

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

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

ELENA KOLOVA, an individual; BENJAMIN
RISHA, an individual; REZA KHANLARI, an)
individual,)
Plaintiffs,)
vs.)
ALLSTATE INSURANCE COMPANY, a)
foreign insurance company,)
Defendants.)

NO. 18-2-10932-9 SEA
ORDER ON MOTION TO COMPEL
~~PROPOSED~~

Plaintiffs moved to compel. This Court considered the material filed by both parties.
This Court GRANTS plaintiffs' motion and makes the following findings of fact and conclusions
of law.

1.0 FINDINGS OF FACT

1.1 Plaintiffs' first set of discovery propounded to defendant asks for information
relevant to plaintiffs' claims.

1.2 In response, defendant made four pages of "general objections," numbering 13
discrete different objections including assertions the discovery requested was not relevant and
asserting privileges including the work product doctrine and attorney-client privilege. Defendant
indicated it would only produce discovery it deemed relevant to the case.

1 1.3 Plaintiffs fulfilled the discovery conference requirement and worked with
2 defendant over an extended period to resolve the discovery issues presented by the motion.
3 Defendant, despite indicating it would reconsider matters, and several times promising to provide
4 additional documents on specific dates, continued its objections and did not produce additional
5 documents. Although defendant protests plaintiffs did not conference the same issues again after
6 the case was recently remanded, it makes no showing that further conferencing the same issues
7 would obtain any different result. Allstate certainly does not indicate its position has changed.

8 1.4 Defendant lodged essentially the identical boilerplate objection to every one of
9 plaintiffs' discovery requests. To the extent those objections deviate slightly, the deviations are
10 not material. The objections lack a good faith basis in fact or law.

11 1.5 For instance, in response to plaintiffs' first interrogatory merely asking defendant
12 to identify the claim numbers and dates assigned to claims made by the plaintiffs, defendant
13 Allstate alleged claim numbers constituted "work product" and "attorney-client privilege"
14 information. They are neither. Defendant Allstate alleged that merely identifying claim numbers
15 required it to state "all facts which defendant intends to rely to prove its case at the time of trial,"
16 and that its claim numbers which no doubt were attached to every piece of correspondence it sent
17 to plaintiffs and third parties constituted "confidential, proprietary business information and/or a
18 trade secret." Identifying applicable claim numbers does not require Allstate to identify what
19 facts it will rely on to prove its case at trial nor are they confidential or proprietary information.
20

21 1.6 In response to plaintiffs' first request for production asking Allstate to produce
22 plaintiffs' claim files, defendant objected that the phrase "claim file" was vague. Further, it
23 asserted both work product and attorney-client privilege objections and did not identify what
24
25

1 documents were allegedly subject to the objection. The term claim file is not vague. Washington
2 law is replete with examples of use of the word and the insurance commissioner expressly
3 requires insurance companies to maintain claim files. Further, claim files are not subject to the
4 attorney-client privilege. That is established by Cedell v. Farmers, 176 Wn.2d 686, 697 (2013)
5 (“[I]t is a well-established principle in bad faith actions brought by an insured against an insurer
6 under the terms of an insurance contract that communications between the insurer and the
7 attorney are not privileged with respect to the insured.”)

8 1.7 Defendant’s objections did not identify why any documents requested were
9 objectionable nor did defendant provide a privilege log that would allow plaintiffs or this court
10 to determine what documents were being withheld and whether they were properly subject to a
11 privilege.

12 1.8 Defendant refused to produce relevant documents without a protective order.
13 However, defendant did not timely move for a protective order. Instead of fulfilling its
14 affirmative obligation to move for protective order, defendant asserted in its discovery answers
15 it would not produce documents without a protective order and then put the burden on plaintiff
16 to tell defendant whether plaintiffs wanted the discovery they already requested in which case
17 defendant would demand a protective order – something it has never done despite plaintiffs
18 telling defendant they wanted the requested discovery. Defendant only in response to plaintiffs’
19 motion to compel requested a protective order yet it did not even provide one for the Court to
20 consider.
21

22 ///

23 ///

24
25
MCGAUGHEY BRIDGES DUNLAP, PLLC
3131 WESTERN AVE, SUITE 410
SEATTLE, WA 98121
(425) 462 - 4000
FACSIMILE (425) 637 - 9638

1 1.9 A party may not unilaterally determine what is relevant. A party must answer all
2 discovery propounded unless they timely obtain a protective order. Plaintiffs propounded
3 discovery in January 2018. Defendant by not timely obtaining a protective order and indicating
4 it would only produce what it unilaterally deemed relevant is not appropriate and violates CR 26.

5 1.10 A party may make well-reasoned opposition to discovery. However, defendant's
6 opposition to discovery is not well reasoned. Long boilerplate objections, the assertion of
7 privileges to requests that request nothing privileged and with no identification of what is being
8 withheld, is not well reasoned. It lacks a good faith basis in fact and law.

9 1.11 Defendant has produced some evidence that it makes an effort to keep its internal
10 policies and procedures and related materials private and confidential. However, it has presented
11 not a scintilla of evidence those materials are materially different from any other insurance
12 company's and not providing that evidence, it has not provided a single concrete example to
13 demonstrate that. Defendant bears the burden of proof to show an entitlement to a protective
14 order. It has not met that burden.

15
16 1.12 Plaintiffs' request for personnel files is relevant given the allegations in this case
17 and the showing made as contained in the declaration of plaintiffs' counsel. Allstate's primary
18 response was that disclosure would reveal private information. That founders on the fact that
19 plaintiffs, in their request for production, explicitly removed from its scope a variety of specific
20 items that might be personal information. The personnel files may contain evidence relevant on
21 whether Allstate acted unreasonably, as opposed to simply incorrectly. Further, the evidence may
22 be relevant in regard to plaintiffs' request to treble damages under IFCA. Finally, the evidence
23 is relevant under CR 26 to the extent that it may assist plaintiffs in formulating additional
24
25

MCGAUGHEY BRIDGES DUNLAP, PLLC
3131 WESTERN AVE, SUITE 410
SEATTLE, WA 98121
(425) 462 - 4000
FACSIMILE (425) 637 - 9638

1 discovery requests.

2 1.13 Plaintiffs have been prejudiced by defendant's failure to respond to discovery as
3 it has resulted in months of delay in the discovery process as well as the wasted time working
4 with Allstate on these discovery requests, which based on the materials provided is substantial.

5 **2.0 CONCLUSIONS OF LAW**

6 2.1 Plaintiffs' discovery requests are relevant under CR 26 and defendant's objections
7 lack a good faith basis in fact and law. Defendant's objections to plaintiffs' first discovery
8 requests are stricken. Defendant shall provide new, full and complete responses to plaintiffs'
9 discovery request as propounded, without objection, and certified by both defense counsel and
10 the party defendant by June 26, 2020. Defendant shall not respond by adopting by cross-
11 reference prior answers.

12 ORDERED this 19 of May, 2020.

13
14 
15 _____
16 Hon. Julie Spector

17 PRESENTED BY:

18 McGAUGHEY BRIDGES DUNLAP, PLLC

19
20 By: _____

21 Dan'L W. Bridges, WSBA #24179
22 Attorney for plaintiffs
23
24
25

MCGAUGHEY BRIDGES DUNLAP, PLLC
3131 WESTERN AVE, SUITE 410
SEATTLE, WA 98121
(425) 462 - 4000
FACSIMILE (425) 637 - 9638