

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

ZACHERY R. LOMBARDO,

Plaintiff,

v.

CASE NO. 3:16cv392-MCR/EMT

GOVERNMENT EMPLOYEES
INSURANCE COMPANY,

Defendant.

**GOVERNMENT EMPLOYEES INSURANCE COMPANY'S RESPONSE IN
OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL**

COMES NOW, DEFENDANT GOVERNMENT EMPLOYEES
INSURANCE COMPANY ("GEICO"), by and through its undersigned counsel
and pursuant to Federal Rules of Civil Procedure 34 and 37, and hereby responds
in opposition to Plaintiff's Motion to Compel. GEICO respectfully requests that
this Honorable Court deny Plaintiff's Motion and, as grounds therefore, would
state as follows:

1. This is a bad faith action stemming from an April 10, 2012 automobile
accident. [See Doc 1 at ¶ 18]. As a result of the accident, suit was filed against Mr.
Lombardo. [See Doc. 1 at ¶ 9]. That lawsuit resulted in a final judgment against Mr.
Lombardo. [See Doc. 1-2].

2. On January 18, 2017, Plaintiff filed a Motion to Compel the production of GEICO adjuster Andrea Thomas' personnel file. [Doc. 19].

3. Plaintiff's Motion to Compel the production of Ms. Thomas' personnel file was based on the representation to this Court that Ms. Thomas was the primary adjuster who was involved in the underlying claim. [Doc. 19, page 14] (Plaintiff argued: "[h]ere, Andrea Thomas was the primary adjuster . . .").

4. On February 23, 2017, this Court entered an Order upon Plaintiff's Motion to Compel [Doc. 19], in which this Court determined:

The undersigned concludes that Lombardo's RFP No. 9 is **overly broad** and that only documents from Ms. Thomas' personnel file that are related to settlement and claims handling/adjustment are relevant to Lombardo's claim and proportional to the needs of this case, considering the factors set forth in Fed. R. Civ. P. 26(b)(1).

[Doc. 25, page 10].

5. This Court noted that Plaintiff represented that Ms. Thomas was the primary adjuster [Doc. 25, page 5]¹, and this Court explained that only certain personnel file materials related to the "primary claims adjuster(s), is relevant and discoverable in bad faith actions such as this." [Doc. 25, page 8].

¹ This Court noted that Plaintiff "states that Andrea Thomas was the primary insurance adjuster involved in the handling and defense of Ms. Macedo's claim against him, including the conducting of all settlement discussions." [Doc. 25, page 5].

6. On June 2, 2017, Plaintiff served his Second Request for Production, seeking additional GEICO employee personnel files. Specifically, Plaintiff sought the production of the personnel files for Mike Conley, Mindy Thagard, and John Walsh.

7. On June 30, 2017, GEICO objected on the grounds that the discovery was overly broad, unduly burdensome, not proportional to the needs of this case, sought protect confidential information, sought protected financial information, and sought materials not relevant to the issues in this case. [See GEICO's Response to Plaintiff's Second Request to Produce, attached hereto as **Exhibit A**].

8. On July 24, 2017, Plaintiff filed his Motion to Compel the production of the additional personnel files. [Doc. 28]

9. In his Motion to Compel, Plaintiff simply seeks to bootstrap ancillary GEICO employees to this Court's prior Order allowing for the limited discovery of portions of the primary adjuster's personnel file.

10. Plaintiff does not attempt to address the relevancy and proportionality requirements of Rule 26(b)(1).

11. As Plaintiff is not presently seeking the discovery of the primary adjuster's personnel file, this Court's prior Order is not applicable to the Request for Production at Issue.

12. Moreover, the basis for allowing the discovery of Ms. Thomas' personnel file has, in part, been rendered moot insofar as the Plaintiff has since been deposed and testified that he is in agreement with GEICO's investigatory findings. [See June 21, 2017, Zackery Lombardo Deposition Transcript at 24:8-24, excerpt attached hereto as **Exhibit B**]. [See Doc. 19, ¶ 7 (Plaintiff arguing that Ms. Thomas' personnel file was discoverable because she investigated the claim)].²

13. Pursuant to Plaintiff's sworn deposition testimony in this case, GEICO's investigation of the underlying accident is no longer at issue and, therefore, not a basis for the production of personnel files as Plaintiff has expressly agreed with GEICO's investigation.

14. As such, pursuant to Rule 26(b)(1), Plaintiff's Motion to Compel is due to be denied as the discovery sought is neither relevant nor proportional to the needs of this case.

WHEREFORE, Defendant, GOVERNMENT EMPLOYEES INSURANCE COMPANY, respectfully requests that this Honorable Court DENY Plaintiff's Motion to Compel, as well as grant any further relief that this Court deems necessary and proper.

² GEICO grants Plaintiff's counsel the benefit of the doubt that Plaintiff's counsel did not know Plaintiff's testimony would undercut the basis for their prior motion to compel, as Plaintiff had not yet been deposed. However, there is no justification for advancing such an illegitimate argument after Plaintiff has been deposed and his testimony made known.

MEMORANDUM OF LAW

I. Plaintiff's Discovery Request is Neither Relevant Nor Proportional to the Needs of this Case

In its Order on Plaintiff's Motion to Compel the Production of Andrea Thomas' personnel file, this Court concluded that Plaintiff's request was overly broad. [Doc. 25, page 10]. This Court allowed for the limited production of certain portions of Ms. Thomas' personnel file on the basis that Plaintiff "states that Andrea Thomas was the primary insurance adjuster involved in the handling and defense of Ms. Macedo's claim against him, including the conducting of all settlement discussions." [Doc. 25, page 5]. This Court explained that certain personnel file materials related to the "primary claims adjuster(s), is relevant and discoverable in bad faith actions such as this." [Doc. 25, page 8]. In accordance with this Court's Order, GEICO produced Ms. Thomas's personnel file.

Here, Plaintiff is not seeking the personnel file for the primary adjuster. Pursuant to the factors set forth in Rule 26(b)(1), Mr. Conley, Ms. Thagard, and Mr. Walsh's personnel files are neither relevant nor proportional to the needs of this case.

Rule 26(b)(1) allows "discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case[.]"

Fed. R. Civ. P. 26. Rule 26(b)(1) requires:

Courts consider the following factors: (1) the importance of the issues at stake in the action, (2) the amount in controversy, (3) the parties' relative access to relevant information, (4) the parties'

resources, (5) the importance of the discovery in resolving the issues, and (6) whether the burden or expense of the proposed discovery outweighs its likely benefit.

VIP Auto Glass, Inc. v. GEICO Gen. Ins. Co., 2017 WL 2538674, at *2 (M.D. Fla. June 12, 2017) (internal quotation marks omitted). “[P]roportionality ‘focuses on the marginal utility of the discovery sought.’” Edmondson v. Velvet Lifestyles, LLC, 2016 WL 7048363, at *6 (S.D. Fla. Dec. 5, 2016) (quoting Viagasi v. Solow Mgmt. Corp., 2016 WL 616386, at *14 (S.D.N.Y. Feb. 16, 2016)). “The analysis as to proportionality begins with a review of the actual claims and defenses in the case, ‘and a consideration of how and to what degree the requested discovery bears on those claims and defenses.’” Houston Specialty Ins. Co. v. Titleworks of Sw. Florida, Inc., 2016 WL 7130939, at *2 (M.D. Fla. July 19, 2016) (quoting Koster v. Landmark Am. Ins. Co., 2016 WL 3014605, at *2 (M.D. Fla. May 20, 2016)).

A. Review of the Actual Claims and Defenses

“The analysis as to proportionality begins with a review of the actual claims and defenses in the case[.] Houston Specialty Ins. Co. v. Titleworks of Sw. Florida, Inc., 2016 WL 7130939, at *2 (M.D. Fla. July 19, 2016). Here, Plaintiff has sued GEICO for bad faith and alleges that GEICO failed to settle a claim brought against Plaintiff when GEICO could and should have done so. [Doc. 1, ¶19a]. Plaintiff also alleges that GEICO did not adequately communicate with Plaintiff during the pendency of the claim brought against Plaintiff. [Doc. 1, ¶ 19k].

The facts of the underlying case and claim are straight forward. Plaintiff, who was the defendant in the underlying action, was involved in a motor vehicle accident with Alyssa Macedo, plaintiff below. Ms. Macedo and Plaintiff had differing accounts as to how the accident occurred. GEICO conducted an investigation and concluded that the facts supported Plaintiff's explanation as opposed to Ms. Macedo's. The case was ultimately tried before a jury, and the jury found Ms. Macedo's explanation more credible than Plaintiff's.

Importantly, in his deposition for this present action, Plaintiff reaffirmed his agreement with GEICO's investigatory findings and Plaintiff reaffirmed that he did not agree with the Ms. Macedo's explanation or the jury's determination. [See **Exhibit B**, lines 17-24]. Where Plaintiff has testified that he agrees with GEICO's investigation, Plaintiff's counsel cannot make a credible argument attacking GEICO's investigation. In light of Plaintiff's testimony and the fact that Mr. Walsh, Mr. Conley, and Ms. Thagard were not the primary adjusters, their personnel files have no bearing on the claims in this case.

B. Importance of the Issues at Stake in this Action

As explained above, the issue in this case is whether GEICO acted in bad faith in its handling of Ms. Macedo's claim against Mr. Lombardo. The excess verdict giving rise to the present bad faith action is the result of a jury discounting Mr. Lombardo's testimony in a case of contested liability. Such a case does not present

an issue of significant importance to the public. See State Farm Mut. Auto. Ins. Co. v. Pointe Physical Therapy, LLC, 2017 WL 2616938, at *3 (E.D. Mich. June 12, 2017), aff'd sub nom. State Farm Mutual Automobile Insurance Company, Plaintiff, v. Pointe Physical Therapy, LLC, et al., Defendants., 2017 WL 3116261 (E.D. Mich. July 21, 2017) (weighing Rule 26(b)(1) factors and finding that health care and insurance fraud presented an issue of public importance); In re: Takata Airbag Products Liab. Litig., 2016 WL 5795347, at *4 (S.D. Fla. June 24, 2016), report and recommendation adopted sub nom. In re Takata Airbag Products Liab. Litig., 15-02599-MD, 2016 WL 5844932 (S.D. Fla. June 30, 2016) (weighing Rule 26(b)(1) and determining that millions of defective airbags was an important issue); Hurt v. Vantlin, 2016 WL 320149, at *2 (S.D. Ind. Jan. 27, 2016) (weighing Rule 26(b)(1) factors and determining that alleged civil rights violation was an important issue at stake).

The issue at stake in this action does not concern civil rights. The issue at stake in this action does not concern public health. The issue at stake in this action does not concern widespread fraud. As such, under Rule 26(b)(1), the issue at stake in this action is not important for the purposes of determining proportionality, and this factor indicates that Plaintiff's discovery request is neither relevant nor proportional to the needs of this case.

C. Amount in Controversy

Here, the Final Judgment entered against Mr. Lombardo totaled \$172,965.91. [Doc. 1, ¶ 15]. GEICO has paid \$100,000 of this amount. [Doc. 1, ¶ 16]. The unpaid portion of the final judgment against Mr. Lombardo totals \$72,965.91. Pursuant to Rule 26(b)(1), the amount in controversy shows that Plaintiff's discovery request is not proportional to the needs of this case. See In re Blue Cross Blue Shield Antitrust Litig., 2015 WL 9694792, at *2 (N.D. Ala. Dec. 9, 2015) (weighing Rule 26(b)(1) and commenting that "the amount at stake in this case is great, involving perhaps billions of dollars").

D. Parties' Relative Access to Relevant Information

GEICO has produced the unprivileged portion of its claims file in this action. GEICO's claims file contains all relevant information regarding GEICO's handling of the underlying action. Additionally, GEICO has produced the personnel file for the primary adjuster. At this stage in discovery, the parties' access to nonprivileged, relevant information is equal. As such, pursuant to Rule 26(b)(1), this factor indicates that Plaintiff's discovery request is not proportional to the needs of this case.

E. Parties' Resources

Here, there is no suggestion or evidence that Plaintiff's resources are limited. There is no reasonable basis for suggesting that the outcome of the present action

will be determined by the cost of litigation. As such, this factor indicates that Plaintiff's discovery request is not proportional to the needs of this case.

F. The Importance of the Discovery in Resolving the Issues

The requested personnel files are not relevant to the issue in this case, and the importance of the requested personnel files is marginal at best. Plaintiff has already secured the primary adjuster's personnel file. To the extent the Plaintiff argued that GEICO's investigation supported the discovery of Ms. Thomas' personnel file, Plaintiff's subsequent testimony discredits that argument. The requested personnel files are not important to the issues in this case. Pursuant to Rule 26(b)(1), this factor shows that the requested discovery is neither relevant nor proportional to the needs of this case.

G. The Burden and Expense Outweighs any Purported Benefit.

Plaintiff has requested personnel files for three employees who have collectively worked at GEICO for over fifty years. Under information and belief, the personnel files will number in the thousands of page. As the personnel files contain information that is protected and clearly irrelevant, limited production of the files will cause GEICO to incur the expense and burden of culling the voluminous documents down to select pages. [See Exhibit A] (objecting on the bases that the personnel files contain protected and irrelevant information). This burden and expense is unreasonable, considering the lack of relevance that the requested discovery has on

the issues in this case.³ See Scott v. Eglin Fed. Credit Union, 2017 WL 1364600, at *3 (N.D. Fla. Apr. 13, 2017) (reasoning that “the marginal relevance of information” compared to the “time and expense” in responding to discovery was not proportional to the needs of the case and would force the “employer to incur an expense that ultimately will have little or no impact on the outcome of this case.”). Pursuant to Rule 26(b)(1), the burden and expense of the proposed discovery outweighs any purported benefit and is neither relevant nor proportional to the needs of this case.

II. Mike Conley’s Personnel File

Mr. Conley was a supervisor at GEICO during the pendency of the underlying claim. As Plaintiff correctly points out, “Mr. Conley gave direction the [sic] adjuster Andrea Thomas that included trying to get the claim resolved early through contact with Ms. Macedo’s attorneys, tying up any loose ends on liability, and potentially seeking to bifurcate the trial on liability from the trial on damages.” [Doc. 28, page 9]. By Plaintiff’s own argument, Mr. Conley was not tasked with negotiating with Ms. Macedo’s attorney nor investigating liability; rather, Mr. Conley assigned Andrea Thomas, the primary adjuster, to complete those tasks.

Importantly, Plaintiff has already deposed Mr. Conley in this case. Plaintiff questioned Mr. Conley, and Mr. Conley testified concerning his education,

³ GEICO would note that it may have an affirmative duty to assert its employee’s constitutional right to privacy.

licensing, training, employment history, job responsibilities, and involvement in the underlying claim.

Plaintiff is asserting an argument that Mr. Conley's personnel file is de facto relevant simply because he was the supervisor. Pursuant to Plaintiff's line of reasoning, Plaintiff would be entitled to personnel files for employees in each level of management, leading to the president of GEICO's parent company. Plaintiff has not made a showing of relevance or proportionality under Rule 26(b)(1). Mr. Conley was not responsible for investigations or negotiations. Pursuant to Rule 26, Mr. Conley's personnel file is neither relevant nor proportional to the needs of this case.

III. John Walsh's Personnel File

Plaintiff's de facto relevancy argument is furthered in his request for John Walsh's personnel file. Plaintiff argues that "Mr. Walsh is Mr. Conley's supervisor and he participated in the 60 day and 30 day trial reviews." [Doc. 28, page 9]. Additionally, Plaintiff contends that Mr. Walsh noted that the underlying case was a good case to try. [Doc. 28, page 9]. The degrees of separation between Mr. Walsh and the actual investigation and settlement negotiation of the underlying claim place his personnel file beyond the limits of relevance.

Plaintiff makes no suggestion that Mr. Walsh had any involvement in the investigation of the underlying claim. Similarly, Plaintiff has not put forth any argument that Mr. Walsh was involved in settlement negotiations as to the

underlying claim. Rather, Plaintiff contends that participation in two separate trial reviews of a claim that spans multiple years renders Mr. Walsh's personnel file discoverable. However, Plaintiff has failed to address the proportionality and relevant requirements of Rule 26(b)(1) in his Motion to Compel. Pursuant to the Rule 26(b)(1) factors discussed above, Mr. Walsh's personnel file is not relevant and clearly not proportional to the needs of this case.

IV. Mindy Thagard's Personnel File

Plaintiff also seeks Mindy Thagard's personnel file. Ms. Thagard is the initial adjuster who received the accident report, took the parties' recorded statements, and discussed the accident with Ms. Macedo's insurer. Ms. Thagard also mailed Ms. Macedo a denial of liability letter. That is the limited extent of Ms. Thagard's involvement. Importantly, Plaintiff has already deposed Ms. Thagard in this case. Plaintiff questioned Ms. Thagard, and Ms. Thagard testified concerning her education, licensing, training, employment history, job responsibilities, and involvement in the underlying claim.

Ms. Thagard was not involved with any settlement negotiations. Plaintiff does not contend that Ms. Thagard was involved with settlement negotiations. Ms. Thagard did not receive a demand from Ms. Macedo. Ms. Thagard was not assigned to the claim when suit was filed. Ms. Thagard was not the primary adjuster.

To the extent that Ms. Thagard initially investigated the claim, such is not a basis for establishing relevance or overcoming proportionality when the Plaintiff has testified that he agrees with GEICO's investigation. [See **Exhibit B**]. As Ms. Thagard was not involved in settlement negotiations of the underlying claim, and as Plaintiff has testified that he agrees with Ms. Thagard's brief investigative activities in the underlying case, this Court should not allow discovery of Ms. Thagard's personnel file in this case because her personnel file is neither relevant nor proportional to the needs in this case.

V. GEICO's Objections Are Substantially Justified

Pursuant to Rule 37(a)(5)(A), should this Court permit discovery of the requested personnel files, this Court should not award Plaintiff expenses as GEICO's objections are substantially justified.

“Substantial justification in this context means justification to a degree that could satisfy a reasonable person that parties could differ as to whether the party was required to comply with the disclosure request.” LeGrande v. Adecco, 233 F.R.D. 253, 257 (N.D.N.Y. 2005) (citation and internal quotation marks omitted). In considering whether a party's position is substantially justified, “the Court's focus must be on the quality of the justification and the genuineness of the dispute; where an impartial observer would agree that a party had good reason to withhold

discovery, then such a justification is substantial.” Alvarez v. Wallace, 107 F.R.D. 658, 662 (W.D. Tex. 1985) (internal quotation marks omitted).

Here, GEICO’s opposition to Plaintiff’s discovery request is substantially justified. Although this Court allowed for the limited discovery of portions of Andrea Thomas’ personnel file, such discovery was allowed on the basis that Ms. Thomas was the primary adjuster who investigated the claim and handled settlement negotiations. Ms. Thagard, Mr. Conley, and Mr. Walsh did not act as the primary adjuster. Moreover, considering the fact that Plaintiff subsequently testified that he does not have a complaint as to GEICO’s investigation, GEICO’s investigation is not an issue and is not a legitimate basis for discovering personnel files in this case. Likewise, Ms. Thagard, Mr. Conley, and Mr. Walsh did not handle settlement negotiations, and such is not a basis for allowing the discovery of their personnel files.

Furthermore, Plaintiff concedes that his request for production was not in agreement with this Court’s Order concerning Ms. Thomas’ personnel file. [Doc. 28, page 2]. To the extent that Plaintiff offered to modify his request to comport with this Court’s prior Order, such a perspective request for production has not been issued to GEICO, and such a perspective request for production is not before this Court. Considering that the bases for this Court’s Order allowing the discovery of Ms. Thomas’ personnel file are non-existent with regards to Ms. Thagard, Mr.

Walsh, and Mr. Conley's personnel files, "an impartial observer would agree that [GEICO] had good reason to withhold" the personnel files. Alvarez v. Wallace, 107 F.R.D. 658, 662 (W.D. Tex. 1985). As such, GEICO was substantially justified and this Court should not award Plaintiff expenses.

VI. Conclusion

Plaintiff's sole reliance on this Court's Order [Doc. 25] granting the limited discovery of portions of Ms. Thomas' personnel file is misplaced as the three employees identified in Plaintiff's Second Request for Production are distinguishable as a matter of fact and law. [See Doc. 28, page 10].⁴

It is undisputed that Andrea Thomas was the primary adjuster. Mr. Conley, Mr. Walsh, and Ms. Thagard had substantially less involvement in the handling of the underlying claim, and they were not the primary adjuster assigned to the underlying claim. Ms. Thagard, Mr. Walsh, and Mr. Conley did not handle negotiations in the underlying claim. Mr. Conley and Mr. Walsh did not handle the investigation of the underlying claim.

Moreover, since this Court's prior Order [Doc. 25], Plaintiff has testified that he does not take issue with GEICO's investigation. Plaintiff's testimony clearly refutes the bases for this Court's prior Order allowing the discovery of the primary

⁴ Plaintiff argues: "The objections should be overruled on the same basis and GEICO should be ordered to produce the same information for Ms. Thagard, Mr. Conley, and Mr. Walsh, as it was ordered to produce for Ms. Thomas.

adjuster's personnel file. Therefore, Plaintiff's argument that this Court's prior Order is controlling on these requested personnel files is improper.

Under Rule 26(b), the requested discovery is neither relevant nor proportional to the needs in this case. As such, this Court should deny Plaintiff's Motion to Compel.

WHEREFORE, Defendant, GOVERNMENT EMPLOYEES INSURANCE COMPANY, respectfully requests that this Honorable Court DENY Plaintiff's Motion to Compel, as well as grant any further relief that this Court deems necessary and proper.

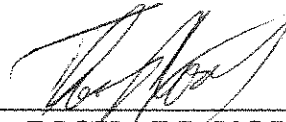
LOCAL RULE 7.1 CERTIFICATION

The undersigned hereby certifies that this Memorandum does not exceed 8,000 words and contain 3,802 words.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 4th day of August, 2017, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by

CM/ELF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notice of Electronic Filing.



B. RICHARD YOUNG

Florida Bar No.: 442682

ryoung@flalawyer.net

BRENTT E. PALMER

Florida Bar No.: 690880

bpalmer@flalawyer.net

THOMAS J. MOODY

Florida Bar No.: 123618

tmoody@flalawyer.net

Young, Bill, Boles, Palmer & Duke,
P.A.

PO Drawer 1070

Pensacola, Florida 32591-1070

(850) 432-2222 - telephone

(850) 432-1444 - facsimile

Attorneys for Defendant, Government

Employees Insurance Company

SERVICE LIST

Lombardo v. Government Employees Insurance Co.

Case No.: 3:16-cv-392-MCR/EMT

Elizabeth C. Munro, Esq.
Vanguard Attorneys
1220 E 5th Ave.
Tampa, FL 33605
Via Electronic Filing
ElizabethM@vanguardattorneys.com
GraceA@vanguardattorneys.com
Courtdocuments@vanguardattorneys.com

Stephanie Miles, Esquire
Darrell Hinson, Esquire
Swope, Rodante, P.A.
1234 E. 5th Avenue
Tampa, FL 33605
Via Electronic Filing
Team4eservice@swopelaw.com
eservice@swopelaw.com

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

ZACHERY R. LOMBARDO,

Plaintiff,

v.

CASE NO. 3:16cv392-MCR/EMT

GOVERNMENT EMPLOYEES
INSURANCE COMPANY,

Defendant.

GOVERNMENT EMPLOYEES INSURANCE COMPANY'S RESPONSES TO
PLAINTIFF'S SECOND REQUEST TO PRODUCE

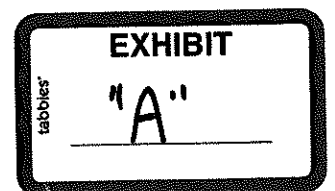
GOVERNMENT EMPLOYEES INSURANCE COMPANY ("GEICO"), by and through its undersigned counsel and pursuant to Federal Rules of Civil Procedure 34, hereby provides the following responses to Plaintiff's Second Request to Produce:

1. 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 those job positions, any complaints, commendations, or other documentation of performance evaluations or reviews or similar assessments or appraisals of responsibilities and performance of **Michael Conley** for the years 2010 through 2014. Plaintiff does not seek production of Social Security numbers, telephone numbers, drug test results, information relating to the employees family, or any other protected health information.

GEICO's RESPONSE:

GEICO objects to Request No. 1 as overly broad, unduly burdensome, seeking irrelevant materials, and not proportional to the needs of this case.

Additionally, GEICO objects to Request No. 1 to the extent that it seeks the production of any performance evaluations contained in any personnel files as the production of such would have a chilling effect on GEICO's evaluation of its employees and the operation of its business. Specifically, invading the confidentiality of GEICO's employees' performance evaluations would



have a significant negative impact on GEICO's ability to candidly appraise the performance of its employees, thus devaluing the performance evaluations of both GEICO and its employees.

Moreover, the documents would be inadmissible pursuant to Rule 404(b), Federal Rules of Evidence, which provides that prior acts are not admissible to prove action in conformity therewith. See Jones v. S. Pac. R.R., 962 F.2d 447 (5th Cir. 1992) (holding generally that evidence of similar prior infractions by an employee were not admissible to demonstrate the employee's negligence at the time of the loss); accord Fisher v. Bumbo Int'l Trust, 2014 WL 12042519, at *2 (S.D.Fla. 2014). Any evidence contained in any of GEICO's employee personnel files which may show mishandling of other claims is precisely the type of improper propensity evidence F.R.E. 404(b) is designed to preclude, as the sole use of such evidence would be for the Plaintiff to attempt to improperly argue that GEICO's employees must have mishandled the underlying claim based on their alleged mishandling of other claims. Any documents reflecting GEICO's reviews or evaluations of any employee's handling of this claim would also be inadmissible. Such documents would constitute improper evidence of subsequent remedial measures pursuant to Rule 407 of the Federal Rules of Evidence. See Williams v. Asplundh Tree Expert Co., 71 Fed. R. Evid. Serv. 509, 2006 WL 2868923 (M.D.Fla. 2006) (holding that evidence of a recommendation of "corrective action" against an employee following loss giving rise to the claim was inadmissible under F.R.E. 407).

GEICO also objects to Request No. 1 as it seeks the production of information that is derived, upon information and belief, solely from Mr. Conley's GEICO employee personnel file, which is not relevant to the present bad faith litigation as required by Rule 26(b)(1), Federal Rules of Civil Procedure. Likewise, pursuant to Florida law, Plaintiff must establish that the confidential information contained in the requested personnel file or files at issue, which are unrelated to the

claims handling, are clearly relevant to the issue in this action of whether GEICO handled the underlying claim in bad faith. The documents contained in Mr. Conley's personnel file which are related to Mr. Conley's handling of claims other than the underlying claim are likewise irrelevant as such involve the handling of claims based entirely on different facts and circumstances. Mr. Conley's involvement in other claims that have no facts in common with that of the underlying claim is entirely irrelevant to Mr. Conley's limited involvement in this claim.

Additionally, GEICO objects to Request No. 1 because the documents and information contained in GEICO's employees' personnel files are confidential and sensitive in nature and are not subject to discovery absent a showing by Plaintiff that the personnel files sought are relevant to the present litigation and that disclosure of the same will not result in an undue invasion of the privacy of GEICO's employees. See CAC-Ramsay Health Plans, Inc. v. Johnson, 641 So.2d 434 (Fla. 3d DCA 1994); see also Alterra Healthcare Corp. v. Estate of Shelley, 827 So.2d 936, 945 (Fla. 2002).

In addition, GEICO objects to the extent that Plaintiffs' Request No. 1 calls for the production of privileged financial information and/or materials of GEICO's employees. Florida Courts have repeatedly held that private individual financial information is not discoverable when there is no financial issue pending in the case to which the discovery applies. See Bd. of Trs. of the Internal Improvement Trust Fund v. Am. Educ. Enters., LLC, 99 So.3d 450, 458 (Fla.2012); see also Friedman v. Heart Inst. of Port St. Lucie, 863 So.2d 189, 194 (Fla.2003); Aspex Eyewear Inc. v. Ross, 778 So.2d 481, 481-82 (Fla. 4th DCA 2001) ("Ordinarily the financial records of a party are not discoverable unless the documents themselves or the status which they evidence is somehow at issue in the case."). Given that private individuals have a constitutionally guaranteed right to privacy, "the disclosure of personal financial information may cause irreparable harm to a

person forced to disclose it, in a case in which the information is not relevant." Friedman v. Heart Inst. of Port St. Lucie, 863 So.2d 189, 194 (Fla.2003) (quoting Straub v. Matte, 805 So.2d 99, 100 (Fla. 4th DCA 2002); see also Woodward v. Berkerv, 714 So.2d 1027 (Fla. 4th DCA), rev. denied, 717 So.2d 528 (Fla.1998).

GEICO also objects as Plaintiff could have obtained this information in a less burdensome matter—during Mr. Conley's June 8, 2017 deposition in this case.

2. All document, and information, whether maintained electronically or in a physical file, relative to training, education, experience, licensure, job positions, responsibilities and duties associated with those job positions, any complaints, commendations, or other documentation of performance evaluations or reviews or similar assessments or appraisals of responsibilities and performance of **Mindy Thagard** for the years 2010 through 2013. Plaintiff does not seek production of Social Security numbers, telephone numbers, drug test results, information relating to the employees family, or any other protected health information.

GEICO's RESPONSE:

GEICO objects to Request No. 2 as overly broad, unduly burdensome, seeking irrelevant materials, and not proportional to the needs of this case.

Additionally, GEICO objects to Request No. 2 to the extent that it seeks the production of any performance evaluations contained in any personnel files as the production of such would have a chilling effect on GEICO's evaluation of its employees and the operation of its business. Specifically, invading the confidentiality of GEICO's employees' performance evaluations would have a significant negative impact on GEICO's ability to candidly appraise the performance of its employees, thus devaluing the performance evaluations of both GEICO and its employees.

Moreover, the documents would be inadmissible pursuant to Rule 404(b), Federal Rules of Evidence, which provides that prior acts are not admissible to prove action in conformity therewith. See Jones v. S. Pac. R.R., 962 F.2d 447 (5th Cir. 1992) (holding generally that evidence of similar prior infractions by an employee were not admissible to demonstrate the employee's negligence at the time of the loss); accord Fisher v. Bumbo Int'l Trust, 2014 WL 12042519, at *2

(S.D.Fla. 2014). Any evidence contained in any of GEICO's employee personnel files which may show mishandling of other claims is precisely the type of improper propensity evidence F.R.E. 404(b) is designed to preclude, as the sole use of such evidence would be for the Plaintiff to attempt to improperly argue that GEICO's employees must have mishandled the underlying claim based on their alleged mishandling of other claims. Any documents reflecting GEICO's reviews or evaluations of any employee's handling of this claim would also be inadmissible. Such documents would constitute improper evidence of subsequent remedial measures pursuant to Rule 407 of the Federal Rules of Evidence. See Williams v. Asplundh Tree Expert Co., 71 Fed. R. Evid. Serv. 509, 2006 WL 2868923 (M.D.Fla. 2006) (holding that evidence of a recommendation of "corrective action" against an employee following loss giving rise to the claim was inadmissible under F.R.E. 407).

GEICO also objects to Request No. 2 as it seeks the production of information that is derived, upon information and belief, solely from Ms. Thagard's GEICO employee personnel file, which is not relevant to the present bad faith litigation as required by Rule 26(b)(1), Federal Rules of Civil Procedure. Likewise, pursuant to Florida law, Plaintiff must establish that the confidential information contained in the requested personnel file or files at issue, which are unrelated to the claims handling, are clearly relevant to the issue in this action of whether GEICO handled the underlying claim in bad faith. The documents contained in Ms. Thagard's personnel file which are related to Ms. Thagard's handling of claims other than the underlying claim are likewise irrelevant as such involve the handling of claims based entirely on different facts and circumstances. Ms. Thagard's involvement in other claims that have no facts in common with that of the underlying claim is entirely irrelevant to Ms. Thagard's limited involvement in this claim.

Additionally, GEICO objects to Request No. 2 because the documents and information contained in GEICO's employees' personnel files are confidential and sensitive in nature and are not subject to discovery absent a showing by Plaintiff that the personnel files sought are relevant to the present litigation and that disclosure of the same will not result in an undue invasion of the privacy of GEICO's employees. See CAC-Ramsay Health Plans, Inc. v. Johnson, 641 So.2d 434 (Fla. 3d DCA 1994); see also Alterra Healthcare Corp. v. Estate of Shelley, 827 So.2d 936, 945 (Fla. 2002).

In addition, GEICO objects to the extent that Plaintiffs' Request No. 2 calls for the production of privileged financial information and/or materials of GEICO's employees. Florida Courts have repeatedly held that private individual financial information is not discoverable when there is no financial issue pending in the case to which the discovery applies. See Bd. of Trs. of the Internal Improvement Trust Fund v. Am. Educ. Enters., LLC, 99 So.3d 450, 458 (Fla.2012); see also Friedman v. Heart Inst. of Port St. Lucie, 863 So.2d 189, 194 (Fla.2003); Aspex Eyewear Inc. v. Ross, 778 So.2d 481, 481-82 (Fla. 4th DCA 2001) ("Ordinarily the financial records of a party are not discoverable unless the documents themselves or the status which they evidence is somehow at issue in the case."). Given that private individuals have a constitutionally guaranteed right to privacy, "the disclosure of personal financial information may cause irreparable harm to a person forced to disclose it, in a case in which the information is not relevant." Friedman v. Heart Inst. of Port St. Lucie, 863 So.2d 189, 194 (Fla.2003) (quoting Straub v. Matte, 805 So.2d 99, 100 (Fla. 4th DCA 2002); see also Woodward v. Berkery, 714 So.2d 1027 (Fla. 4th DCA), rev. denied, 717 So.2d 528 (Fla.1998).

GEICO also objects as Plaintiff could have obtained this information in a less burdensome matter—during Ms. Thagard's June 8, 2017 deposition in this case.

3. 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 those job positions, any complaints, commendations, or other documentation of performance evaluations or reviews or similar assessments or appraisals of responsibilities and performance of **John Walsh** for the years 2010 through 2014. Plaintiff does not seek production of Social Security numbers, telephone numbers, drug test results, information relating to the employees family, or any other protected health information.

GEICO's RESPONSE:

GEICO objects to Request No. 3 as overly broad, unduly burdensome, seeking irrelevant materials, and not proportional to the needs of this case.

Additionally, GEICO objects to Request No. 3 to the extent that it seeks the production of any performance evaluations contained in any personnel files as the production of such would have a chilling effect on GEICO's evaluation of its employees and the operation of its business. Specifically, invading the confidentiality of GEICO's employees' performance evaluations would have a significant negative impact on GEICO's ability to candidly appraise the performance of its employees, thus devaluing the performance evaluations of both GEICO and its employees.

Moreover, the documents would be inadmissible pursuant to Rule 404(b), Federal Rules of Evidence, which provides that prior acts are not admissible to prove action in conformity therewith. See Jones v. S. Pac. R.R., 962 F.2d 447 (5th Cir. 1992) (holding generally that evidence of similar prior infractions by an employee were not admissible to demonstrate the employee's negligence at the time of the loss); accord Fisher v. Bumbo Int'l Trust, 2014 WL 12042519, at *2 (S.D.Fla. 2014). Any evidence contained in any of GEICO's employee personnel files which may show mishandling of other claims is precisely the type of improper propensity evidence F.R.E. 404(b) is designed to preclude, as the sole use of such evidence would be for the Plaintiff to attempt to improperly argue that GEICO's employees must have mishandled the underlying claim based on their alleged mishandling of other claims. Any documents reflecting GEICO's reviews or evaluations of any employee's handling of this claim would also be inadmissible. Such documents

would constitute improper evidence of subsequent remedial measures pursuant to Rule 407 of the Federal Rules of Evidence. See Williams v. Asplundh Tree Expert Co., 71 Fed. R. Evid. Serv. 509, 2006 WL 2868923 (M.D.Fla. 2006) (holding that evidence of a recommendation of "corrective action" against an employee following loss giving rise to the claim was inadmissible under F.R.E. 407).

GEICO also objects to Request No. 3 as it seeks the production of information that is derived, upon information and belief, solely from Mr. Walsh's GEICO employee personnel file, which is not relevant to the present bad faith litigation as required by Rule 26(b)(1), Federal Rules of Civil Procedure. Likewise, pursuant to Florida law, Plaintiff must establish that the confidential information contained in the requested personnel file or files at issue, which are unrelated to the claims handling, are clearly relevant to the issue in this action of whether GEICO handled the underlying claim in bad faith. The documents contained in Mr. Walsh's personnel file which are related to Mr. Walsh's handling of claims other than the underlying claim are likewise irrelevant as such involve the handling of claims based entirely on different facts and circumstances. Mr. Walsh's involvement in other claims that have no facts in common with that of the underlying claim is entirely irrelevant to Mr. Walsh's limited involvement in this claim.

Additionally, GEICO objects to Request No. 3 because the documents and information contained in GEICO's employees' personnel files are confidential and sensitive in nature and are not subject to discovery absent a showing by Plaintiff that the personnel files sought are relevant to the present litigation and that disclosure of the same will not result in an undue invasion of the privacy of GEICO's employees. See CAC-Ramsay Health Plans, Inc. v. Johnson, 641 So.2d 434 (Fla. 3d DCA 1994); see also Alterra Healthcare Corp. v. Estate of Shelley, 827 So.2d 936, 945 (Fla. 2002).

In addition, GEICO objects to the extent that Plaintiffs' Request No. 3 calls for the production of privileged financial information and/or materials of GEICO's employees. Florida Courts have repeatedly held that private individual financial information is not discoverable when there is no financial issue pending in the case to which the discovery applies. See Bd. of Trs. of the Internal Improvement Trust Fund v. Am. Educ. Enters., LLC, 99 So.3d 450, 458 (Fla.2012); see also Friedman v. Heart Inst. of Port St. Lucie, 863 So.2d 189, 194 (Fla.2003); Aspex Eyewear Inc. v. Ross, 778 So.2d 481, 481-82 (Fla. 4th DCA 2001) ("Ordinarily the financial records of a party are not discoverable unless the documents themselves or the status which they evidence is somehow at issue in the case."). Given that private individuals have a constitutionally guaranteed right to privacy, "the disclosure of personal financial information may cause irreparable harm to a person forced to disclose it, in a case in which the information is not relevant." Friedman v. Heart Inst. of Port St. Lucie, 863 So.2d 189, 194 (Fla.2003) (quoting Straub v. Matte, 805 So.2d 99, 100 (Fla. 4th DCA 2002); see also Woodward v. Berkerv, 714 So.2d 1027 (Fla. 4th DCA), rev. denied, 717 So.2d 528 (Fla.1998).

GEICO also objects as Plaintiff can obtain this information in a less burdensome matter—by deposing Mr. Walsh.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 30 day of June, 2017, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic

Filing generated by CM/ELF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notice of Electronic Filing.



B. RICHARD YOUNG

Florida Bar No.: 442682

ryoung@flalawyer.net

BRENTT E. PALMER

Florida Bar No.: 690880

bpalmer@flalawyer.net

THOMAS J. MOODY

Florida Bar No.: 123618

tmooddy@flalawyer.net

Young, Bill, Boles, Palmer & Duke, P.A.

PO Drawer 1070

Pensacola, Florida 32591-1070

(850) 432-2222 - telephone

(850) 432-1444 - facsimile

Attorneys for Defendant, Government

Employees Insurance Company

SERVICE LIST

Lombardo v. Government Employees Insurance Co.

Case No.: 3:16-cv-392-MCR/EMT

Elizabeth C. Munro, Esq.
Vanguard Attorneys
1220 E 5th Ave.
Tampa, FL 33605
Via Electronic Filing
ElizabethM@vanguardattorneys.com
GraceA@vanguardattorneys.com
Courtdocuments@vanguardattorneys.com

Stephanie Miles, Esquire
Darrell Hinson, Esquire
Swope, Rodante, P.A.
1234 E. 5th Avenue
Tampa, FL 33605
Via Electronic Filing
Team4eservice@swopelaw.com
eservice@swopelaw.com

1 A. I don't recall ever seeing this.

2 Q. Okay. On the second page of that document it
3 says CC: Zackery Lombardo. Do you see that?

4 A. I do.

5 Q. Do you have any reason to believe that you
6 weren't copied on this letter to Ms. Macedo?

7 A. I do not.

8 Q. Okay. In this letter GEICO is indicating that
9 they're denying Ms. Macedo's claim because you weren't at
10 fault for the accident. Do you see that?

11 A. Yes.

12 Q. Okay. Did you disagree with that position by
13 GEICO?

14 A. No.

15 MS. MILES: Form.

16 BY MR. BILL:

17 Q. Did you believe that Ms. Macedo was a hundred
18 percent at fault for this accident?

19 A. I do.

20 Q. Okay. You did at all times throughout the
21 pendency of the underlying claim?

22 A. Yes.

23 Q. And you do as we sit here today?

24 A. I do.

25 Q. Okay. And if it was you paying for this claim

EXHIBIT

"B"

tabbles