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United States District Court,
N.D. Oklahoma.

Rocky WALKER and Kristi Walker, Plaintiffs,
v.

PROGRESSIVE DIRECT
INSURANCE COMPANY, Defendant.

No. 09-CV-556-TCK-PJC. | March 5, 2010.

Attorneys and Law Firms

[Bradford D. Barron](#), [Richard D. Gibbon](#), [Zachary T. Barron](#),
Gibbon Barron & Barron, P.L.L.C., Tulsa, OK, [Michael Arthur Finerty](#), Muskogee, OK, for Plaintiffs.

[Brad Roberson](#), Pignato, Cooper, Kolker & Roberson, P.C.,
Oklahoma City, OK, for Defendant.

Opinion

ORDER

[PAUL J. CLEARY](#), United States Magistrate Judge.

*1 This matter is before the Court on the Motion to Compel Inspection [Dkt. No. 16] of Defendant Progressive Direct Insurance Company (“Progressive”). For the reasons set forth below, the motion is **GRANTED**.

This is a lawsuit over insurance coverage for a 2003 Chevrolet Tahoe that was allegedly stolen from an empty lot in July 2008 where it had been placed with a “For Sale” sign. The damaged vehicle was recovered on July 27, 2008. Progressive inspected the vehicle, determined it was repairable and estimated the repair cost. Plaintiffs disagree with Progressive’s estimate and believe that the vehicle should be declared a total loss. Progressive wants to inspect the vehicle, but Plaintiffs object.

Applicable Legal Standard

It is well-established that discovery under the Federal Rules is limited only by relevance and burdensomeness. [Rich v.](#)

[Martin Marietta Corp.](#), 522 F.2d 333, 343 (10th Cir.1975).

Trial courts have broad discretion in managing discovery matters and are subject to review only for abuse of discretion.

[In re Multi–Piece Rim Products Liability Litigation](#), 653 F.2d 671, 679 (D.C.Cir.1981).

Rule 26(b)(1) provides that parties may obtain discovery “regarding any matter, not privileged, that is relevant to the claim or defense of any party.... Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” [Fed.R .Civ.P. 26\(b\)\(1\)](#). At the discovery phase of litigation “relevancy” is broadly construed and a request for discovery should be considered relevant if there is “any possibility” that the information sought may be relevant to the claim or defense of any party. [Owens v. Sprint/United Mgmt. Co.](#), 221 F.R.D. 649, 652 (D.Kan.2004) (citation omitted). A discovery request should be allowed “unless it is clear that the information sought can have no possible bearing” on the claim or defense of a party. *Id.*

When the requested discovery appears relevant, the party opposing discovery has the burden of establishing the lack of relevance by demonstrating that the requested discovery does not come within the scope of relevance set forth in [Rule 26\(b\)\(1\)](#), or that it is of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure. [Gen. Elec. Cap. Corp. v. Lear Corp.](#), 215 F.R.D. 637, 640 (D.Kan.2003) (citation omitted).

Discussion

Plaintiffs have sued Progressive for bad faith breach of insurance contract. Progressive asserts, *inter alia*, that Plaintiffs have failed to mitigate damages, there is a dispute as to whether Plaintiffs damaged their own vehicle, and Progressive’s investigation was reasonable. Plaintiffs’ chief contention is that anything gleaned from inspection of the vehicle at this time is irrelevant because the determination of bad faith is to be made as of the time Progressive made its determination as to whether the vehicle was totaled or could be repaired. Plaintiffs rely heavily on [Buzzard v. Farmers Ins. Co., Inc.](#), 824 P.2d 1105 (Okla.1991) for the proposition that “The knowledge and belief of the insurer during the time period the claim is being reviewed is the focus of a bad-faith claim.” *Id.* at 1109. The question in *Buzzard* was whether there was sufficient evidence to support a jury determination of bad faith. Thus, the Court’s pronouncement above was made in the context of an evaluation of evidence and issues

presented to a jury at trial. Here, the question is broader. The issue before this Court is whether Progressive should be allowed access to the vehicle in question under the broad rubric of [Rule 26](#) discovery. Plaintiffs may well carry the day with the arguments that have posed herein—but that day is several months off. Those arguments are appropriate as to admissibility of evidence at trial. Today, however, we deal only with the issue of discovery.

*2 The Court finds that Progressive's Motion to Compel Inspection should be **GRANTED**. It is conceivable that the inspection could lead to *discovery* of admissible evidence related to the claims and defenses herein. It is not clear to the Court that information gathered from inspection of the vehicle even at this late date could have “no possible bearing” on the claims and defenses herein. *Owens*, 221 F.R.D. at 652.

Accordingly, the Motion to Compel [Dkt. No. 16] is **GRANTED**.

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