DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	DATE FILED: April 7, 2017 4:58 PM CASE NUMBER: 2016CV34019
Plaintiff(s) ALEXANDER F QUILLEN v. **Defendant(s)** STATE FARM MUTUAL AUTO INS CO	⚠ **COURT USE ONLY** ⚠ Case Number: 2016CV34019 Division: 203 Courtroom:

Order regarding discovery

This matter comes before the Court following a hearing held on March 22, 2017.

There does not appear to be a dispute in this action that the Plaintiff is entitled to the payment of insurance proceeds by the Defendant, but the parties do not agree on the amount owed. As acknowledged by the Plaintiff, C.R.C.P. 1 requires the Court and the parties to employ the Rules of Civil Procedure in such a manner as to secure the just, speedy, and inexpensive determination of this action. In this regard, C.R.C.P. 26(b)(1) was modified in 2015 to permit parties to obtain information that is relevant to the claim or defense of any party and that is proportional to the needs of the case. C.R.C.P. 26(b)(1). This represents a contraction on the scope of discovery, which previously allowed parties to obtain information so long as their requests were reasonably calculated to lead to the discovery of admissible evidence. In other words, until recently, the Colorado Rules of Civil Procedure sanctioned the expensive and wasteful practice of using the discovery process to conduct investigations and perform fishing expeditions to see if the opposing party might have information that would support a claim. Under that prior standard, obtaining claims manuals, company policies, and employee training materials from an insurance company in order to comb through them and see if, perhaps, some internal policy was violated fell under the broad scope of discovery. Such practices, however, were part of the reason C.R.C.P. 26 was changed.

The Plaintiff does not identify any particular policy he needs to see and does not explain how such policy is relevant to a claim or defense in this case. Instead, he wants to look at the materials to see what is there. Claims manuals, policies, and training manuals would not resolve the pivotal dispute in this case and the burden and expense of producing such materials in a case such as this greatly outweighs their likely benefit to the Plaintiff. Moreover, the importance of the materials in resolving the issues in the case is minimal at best. Further, the Complaint sets forth specific alleged actions and omissions by the Defendant forming the basis of the Plaintiff's claims. A delay or denial of a claim is unreasonable when it lacks a reasonable basis for the action. The concept is not complex. Based upon the alleged circumstances of this case, the determination of whether there has been a breach of the policy, and whether any delay or denial was unreasonable or in bad faith does not turn on the Defendant's claims manuals, company policies, or employee manuals. As such, the requested discovery is not relevant to the claims or defenses herein, in addition to the fact that it is not proportional to the needs of the case. Finally, the discovery requested by the Plaintiff would serve to reduce the possibility of a just, speedy, and inexpensive resolution of the action as required by C.R.C.P. 1.

A number of the cases on which the Plaintiff relies predate both the Colorado and federal efforts to reign in the costly and inefficient practices of the past. In fact, one of the cases, Safeco Insurance Company of America, 2014 WL 11497826 (D. New Mex., 2014), specifically approves discovery of insurance claims manuals, training manuals, and policies on the basis that the request for the information appeared "reasonably calculated to lead to the discovery of admissible evidence." Id. at *6. The three cases that post-date the analogous amendment to the scope of discovery under Fed. R. Civ. P. 26, which was effective December 1, 2015, nevertheless cite to and rely upon earlier cases. Moreover, the authority relied upon by the Plaintiff is not only federal, it consists entirely of trial court rulings. While such positions can be persuasive, they are not binding.

The other outstanding issue, raised by the Court, is whether the parties should be permitted to designate an expert witness regarding insurance industry standards. Under the circumstances of the case, it may be that an expert can serve to assist the jury in understanding the evidence or determining disputed facts. Although there may be opinions in this area that are improper, that is an issue that is better resolved based upon consideration of the specific opinions. Accordingly, a limitation

at this point in time is unwarranted, and the Case Management Order as entered is not further modified with regard to expert witnesses.

Issue Date: 4/7/2017

JOHN WILLIAM MADDEN IV
District Court Judge