

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LINDA KAUFMAN : CIVIL ACTION
v. :
NATIONWIDE MUTUAL :
INSURANCE COMPANY : NO. 97-1114

MEMORANDUM OF DECISION

THOMAS J. RUETER
United States Magistrate Judge

November , 1997

Plaintiff has filed this action against Nationwide Mutual Insurance Company (“Nationwide”) alleging that it acted in bad faith in the handling of the plaintiff’s underinsured motorist claim. See 42 Pa. Cons. Stat. Ann. § 8371 (West Supp. 1997). Presently before the court is the Plaintiff’s Motion to Compel Answers to Interrogatories and Request for Production of Documents (Document No. 15).¹ For the reasons that follow, the motion is GRANTED IN PART and DENIED IN PART.

I. PROCEDURES FOR SETTING RESERVES

First, plaintiff seeks all documents related to the procedures Nationwide utilizes for setting reserves in uninsured and underinsured motorist claims. (Interrogatory (Set I), No. 8). Reserves are set when a claim is initially made for the purpose of complying with state law. 40

¹ This motion was referred by the Honorable James McGirr Kelly pursuant to 28 U.S.C. § 636(b)(1)(A).

Pa. Cons. Stat. Ann. § 115 (West Supp. 1997). The reserve does not conclusively determine the final amount paid to settle a claim. After a claim is investigated, its monetary value may differ from the amount initially set for reserve. Accordingly, the fact that a Nationwide employee may not have established a reserve in accordance with its internal procedures does not establish bad faith on its part in handling plaintiff's claim. Nationwide has produced the amount of reserve it set for the specific underinsured motorist claim filed by plaintiff. Nationwide's procedure for setting reserves, however, is confidential information which a court should not order to be disclosed unless the relevance of this information is clear and disclosure is necessary. Centurion Indus., Inc. v. Warren Steurer and Assoc., 665 F.2d 323, 325 (10th Cir. 1981). This court agrees with the defendant that the production of documents relating to its reserve procedures will not lead to the discovery of admissible evidence and, therefore, need not be produced by the defendant. Fed. R. Civ. P. 26(b)(1).

II. PERSONNEL FILES OF CLAIMS ADJUSTORS

Second, plaintiff seeks production of the personnel files of all employees involved in the handling of plaintiff's claim. (Interrogatory (Set I), Nos. 15 and 16). Our court has recognized "a heightened standard of relevance" for discovery of information contained in personnel files. Stabilus v. Haynsworth, Baldwin, Johnson and Greaves, P.A., 144 F.R.D. 258, 266 (E.D.Pa. 1992). Plaintiff argues that she needs this information to determine if Nationwide employees are encouraged to pay claims "as little as they can, as late as they can." However, the plaintiff can obtain information on Nationwide's practices of employee compensation from a less confidential source. For instance, plaintiff may learn this information through the depositions of

the supervisors and employees involved in the disposition of plaintiff's claim, and documents relating to the compensation of its claims adjustors, without searching the confidential materials contained in personnel files. Therefore, defendant need not produce the requested personnel files. See Fed. R. Civ. P. 26(b)(2) (court may prohibit discovery if the information can be obtained from a less burdensome source); Bosaw v. National Treasury Employees' Union, 887 F. Supp. 1199, 1213 (S.D. Ind. 1995) (federal courts have discretion to restrict or prevent discovery that may be obtained from some other source that is more convenient, less burdensome, or less expensive); Nestles Foods Corps. v. Aetna Cas. And Surety Co., 135 F.R.D. 101, 107 (D. N.J. 1990) (same).

III. CLAIMS MANUALS AND NEWSLETTERS

Third, plaintiff requests copies of all claims manuals and newsletters distributed to Nationwide's claims personnel over the past year. (Interrogatory and Request for Production (Set 1), No. 19). Such a request is overly broad and complete compliance therewith would be burdensome upon the defendant. The court finds that some of the information contained in the manuals and newsletters is relevant to this action if it contains instructions concerning procedures used by Nationwide's employees in handling claims.² Thus, the court orders that defendant produce those portions of the manuals or newsletters containing this limited

² This court acknowledges that in Garvey v. Nationwide Grange Mutual Ins. Co., 167 F.R.D. 391, 396 (E.D.Pa. 1996), the court in obiter dictum stated that "the fact that the defendant may have strayed from its internal procedures does not establish bad faith on the part of the defendant in handling the plaintiff's loss." Id. However, there may be circumstances when such discovery would be relevant. For example, a claims manual could be relevant if it requires an adjustor to take certain investigative steps before adjusting a claim and plaintiff can show that these steps were deliberately omitted. Although this fact alone would not be enough to establish bad faith, surely it is probative evidence for plaintiff to demonstrate bad faith.

information, which were sent to the employees who directly handled plaintiff's claims. The defendant is not required to produce the remaining materials requested by plaintiff. See Fed. R. Civ. P. 26(b)(2).³

IV. PRIOR BAD FAITH CASES

Fourth, plaintiff seeks information regarding other bad faith cases which have been filed against Nationwide in the past seven years. (Interrogatory (Set I), Nos.23-30). This court agrees with Judge Bartle that “[t]hese prior bad faith cases, if any, will necessarily involve totally different facts and circumstances from those present here” and, therefore, are irrelevant to the bad faith action before the court. North River Ins. Co. v. Greater N.Y. Mut. Ins. Co., 872 F. Supp. 1411, 1412 (E.D.Pa. 1995); accord Shellenberger v. Chubb Life Am., 1996 WL 92092, at *2-3 (E.D.Pa. 1996)(Huyett, J). Furthermore, even if these prior bad faith actions had some relevance to this case, this court finds that the burden and expense of producing this information outweighs the likelihood of finding relevant material. Fed. R. Civ. P. 26(b)(2); City of Waltham v. U.S. Postal Service, 11 F.3d 235, 243 (1st Cir. 1993) (“The court has broad power to control discovery. In doing so, it can weigh discovery burdens against the likelihood of finding relevant

³ This court acknowledges that the defendant argues that the manuals and newsletters may contain “trade secrets”, the disclosure of which would likely be harmful to Nationwide. However, to refuse discovery, a party must demonstrate that the information requested constitutes trade secrets, and disclosure of such information would be harmful. Smith v. Bic Corp., 869 F.2d 194, 199 (3d Cir. 1989); Centurion Industries, Inc., 665 F.2d at 325. In its response to plaintiff's motion, defendant has not met its burden of showing that the materials are trade secrets. Defendant merely states that “the requested materials may contain privileged marketing strategy and trade secrets.” (Brief at 6)(emphasis added). Nonetheless, should Nationwide so request, the court will consider entering a protective order, provisions to be agreed upon by counsel, to provide adequate safeguards for Nationwide's confidential materials.

material.”). Accordingly, plaintiff’s request for these materials is denied.

V. CASELOADS OF CLAIMS ADJUSTORS

Finally, plaintiff requests Nationwide to identify the average number of cases that claims adjustors employed in Pennsylvania have handled at any one time in the past five years. (Interrogatory and Request for Production (Set I), No. 31). Plaintiff argues that this information is relevant because it will show that Nationwide has a practice of overworking its claims adjustors, thereby causing them to improperly process their insureds’ claims. Plaintiff also wishes to compare the average number of claims assigned to an adjustor in Pennsylvania to the number of claims assigned to the adjustors who decided plaintiff’s claim.

As noted earlier, this court has discretion to deny plaintiff’s discovery requests if the burden or expense of compliance with that request outweighs the likelihood of finding relevant material. Fed. R. Civ. P. 26(b)(2); Bosaw, 887 F. Supp. at 1213. The court finds that requiring Nationwide to compile this statistical information for the entire Commonwealth of Pennsylvania will be burdensome and oppressive in comparison to the marginal value of the information at trial. Simply because a particular adjustor has a heavy caseload does not necessarily indicate that his or her decision to deny a claim is without basis. To accept this contention would be tantamount to agreeing with the proposition that since a particular federal judge has a heavier caseload than the national norm, his or her decisions are more likely to be arbitrary or erroneous.

Moreover, there may be a multitude of reasons why one adjustor’s case load is heavier than that of another. For example, a shortage of adjustors in a particular office due to employee illness or absence from work could result in uneven caseloads assigned to adjustors.

Perhaps, Nationwide cannot easily fill vacant adjustors' positions in a given area. The disparity in caseload assignments conceivably could be attributed to the different skill and experience levels of the adjustors. Arguably, one adjustor can competently handle more claims than another adjustor in a different location in the state. For example, an adjustor in a highly populated area, such as Philadelphia, may be able to handle a greater volume of claims because there is less need to travel and he or she can use one law firm to represent Nationwide in that region. Consequently, requiring defendant to statistically identify the average number of cases handled by an adjustor in Pennsylvania will not reveal whether, in this particular case, the assigned adjustor lacked a reasonable basis for denying plaintiff's claims.

The only issue at bar is whether Nationwide acted recklessly or with ill will under the particular circumstances of this case, not whether Nationwide's management of its business operations was reasonable. As Chief Judge Cahn has suggested, this later question is "properly left to the Pennsylvania Insurance Commissioner, not a judge or jury." Hyde Athletic Industries Inc. v. Continental Cas. Co., 969 F. Supp. 289, 307 (E.D.Pa. 1997). The statistical information requested by plaintiff is of little or no relevance to the discrete issue before the court. It would be burdensome for the defendant to comply with the plaintiff's request in view of the marginal relevance of the information. Accordingly, plaintiff's request for information on the caseload of Nationwide's claims adjustors is denied.

For all the above reasons, the plaintiff's motion to compel is GRANTED IN PART and DENIED IN PART. An appropriate order follows.⁴

BY THE COURT:

THOMAS J. RUETER
United States Magistrate Judge

⁴ Plaintiff also requests the court to order defendant to fully answer its Second Set of Interrogatories and Request for Production of Documents. However, plaintiff fails to specify how the defendant failed to comply with the requests. Defendant has represented to this court that it has fully answered the second set of discovery requests, specifically by providing all documents requested therein. Defendant also states that pursuant to Fed. R. Civ. P. 33(d) it produced records in lieu of answering the interrogatories. Accordingly, Plaintiff's Motion to Compel Answers to the Second Set of Discovery requests is DENIED AS MOOT.

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ORDER

AND NOW, this day of November, 1997, for the reasons set forth in the accompanying Memorandum of Decision, it is hereby

ORDERED

that the plaintiff's Motion to Compel Answers to Interrogatories and Requests for Production of Documents is GRANTED IN PART and DENIED IN PART. Any information which the defendant must produce, as directed in the court's Memorandum, must be sent to the plaintiff within twenty (20) days from the date of this Order. In all other respects, the motion is DENIED.

BY THE COURT:

THOMAS J. RUETER
United States Magistrate Judge