

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

ZACKERY R. LOMBARDO,
Plaintiff,

v.

Case No.: 3:16cv392/MCR/EMT

GOVERNMENT EMPLOYEES
INSURANCE COMPANY,
Defendant.

_____ /

ORDER

This cause is before the court upon Plaintiff’s “Motion to Compel Documents of Three Additional GEICO Employees’ [Personnel] Files Related to Claims Handling . . .” (ECF No. 28), and Defendant’s response in opposition thereto (ECF No. 30).

Background

In this action Plaintiff Lombardo claims that Defendant GEICO acted in bad faith toward Lombardo, its insured, by failing to fully investigate and settle within the policy limits all claims arising out of an automobile accident he had with Alysia Macedo on April 10, 2012 (*see generally* ECF Nos. 1 (complaint), 11 (joint report)). As a result, Ms. Macedo filed a state-court lawsuit against Lombardo and ultimately, after Macedo prevailed at trial, a final judgment was entered against Lombardo in the

amount of \$172,965.91, or nearly \$73,000 more than Lombardo's policy limits of \$100,000. GEICO contends in this action that, with respect to the underlying accident and claims arising therefrom, it acted fairly and honestly with due regard for Lombardo's interests and fully investigated all of the claims that arose out of the accident to determine how best to limit Lombardo's liability. GEICO notes that Lombardo denied any negligence on his part and that an accident reconstruction expert's findings supported Lombardo's position (*see generally* ECF Nos. 1, 11).

Discovery commenced in this case in September 2016, and in January 2017 Lombardo filed a motion to compel GEICO to produce the personnel file of Andrea Thomas, the GEICO adjuster who had been primarily responsible for handling Macedo's claim (ECF No. 19). After considering GEICO's response to the motion (ECF No. 22), the undersigned issued an order granting in part the motion to compel (ECF No. 25). In short, the undersigned determined that portions of the primary claims adjuster's file were discoverable and ordered GEICO to produce those portions.¹

In the instant motion, Lombardo now seeks an order compelling GEICO to produce three additional personnel files of three additional GEICO employees:

¹ The undersigned achieved this result by narrowing the request for production ("RFP") propounded by Lombardo that pertained to Ms. Thomas' file (*see* ECF No. 25).

Mindy Thagard, who was initially assigned to handle Macedo's claim, and apparently handled the claim for about three weeks, from on or about April 10, 2012, through May 3, 2012; Michael Conley, who supervised Andrea Thomas; and John Walsh, Michael Conley's supervisor. In support, Lombardo in large part relies upon this court's earlier ruling on his first motion to compel and notes that he agreed to narrow his RFPs as to the personnel files of Thagard, Conley, and Walsh in the same manner previously ordered by the court, but GEICO would not agree to produce their personnel files even in response to narrowed RFPs. GEICO contends that this court's earlier decision was based upon a determination that Andrea Thomas was the *primary* claims adjuster. Thus, says GEICO, the court's earlier decision does not control the matter as to the personnel files of any supervisor or *non-primary* claims adjuster.

Conclusion

- Michael Conley and John Walsh

The court finds that the personnel files of supervisors Conley and Walsh are not discoverable. At some point, delving into personnel files becomes the sort of fishing expedition that the discovery rules do not permit. Though each supervisor may possess some relevant information, the material in their personnel files is likely of limited relevance and sure to contain private documents such as those related to

health care, life insurance, wages or salary, income tax returns, retirement accounts, bank accounts (e.g., for purposes of electronic deposits), or even participation in employee assistance programs.

In reaching its conclusion, the court has also, of course, considered the proportionality factors of Rule 26, including the importance of the issues at stake in this action and the amount in controversy (approximately \$73,000), among others. The court is also mindful that Mr. Conley has been deposed, and thus Lombardo's attorneys had the opportunity to ask him about the same matters they now seek to discover by obtaining his personnel file. Finally, the court notes that the degree of separation between Mr. Walsh and the investigation/handling of Macedo's claim is even greater than that of Mr. Conley, as Walsh appears to have had only minimal and non-direct involvement in the processing of the underlying claim.

- Mindy Thagard

The court is unable to reach the same conclusion as to Mindy Thagard, because it appears that she was primarily responsible for handling the Macedo claim initially, even though only for a short period of time. Thus, the same reasons that led this court to conclude that Ms. Thomas' file was discoverable generally support the same conclusion here, even though Ms. Thomas' involvement in the matter was evidently

greater and more protracted than that of Ms. Thagard.² The court will therefore permit discovery of Ms. Thagard's file to a limited extent. More specifically, GEICO must produce the following documents from her file:

All DOCUMENTS, and information, whether maintained electronically or in a physical file, relative to training, education, experience, licensure, job positions, responsibilities, and duties associated with claims handling (to include adjusting and settling); any complaints, commendations, or other documentation of performance evaluations or reviews or similar assessments of responsibilities and performance of Mindy Thagard in her capacity as a claims handler for the years 2010 through May 3, 2012.

GEICO, of course, is not required to produce Social Security numbers, telephone numbers, drug test results, information relating to Ms. Thagard's family, or any other protected health information.

Accordingly, it is **ORDERED**:

1. Plaintiff's Motion to Compel Documents of Three Additional GEICO Employees' Files Related to Claims Handling and Request for Attorney's Fees and Costs (ECF No. 28) is **DENIED in part and GRANTED in part**.

² Even if Ms. Thagard cannot be considered a "primary claims adjuster" during the initial investigation of Macedo's claim, it is clear that she was directly involved in handling the claim, as opposed to being involved only in a supervisory capacity. For example, Thagard evidently took a recorded statement from Macedo, obtained medical releases from Macedo, and reached a preliminary determination as to Lombardo's liability based on her review of police reports and photographs (*see* ECF No. 28 at 8–9).

a. The motion is **DENIED** to the extent it seeks an order compelling the production of the personnel files of Michael Conley and John Walsh.

b. The motion is **GRANTED** to the extent it seeks an order compelling the production of Mindy Thagard's personnel file, but only to the extent set forth in the body of this order. GEICO shall produce the Thagard documents to Lombardo with **FOURTEEN (14) DAYS** of the date of this order.

2. No attorney fees or costs are awarded to either party.

DONE AND ORDERED this 14th day of August 2017.

/s/ Elizabeth M. Timothy

ELIZABETH M. TIMOTHY

CHIEF UNITED STATES MAGISTRATE JUDGE