

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 26-CV-02381

Veronica Paquette v. Progressive Northern Insurance Company

ENTRY REGARDING MOTION

Title: Motion to Compel (Motion: 2)
Filer: Robert B. Luce
Filed Date: July 09, 2026

Plaintiff Paquette had a car accident with a policyholder insured by Defendant Progressive Northern Insurance. Co. She settled that claim on her own with Progressive. Paquette herself had an underinsured motorist ("UIM") vehicle policy with Progressive as well. She brought this one-count breach-of-contract case after Progressive failed to pay her under that policy.

Paquette moves to compel Progressive to respond to certain interrogatories (nos. 9, 13-15) and requests for production (nos. 1-2) (Mot. 2). Progressive opposes. Both parties have counsel now. Paquette's lawyer filed a nominally compliant Rule 26(h) certification.

For the reasons that follow, the court grants in part and otherwise denies Mot. 2.

I. Standard

"We recognize the fact that a party may be entitled to more on a discovery proceeding than [t]he[y] would be able to introduce in evidence." *Mattison v. Poulen*, 134 Vt. 158, 163 (1976). V.R.C.P. 26(b)(1) follows its federal counterpart. E.g., *Sunset Cliff Homeowners Ass'n, Inc. v. The City of Burlington*, No. 198-8-06VTEC, 2006 WL 6840391 (Vt. Super. Dec. 04, 2006) (Durkin, J.) (noting "V.R.C.P. 26(b)(1) [is] modeled after the federal rule").

Rule 26(b)(1) of the Federal Rules of Civil Procedure defines the scope of discovery as including "any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." The Supreme Court has broadly construed the scope of discovery "to encompass any matter that bears on, or that reasonably could lead to another matter that could bear on" the claims or defenses, and that is proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1). Discovery is neither limited to the issues raised by the pleadings, nor to the merits of a case.

In determining whether a discovery request is proportional to the disputed issues, Fed. R. Civ. P. 26(b)(1) directs trial courts to consider “the importance of the issue at stake in the action, the amount in controversy, the parties’ access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). Rule 26 vests the trial judge with broad discretion over making these determinations. “A party claiming that a request is important to resolve the issues should be able to explain the ways in which the underlying information bears on the issues as that party understands them.” Once a party requesting discovery has satisfied this threshold burden, the party resisting discovery must show specific facts demonstrating that the discovery is irrelevant or disproportional under Fed. R. Civ. P. 26(b)(1).

Regarding interrogatories, Fed. R. Civ. P. 33 states that, “[a]n interrogatory may relate to any matter that may be inquired into under Rule 26(b). . . . The grounds for objecting to an interrogatory must be stated with specificity.”

Jenkins v. Miller, No. 2:12-CV-184, 2019 WL 5558601, at *1–2 (D. Vt. Oct. 29, 2019) (Sessions, J.) (case citations omitted). “[D]iscovery has been allowed even though the facts are not exclusively or peculiarly within the knowledge of the party from whom discovery is sought,[] and it is not usually ground for objection that the information is equally available to the interrogator[] or is a matter of public record.” 8 Fed. Prac. & Proc. Civ. § 2014 (3d ed.). “[P]roper arguments under [Rule 26(b)’s] proportionality principle should be addressed to the burden of discovery rather than its scope.” *Id.*

Any assertion of privilege must comply with V.R.C.P. 26(b)(6).

When a party withholds information otherwise discoverable under these rules by claiming that it is privileged ..., the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged ..., will enable other parties to assess the applicability of the privilege[.]

Vt. R. Civ. P. 26(b)(6)(A).[] Pursuant to that rule, a court may order the party claiming the privilege to provide a privilege log of sufficient detail to demonstrate fulfillment of all the requirements for application of the privilege.

Haviland v. Meadows at East Mountain, No. 21-CV-00636, 2023 WL 7309324, at *3 (Vt. Super. Sep. 27, 2023) (Teachout, J.) (citations omitted).

Assertion of the work-product privilege has additional requirements.

“The work product doctrine is distinct from and broader than the attorney-client privilege.” First, “[a]lthough only confidential communications between the attorney and client are protected by the attorney-client privilege, the work

product doctrine may encompass any document prepared in anticipation of litigation by or for the attorney.” Second, while the attorney-client privilege belongs only to the client, either the client or the attorney may assert the work product privilege.

. . . . [To] assert work product privilege: “The materials must (1) be a document or tangible thing, (2) that was prepared in anticipation of litigation, and (3) was prepared by or for a party [to the action], or by or for his representative.”

Vermont Gas Sys., Inc. v. U.S. Fid. & Guar. Co., 151 F.R.D. 268, 275 (D. Vt. 1993) (Parker, C.J.) (citations omitted).

II. Discussion

The parties agree on this overall framework. Paquette only “seek[]s non-privileged information in the possession of” Progressive. Rep. at 1. Progressive acknowledges the relevance of valuation of Paquette’s UIM damages claim in this case. Opp. Ex. A at 2. The parties both acknowledge Rule 26(b)(1)(b)’s authorization for discovery of “any nonprivileged matter that is relevant” including valuation. The court applies this agreement to reach today’s decision.

A. Interrogatories 9, 13

Progressive has raised no legal objection to these interrogatories. It states that “Defendant has only obtained medical records through Plaintiff’s counsel” so “[t]his information is equally available to” Paquette. Ex. A. at 3, 4. Progressive cites no legal authority to decline to answer these interrogatories and the court knows of none. That Paquette may have the same information does not preclude discovery. See 8 Fed. Prac. & Proc. Civ. § 2014 (3d ed.) (discussed above).

B. Interrogatories 14, 15

Paquette has asserted legal arguments regarding the potential admissibility of these anticipated responses. Rep. at 2-3. Yet she has not met her “threshold burden” “to explain the ways in which the underlying information bears on the issues as that party understands them.” *Jenkins*, 2019 WL 5558601, at *1–2. Her motion and reply nowhere address this requirement.

The parties have nonetheless agreed to the discoverability of non-privileged information relevant to valuation of Paquette’s claim. Progressive should respond to these interrogatories accordingly.

C. Request to Produce 1

With today’s order, Progressive’s “Not applicable” response no longer applies. It shall respond accordingly.

D. Request to Produce 2

Progressive objected initially on the basis of materiality, relevance and proportionality. Ex. A. at 6. It now adds work product privilege. E.g., Opp. at 4-5. Progressive has not complied with Rule 26(b)(6) and applicable case law discussed above in § I.

The parties have nonetheless agreed in effect to the discoverability of non-privileged information relevant to valuation of Paquette's claim. Progressive should respond accordingly.

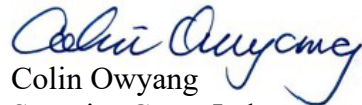
III. Order

The court grants in part Mot. 2 and orders Progressive to:

1. Respond to interrogatories 9 and 13;
2. Respond to interrogatories 14 and 15 with any non-privileged information relevant to valuation of Paquette's claim for damages in this case;
3. Respond to request to produce 1, given its updated responses to Paquette's interrogatories 9 and 13-15;
4. Respond to request to produce 2 with any non-privileged information relevant to valuation of Paquette's claim for damages in this case; and
5. Comply with Rule 26(b)(6) and applicable case law cited in today's decision regarding any assertions of work-product or other privileges.

The court otherwise denies Mot. 2.

Electronically signed pursuant to V.R.E.F. 9(d) on August 27, 2026.


Colin Owyang
Superior Court Judge