



Alan Boroff, Esq. ("Special Master"), in his August 29, 2000 Order. BHC asserts that the Special Master applied an unduly restrictive standard of relevancy and appeals from the provisions of the Order that preclude the following discovery: 1) claims handling information; 2) sales literature; 3) manuals on how to calculate a dividend; 4) Unicare's plan to close claims offices; and 5) documents regarding the implementation of off-anniversary premium increases.

## **II. LEGAL STANDARD**

As the Special Master recognized, under the Federal Rules of Civil Procedure:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery . . . . The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Fed. R. Civ. P. 26(b)(1). Rule 26 allows the court to limit the extent of discovery where it finds that a request is unreasonably cumulative, duplicative, or obtainable from another source that is more convenient, less burdensome or less expensive. Fed. R. Civ. P. 26(b)(2).

## **III. DISCUSSION**

Upon a review of the discovery motions, answers and legal memorandums, the Special Master entered an Order limiting discovery on the following areas: 1) claims handling information;

2) sales literature; 3) manuals on how to calculate a dividend; 4) Unicare's plan to close claims offices; and 5) documents regarding the implementation of off-anniversary premium increases.

First, as to claims handling, the Special Master determined that information on this topic was not relevant, especially in light of the dismissal of the bad faith claim. The Special Master found that information as to how Unicare handled claims "go[es] far afield" from the present action and was not likely to lead to relevant issues.<sup>2</sup> (Special Master's Order dated August 29, 2000 at 2.)

The court agrees. The claims handling information BHC seeks includes yearly claims reports for BHC and its employees, and claims reports that purportedly show the length of time to process claims for BHC's employees. (BHC's Mem. of Law in Supp. of Mot. for Relief at 3.) However, the court has dismissed BHC's claim for bad faith as to Unicare's handling of claims.<sup>3</sup> Further, BHC has not demonstrated how its allegations regarding claims handling are related to its claims for fraud, breach of

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<sup>2</sup> BHC seeks, inter alia, claims reports for BHC and claims reports for BHC's employees from 1994 through 1998, supporting the Special Master's conclusion that BHC's request was overly burdensome and that the discovery sought would contain confidential patient information. (Special Master's Order dated August 29, 2000 at 2-3.)

<sup>3</sup> At a November 9, 1999 hearing, before dismissing BHC's bad faith claim, the court stayed discovery as to claims and claims handling, setting aside an earlier Order by the Special Master that required Unicare to produce claims handling information.

contract, or tortious interference with contract.

Second, BHC requested sales literature that Unicare showed to policyholders other than BHC.<sup>4</sup> Id. at 8. Such literature is not relevant to BHC's claim.<sup>5</sup>

Third, BHC seeks manuals on how Unicare calculates dividends. BHC asserts that a former Unicare employee testified that there was a booklet which explained how Unicare's computer system calculates a dividend. Id. at 9. However, Unicare states that the financial support technician assigned to BHC's account performed the calculations for deficits and surpluses on BHC's policies and that the underwriter assigned to the account had ultimate discretionary authority in approving dividend calculations. Unicare's Br. Opposing BHC's Mot. for Relief at 12 (citing Supplemental Resp. of Unicare to BHC's Interrogs. at 7-8). Unicare states that although there may be a manual on how to perform data entry onto the computer system, there is no manual or booklet that explains how to calculate a dividend or how the computer system calculates a dividend. Id. The Special Master determined that such a booklet was not likely to lead to relevant evidence. The court agrees.

Fourth, BHC seeks discovery on Unicare's plan to close claims offices and the effect of a closed office on claims

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<sup>4</sup> Unicare turned over to BHC the sales literature that it had shown BHC.

<sup>5</sup> Unicare states that not every policyholder is shown the same literature. (Unicare's Br. Opposing BHC's Mot. for Relief at 11.)

handling. In its Amended Complaint, BHC alleges that Unicare fraudulently concealed that it would be closing claims offices. (Am. Compl. ¶¶ 45-46.) The Special Master found that, except for the date on which Unicare made its decision to close the offices, information regarding Unicare's plan to close claims offices was neither relevant nor likely to lead to relevant evidence. The court agrees that, as with other discovery BHC seeks regarding claims handling, any internal plan of Unicare to close claims offices is not relevant or likely to lead to relevant evidence.

Finally, BHC seeks documents regarding any analysis done by Unicare as to its ability to implement off-anniversary premium increases. The Special Master held that internal documents referencing off-anniversary increases were discoverable only insofar as they related to BHC, and that documents relating to Unicare's ability to effect off-anniversary premium increases were protected by the attorney client privilege. (Special Master's Order dated August 24, 2000 at 4-6.) The court agrees that, assuming that documents from Unicare's in-house legal counsel analyzing Unicare's ability to effect off-anniversary increases exist, they would be protected by the attorney-client privilege.<sup>6</sup> The attorney-client privilege protects any communication made between a lawyer and a client when the communication is made for the purpose of securing legal advice or

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<sup>6</sup> Apparently, Unicare's law department determined that, based on Unicare's contract language, it could effect off-anniversary increases. (Noonan Dep. at 159.)

assistance. Philadelphia v. Westinghouse Elec. Corp., 210 F. Supp. 483, 484 (E.D. Pa. 1962).

**IV. CONCLUSION**

For the reasons set forth above, the instant motions will be denied. An appropriate Order follows.

