hearing Time: 9:30 a.m.

Attorney for Plaintiff: Jordan P. Schnitzer, Esq. of The Schnitzer Law Firm

Attorneys for Defendant: Jennifer A. Taylor, Esq. of the law firm Lewis Brisbois
Bisgaard & Smith, LLP.

I.

FINDINGS

These two matters came before the Honorable Erin Lee Truman, on March 4, 2021,

1 pursuant to Plaintiff's Motion to Compel Defendant's Request for Production Responses and
2 Plaintiff's Motion to Compel Defendant's Responses to Interrogatories and Requests for
3 Admission. The Discovery Commissioner having entertained oral argument of counsel and being
4 informed in the premises, finds as follows:

5 1. This is a lawsuit involving claims of breach of contract and extra-
6 contractual insurance claims;

8 2. Some of the material requested by Plaintiff is proprietary and confidential in
9 nature.

10 II.

11 RECOMMENDATIONS

12 Plaintiff's Motion to Compel Defendant's Request for Production Responses is
13 **GRANTED IN PART and DENIED IN PART** and *the Discovery Commissioner* recommends the following: *ED*

- 14 1. Request for Production 15 must be supplemented within 30 days;
- 15 2. Request for Production 16 must be supplemented with policies, processing manuals, and other
16 materials from 2014 through the present under an Order of Protection pursuant to NRCP 26(c) for
17 use in this litigation only; no dissemination to Third Parties or other entities; the documents will be
18 viewed by attorneys, experts, and necessary witnesses; the documents must be destroyed, or
19 returned to Defendant at the end of litigation;
- 20 3. Request for Production 17, the issue is withdrawn;
- 21 4. Request for Production 18 no further response except for the information Ordered subject to a
22 Protective Order;
- 23 5. Request for Production 2 must be provided what was in place at the time of the incident at issue,
24 pertaining to UM/UIM and Medical Payments coverage subject to a Protective Order under NRCP
25 26(c);
- 26 6. Request for Production 7 is COMPELLED, and documents are PROTECTED under NRCP 26(c);
27 7. Request for Productions 21 and 22 are COMPELLED under an Order of Protection *pursuant to NRCP* for documents *26(c)*
28 in effect in 2014 for use in handling UM/UIM and Medical Payments claims in Nevada;

- 1 8. Request for Production 27 is COMPELLED under an Order of Protection;
- 2 9. Request for Production 28 COMPELLED under an Order of Protection in 2014 to the present for
- 3 use in handling UM and Medical Payments claims in Nevada.
- 4 10. Request for Production 34 is COMPELLED under an Order for Protection for employees who
- 5 handled the subject claim and only documents pertaining to employee evaluations and disciplines
- 6 related to claims handling with other private information redacted.
- 7 11. Request for Production 36 is COMPELLED under an Order of Protection for the Bonus Program
- 8 from the time of the incident to the present time for anyone who had authority over the UIM claim;
- 9 12. Request for Production 41 is COMPELLED regarding any UIM policy updates from the date of the
- 10 incident forward related to UIM handling from the date of the incident forward.
- 11 13. Request for Production 42 is PROTECTED;
- 12 14. Request for Production 47 in COMPELLED limited to individuals involved in this litigation as
- 13 Directed on the record under PROTECTION pursuant to NRCP 26(c); and only for information
- 14 pertaining to performance evaluations, audits, and disciplinary reports related to claims handling
- 15 with other private and/or personally identifiable information redacted.
- 16 15. Request for Production 32 is PROTECTED as written; modified to COMPEL production of 1099s
- 17 or other evidence of payments made to the vendor or medical provider who rendered opinions on
- 18 the subject claim for the period of five (5) years preceding the vendor or medical provider's
- 19 opinions on Plaintiff's claim.
- 20 16. Request for Production 40 is PROTECTED except for any actions taken on the claim at issue;
- 21 17. Request for Production 43 is PROTECTED;
- 22 18. Request for Production 39 is COMPELLED only as to individuals involved in the handling of
- 23 Plaintiff's claim;
- 24 19. Request for Production 24 is Compelled for UM/UIM and Medical Payment coverage premium
- 25 payments only;
- 26 20. If the punitive damages claim remains in this case 30 days before Trial, Deft is required to produce
- 27 three years' worth of financial statements;
- 28 21. Request for Production 9, if any portion of the claims handling process in this case was outsourced
- to a Third Party, it needs to be supplemented, including regarding med pay;

1 22. Defendant must supplement all discovery ordered as a result of today's Hearing within 30 days of
2 this Recommendation signed by the Court.

3 Plaintiff's Motion to Compel Defendant's Responses to Interrogatories and Requests for
4 Admission is **GRANTED IN PART** and **DENIED IN PART** and recommends the following.

- 5 1. Interrogatory 2 is compelled in that the name the position of the employee, and business address of
6 the Claims Handlers in this case; if they are no longer employed by Defendant, provide the last
7 known address, and contact information;
- 8 2. Interrogatories 12, 13, and 14, is compelled for UM/UIM claims in Nevada only, for three years;
- 9 3. Interrogatory 27 is PROTECTED for now, however, if the punitive damages claim remains in this
10 case 30 days before Trial, Defendant is required to produce three years' worth of financial
11 statements;
- 12 4. Interrogatory 31 is compelled;
- 13 5. Interrogatory 32 is PROTECTED;
- 14 6. Interrogatory 33, no further response;
- 15 7. Request for Admissions 6 through 15 violate the *Morgan v. DeMille* case; OBJECTIONS STAND,
16 and no further responses are necessary;
- 17 8. Defendant must supplement all discovery ordered as a result of today's Hearing within 30 days of
18 this Recommendation signed by the Court.
- 19 9. Sanctions are not warranted in this case as there was a good faith dispute, and some discovery
20 requests were protected.

21 DATED this 14th day of APRIL 2021.


DISCOVERY COMMISSIONER

22 Approved as to Form and Content:

Respectfully submitted by:

23 DATED the 7th day of APRIL 2021.

DATED the 7th day of APRIL 2021.

24 THE SCHNITZER LAW FIRM

LEWIS BRISBOIS BISGAARD & SMITH,
LLP.

25
26 BY: /s/ Jordan P. Schnitzer
JORDAN P. SCHNITZER, ESQ.
27 Nevada Bar No. 10744
9205 W. Russell Road, Suite 240
28 Las Vegas, NV 89148
Attorney for Plaintiff

BY: /s/ Jennifer A Taylor
Jennifer A. Taylor, Esq
Nevada Bar No. 6141
6385 S. Rainbow Blvd., Suite 600
Las Vegas, NV 89111
Attorney for Defendant

1 **NOTICE**

2 Pursuant to NRC 16.3(c)(2), you are hereby notified that within fourteen (14) days after
3 being served with a report any party may file and serve written objections to the recommendations.
4 Written authorities may be filed with objections, but are not mandatory. If written authorities are
5 filed, any other party may file and serve responding authorities within seven (7) days after being
6 served with objections.

7 **Objection time will expire on April 29, 2021.**

8 A copy of the foregoing Discovery Commissioner's Report was:

9 _____ Mailed to Plaintiff/Defendant at the following address on the ____ day of
10 _____ 20 ____:

11 ☒ Electronically filed and served counsel on **April 15**, 2021,
12 pursuant to N.E.F.C.R. Rule 9.
13

14 By: Natilie Simonetti
15 COMMISSIONER DESIGNEE
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 John Roberts, Plaintiff(s)

CASE NO: A-19-790757-C

7 vs.

DEPT. NO. Department 4

8 United Services Automobile
9 Association, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 5/12/2021

15 Priscilla O'Briant priscilla.obriant@lewisbrisbois.com

16 Anne Cordell anne.cordell@lewisbrisbois.com

17 Jordan Schnitzer jordan@theschnitzerlawfirm.com

18 Kristen Freeman kristen.freeman@lewisbrisbois.com

20 Maceo Butler Maceo.Butler@lewisbrisbois.com

21 Robert Freeman robert.freeman@lewisbrisbois.com

22 Melisa Gabhart melisa@theschnitzerlawfirm.com

23 Jennifer Taylor jennifer.a.taylor@lewisbrisbois.com

CASE No. A-19-790757-C

Case Type: Insurance Carrier
Date Filed: 03/08/2019
Location: Department 4
Cross-Reference Case Number: A790757

PARTY INFORMATION

Lead Attorneys
Robert W. Freeman
Retained
702-893-3383(W)

Jordan Schnitzer
Retained
702-960-4050(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS	
03/08/2019	Complaint Doc ID# 1 [1] Complaint
03/08/2019	Initial Appearance Fee Disclosure Doc ID# 2 [2] Initial Appearance Fee Disclosure
03/08/2019	Summons Electronically Issued - Service Pending Doc ID# 3 [3] Summons USAA
06/21/2019	Affidavit of Service Doc ID# 4 [4] Affidavit of Service
07/31/2019	Answer to Complaint Doc ID# 5 [5] United Services Automobile Association's Answer to Plaintiff's Complaint
07/31/2019	Initial Appearance Fee Disclosure Doc ID# 6 [6] Initial Appearance Fee Disclosure
07/31/2019	Demand for Jury Trial Doc ID# 7 [7] Demand for Jury Trial
08/20/2019	Request for Exemption From Arbitration Doc ID# 8 [8] Request for Exemption from Arbitration
09/05/2019	Commissioners Decision on Request for Exemption - Granted Doc ID# 9 [9] Commissioner's Decision on Request for Exemption - GRANTED
10/25/2019	Peremptory Challenge Doc ID# 10 [10] Peremptory Challenge of Judge
10/28/2019	Notice of Department Reassignment Doc ID# 11 [11] Notice of Department Reassignment
11/08/2019	Joint Case Conference Report Doc ID# 12 [12] Joint Case Conference Report
01/09/2020	Mandatory Rule 16 Conference Order Doc ID# 13 [13] Mandatory Rule 16 Pre-Trial Scheduling Conference Order
01/10/2020	Notice of Compliance Doc ID# 14 [14] Defendant United Services Automobile Association's (USAA) Notice of Compliance of Serving Its Initial Disclosure of Witnesses and Documents Pursuant to NRCFP 16.1
01/13/2020	Notice of Compliance Doc ID# 15 [15] Plaintiff's Notice of Compliance
01/24/2020	Mandatory Rule 16 Conference (9:00 AM) (Judicial Officer Earley, Kerry) Parties Present Minutes
02/06/2020	Result: Matter Heard Scheduling and Trial Order Doc ID# 16 [16] SCHEDULING AND TRIAL ORDER
07/20/2020	Stipulation and Order Doc ID# 17 [17] Stipulation And Order to Extend Discovery and Continue Trial (First Request)
07/21/2020	Notice of Entry of Stipulation and Order Doc ID# 18 [18] Notice of Entry of Stipulation and Order to Extend Discovery and Continue Trial
11/12/2020	Stipulation and Order to Extend Discovery Deadlines Doc ID# 19 [19] Stipulation and Order to Extend Discovery Deadlines and Continue Trial[Second Request]
11/17/2020	Stipulation and Order to Extend Discovery Deadlines Doc ID# 20 [20] Stipulation to Extend Discovery Deadlines and Continue Trial [Second Request]
01/04/2021	Administrative Reassignment - Judicial Officer Change Judicial Reassignment to Judge Nadia Krall
01/14/2021	Motion to Compel Doc ID# 21 [21] Motion to Compel Defendant's Responses to Interrogatories and Requests for Admission
01/14/2021	Exhibits Doc ID# 22 [22] Index of Exhibits to Plaintiff's Motion to Compel Defendant's Responses to Interrogatories and Requests for Admission
01/14/2021	Motion to Compel Doc ID# 23 [23] Plaintiff's Motion to Compel Defendant's Requests for Production Responses
01/14/2021	Exhibits Doc ID# 24 [24] Index of Exhibits to Plaintiff's Motion to Compel Defendant's Responses to Requests for Production
01/19/2021	Clerk's Notice of Hearing Doc ID# 25 [25] Notice of Hearing
02/01/2021	Opposition to Motion to Compel Doc ID# 26 [26] OPPOSITION TO PLAINTIFF S MOTION TO COMPEL DEFENDANT S RESPONSES TO INTERROGATORIES AND REQUESTS FOR ADMISSION
02/02/2021	Opposition to Motion to Compel Doc ID# 27 [27] OPPOSITION TO PLAINTIFF S MOTION TO COMPEL DEFENDANT S REQUESTS FOR PRODUCTION RESPONSES
02/11/2021	Clerk's Notice of Hearing Doc ID# 28 [28] Notice of Hearing
02/11/2021	Notice of Change of Hearing Doc ID# 29 [29] Notice of Change of Hearing
02/15/2021	Stipulation and Order Doc ID# 30 [30] Stipulation and Order to Extend Discovery Deadlines and Continue Trial (Third Request)
02/22/2021	Order Doc ID# 31 [31] Amended Order Setting Civil Jury Trial and Calendar Call
02/24/2021	Order Doc ID# 32 [32] Amended Order Setting Civil Jury Trial and Calendar Call
02/24/2021	Order Doc ID# 33 [33] Amended Order Setting Civil Jury Trial and Calendar Call
02/25/2021	Reply to Opposition Doc ID# 34

	<i>[34] Plaintiff's Reply to Opposition to Motion to Compel Defendant's Requests for Production Responses and Motion to Compel Defendant's Responses to Interrogatories and Requests for Admission</i>
03/04/2021	Motion to Compel (9:30 AM) (Judicial Officer Truman, Erin) <i>Plaintiff's Motion to Compel Defendant's Responses to Interrogatories and Request for Admissions</i> 02/18/2021 Reset by Court to 03/04/2021
03/04/2021	Result: Granted in Part Motion to Compel (9:30 AM) (Judicial Officer Truman, Erin) <i>Plaintiff's Motion to Compel Defendant's Requests for Production Responses</i>
03/04/2021	Result: Granted in Part All Pending Motions (9:30 AM) (Judicial Officer Truman, Erin) Parties Present Minutes
04/07/2021	Result: Matter Heard Discovery Commissioners Report and Recommendations Doc ID# 35 <i>[35] Discovery Commissioner's Report and Recommendations on Plaintiff's Motion to Compel Defendant's Request for Productio Responses and Plaintiff's Motion to Compel Defendant's Responses to Interrogatories and Requests for Admission</i>
04/08/2021	CANCELED Status Check: Compliance (3:00 AM) (Judicial Officer Truman, Erin) Vacated Status Check: Compliance / 3-4-2021 DCRR
04/08/2021	Clerk's Notice of Nonconforming Document Doc ID# 36 <i>[36] Notice of Nonconforming Document</i>
04/15/2021	Discovery Commissioners Report and Recommendations Doc ID# 37 <i>[37] Discovery Commissioner s Report and Recommendations on Plaintiff's Motion to Compel Defendant's Request for Production Responses and Plaintiff's Motion to Compel Defendant's Responses to Interrogatories and Requests for Admission</i>
04/19/2021	Stipulation and Order to Extend Discovery Deadlines Doc ID# 38 <i>[38] Stipulation and Order to Extend Discovery Deadlines and Continue Trial [Fourth Request]</i>
04/20/2021	Notice of Entry of Order Doc ID# 39 <i>[39] NOTICE OF ENTRY OF STIPULATION AND ORDER TO EXTEND DISCOVERY DEADLINES AND CONTINUE TRIAL (FOURTH REQUEST)</i>
04/20/2021	Order Doc ID# 40 <i>[40] Amended Order Setting Civil Jury Trial and Calendar Call</i>
04/29/2021	Objection to Commissioner's Report and Recommendation Doc ID# 41 <i>[41] Defendant's Objection to Discovery Commissioner's Report and Recommendations as to Plaintiff's Motion to Compel</i>
05/12/2021	Order Doc ID# 42 <i>[42] Order RE. Discovery Commissioner's Report and Recommendations</i>
05/24/2021	CANCELED Jury Trial (9:00 AM) (Judicial Officer Krall, Nadia) Vacated 02/09/2021 Reset by Court to 05/24/2021
06/02/2021	Notice of Change of Hearing Doc ID# 43 <i>[43] Notice of Change of Hearing</i>
07/14/2021	Motion to Strike Doc ID# 44 <i>[44] Motion to Strike the Answer of USAA for its Refusal to Participate in Discovery and Violation of Discovery Orders</i>
07/14/2021	Clerk's Notice of Hearing Doc ID# 45 <i>[45] Notice of Hearing</i>
07/18/2021	Stipulation and Order Doc ID# 46 <i>[46] Stipulation and Order to Reschedule Status Check (Trial Readiness)</i>
07/19/2021	Notice of Entry of Stipulation and Order Doc ID# 47 <i>[47] Notice of Entry of Stipulation and Order to Reschedule Status Check (Trial Readiness)</i>
07/28/2021	Opposition Doc ID# 48 <i>[48] Defendant's Opposition to Plaintiff's Motion to Strike the Answer of USAA</i>
08/31/2021	Status Check (9:00 AM) (Judicial Officer Krall, Nadia) Trial Readiness 07/21/2021 Reset by Court to 08/18/2021 07/27/2021 Reset by Court to 07/21/2021 08/18/2021 Reset by Court to 08/31/2021
08/31/2021	Motion to Strike (9:00 AM) (Judicial Officer Krall, Nadia) <i>Motion to Strike the Answer of USAA for its Refusal to Participate in Discovery and Violation of Discovery Orders</i>
09/16/2021	CANCELED Calendar Call (11:00 AM) (Judicial Officer Krall, Nadia) Vacated - per Stipulation and Order 01/14/2021 Reset by Court to 04/29/2021 04/29/2021 Reset by Court to 09/16/2021
10/11/2021	CANCELED Jury Trial (9:00 AM) (Judicial Officer Krall, Nadia) Vacated - Superseding Order
06/14/2022	Calendar Call (11:00 AM) (Judicial Officer Krall, Nadia) 12/14/2021 Reset by Court to 06/14/2022
06/27/2022	Jury Trial (9:00 AM) (Judicial Officer Krall, Nadia) 01/03/2022 Reset by Court to 06/27/2022

FINANCIAL INFORMATION				
	Defendant United Services Automobile Association			
	Total Financial Assessment			223.00
	Total Payments and Credits			223.00
	Balance Due as of 08/10/2021			0.00
07/31/2019	Transaction Assessment			223.00
07/31/2019	Efile Payment	Receipt # 2019-46640-CCCLK	United Services Automobile Association	(223.00)
	Plaintiff Roberts, John			
	Total Financial Assessment			720.00
	Total Payments and Credits			720.00
	Balance Due as of 08/10/2021			0.00
03/11/2019	Transaction Assessment			270.00
03/11/2019	Efile Payment	Receipt # 2019-15245-CCCLK	Roberts, John	(270.00)
10/25/2019	Transaction Assessment			450.00
10/25/2019	Efile Payment	Receipt # 2019-65015-CCCLK	Roberts, John	(450.00)