UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re: OTERO COUNTY HOSPITAL ASSOCIATION, INC.,	No. 11-11-13686 JL
Debtor.	
UNITED TORT CLAIMANTS, as individuals,[1]	
Plaintiffs,	Misc. Proc. No. 13-00007 J Adversary Nos:
v.	12-1204j through 12-1216j, 12-1208j through 12-1223j, 12-1235j, 12-1238j through 12-1249j, 12-1251j through 12-1261j, 12-1271j, 12-1276j and 12-1278j.
QUORUM HEALTH RESOURCES, LLC,	
Defendant.	

ORDER DENYING MOTION TO COMPEL UTC TO ANSWER INTERROGATORIES AND PRODUCE THE REQUESTED DOCUMENTS

THIS MATTER is before the Court on the Motion to Compel UTC to Answer Interrogatories and Produce the Requested Documents ("Motion to Compel") filed by Quorum Health Resources, LLC ("QHR"). *See* Docket No. 335.[2] By the Motion to Compel, QHR requests the Court to compel Plaintiffs (the "UTC") to: 1) produce any written agreement relating to the distribution of settlement proceeds to the UTC; and 2) answer interrogatories concerning whether there is an agreement among the UTC to share in aggregate settlements, whether there is an agreement to share in the settlement even if the claims of an individual member of the UTC are dismissed, and the total settlement amount each individual member of the UTC has received. The Court heard oral argument on the Motion to Compel on August 12,

[1] United Tort Claimants is used to refer to all the plaintiffs named in the adversary proceedings identified by number in the above caption.
[2] *See also*, UTC's response, QHR's reply, and the UTC's supplement – Docket Nos. 342, 343, and 359.

2015 and took the matter under advisement. For the reasons explained below, the Court will deny the Motion to Compel.

DISCUSSION

QHR seeks an order compelling production of documents requested in its Requests for Production 1 and 2 and complete answers to its Interrogatories 2, 3 and 4. QHR asserts the discovery is relevant and necessary for two purposes. First, QHR wishes to demonstrate that this Court's Amended Memorandum Opinion and Order entered March 18, 2015 (Docket Nos. 286 and 287) (hereafter, the "Duty and Breach of Duty Ruling") has preclusive effect in litigation pending in New Mexico State Court (the "State Court Litigation") raising issues similar to the issues before the Court in these adversary proceedings. More specifically, QHR asserts the requested information is relevant to the privity requirement under the res judicata and collateral estoppel doctrines. Second, QHR asserts the information it seeks in Interrogatory 2 is relevant to its formulation of offers in a mediation. The Court will address each of these two issues in turn.

A. Whether QHR is entitled to the requested discovery for the purpose of establishing privity

QHR asks this Court to compel discovery so it may establish the privity requirement under the doctrines of res judicata and/or collateral estoppel to give preclusive effect to this Court's Duty and Breach of Duty Ruling in the State Court Litigation.[3] UTC asserts that discovery pertaining to privity should take place in the State Court, not this Court. The UTC also assert the requested discovery is irrelevant and protected by the attorney-client privilege and

[3] QHR argues in part that any contract or agreement governing the division of litigation proceeds between or among members of the UTC before this Court and the State Court plaintiffs is relevant to the privity issue. Counsel for certain members of the UTC is also lead counsel for the State Court plaintiffs, and has taken a lead role in hearings and in the trial before this Court. According to QHR, in light of the common legal representation in both forums, whether the State Court plaintiffs have a financial interest in the outcome of the litigation before this Court is relevant to the privity issue. That very well may be so, but for the reasons stated below this Court declines to exercise jurisdiction over litigation of the preclusive effect of its decision in the State Court Litigation.

attorney work product doctrines. Because this Court agrees with the UTC that discovery relating to privity should take place in State Court, the Court need not address the other issues.

Whether a federal judgment has preclusive effect in state court litigation is governed by federal law. *See Matosantos Commercial Corp. v. Applebee's Int'l, Inc.*, 245 F.3d 1203, 1207 (10th Cir. 2001) ("the preclusive effect given to federal court judgments is a question of federal law.") (citing *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 121 S.Ct. 1021, 149 L.Ed.2d 32 (2001)).[4] Under the federal law of res judicata, if a federal court exercising diversity jurisdiction issues a decision under state law, the law that governs the res judicata effect of the federal judgment is the law of the state in which the federal diversity court sits. *Matosantos*, 245 F.3d 1203 at 1208.[5] This is sometimes known as the *Semtek* rule. *See, e.g., In re Mirena IUD Products Liability Litigation*, 2015 WL 5037100, *4 (S.D.N.Y. Aug. 26, 2015) (referring to the *Semtek* rule); *Morgan Tire of Sacramento, Inc. v. Goodyear Tire & Rubber Co.*, 2015 WL 1787795, *4 n.1 (E.D.Cal. Apr. 20, 2015) (same). It may not be entirely clear, however, whether federal law dictates application of state collateral estoppel law when the federal court judgment decides an issue of state law based on its diversity jurisdiction, *Matosantos*, 245 F.3d at 1208, or whether or to what extent the *Semtek* rule would extend to the res judicata or collateral estoppel effect of a bankruptcy court judgment adjudicating state law issues under its "related to" jurisdiction.[6] However, the Court need not decide those issues for purposes of ruling on the

[4] *See also, Hatch v. Boulder Town Council*, 471 F.3d 1142, 1146 (10th Cir. 2006) (observing that federal preclusion law applies to federal judgments deciding questions of federal law) (citation omitted).
[5] *See also, In re Zwanziger*, 741 F.3d 74, 77 (10th Cir. 2014) (observing that "[f]ederal common law governs the preclusive effect of a judgment of a federal court sitting in diversity[,]" and that, in turn, the applicable law for determining "the preclusive effect of a federal diversity court's judgment is 'the law that would be applied by state courts in the State in which the federal diversity court sits.'") (quoting *Semtek*, 531 U.S. at 508).
[6] A federal court applying the res judicata doctrine under federal law may look to state law to determine the more substantive elements of res judicata. *See, Lowell Staats Min. Co., Inc. v. Philadelphia Elec. Co.*, 878 F.2d 1271, 1274 (10th Cir. 1989) (explaining that the appeals court generally applies "federal law to

Motion to Compel because the result this Court reaches would be the same regardless of whether state or federal preclusion law applies.

Under both New Mexico and federal res judicata and collateral estoppel law, for a federal court determination of an issue to have preclusive effect, there must (among other things) be a final adjudication in the prior action and the party to be precluded or collaterally estopped must have been a party or in privity with a party in the prior action. *Compare Stan Lee Media, Inc. v. Walt Disney Co.*, 774 F.3d 1292, 1297 (10th Cir. 2014) (applying federal law of collateral estoppel) *with Ideal v. Burlington Res. Oil & Gas Co. LP*, 148 N.M. 228, 231-232, 233 P.3d 362, 365-366 (2010) (applying New Mexico law of collateral estoppel) and *Rhoades v. Rhoades*, 135 N.M. 122, 126, 85 P.3d 246, 250 (Ct. App. 2003) (describing the final judgment requirement under the collateral estoppel doctrine) (citation omitted).[7] *Also compare, Allen v. McCurry*, 449 U.S.90, 94, 101 S.Ct. 411, 414, 66 L.E.2d 308 (1980) (observing that federal courts adhere to the res judicata doctrine, and explaining that "[u]nder res judicata, a final judgment . . . precludes the parties or their privies from relitigating issues that were or could have been raised in that action.")(citation omitted) *with Deflon v. Sawyers*, 139 N.M. 637, 639, 137 P.3d 577, 579 (2006)

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the res judicata issue in successive diversity actions, but federal law will incorporate state law when the issue is more distinctly substantive, as with the concept of 'privity.'") (citing *Petromanagement Corp. v. Acme-Thomas Joint Venture*, 835 F.2d 1329, 1333 (10th Cir. 1988)).

[7] Although the wording of the elements of collateral estoppel under federal and New Mexico law differs somewhat, *Deflon v. Sawyers*, 139 N.M.637, 643, 137 P.3d 577, 583 (2006), both require a final judgment and the same parties or their privies. Under the New Mexico collateral estoppel law, parties are in privity when the relationship between them "'is sufficiently close as to bind them both to an initial determination, at which only one of them was present.'" *Rex, Inc. v. Manufactured Hous. Comm.* 119 N.M. 500, 507, 892 P.2d 947, 954 (1995) (quoting *NLRB v. Donna-Lee Sportswear Co.*, 836 F.2d 31, 35 (1st Cir. 1987)). *See also Lowell Staats*, 878 F.2d at 1280 (acknowledging that "[p]rivity may . . . be established if a party to the first suit represented the interests of the party to the second suit.") (citation omitted). Under federal collateral estoppel law, "'[t]here is no definition of 'privity' which can be automatically applied in all cases involving the doctrines of res judicata and collateral estoppel.'" *Deflon*, 139 N.M. at 640, 137 P.3d at 580 (quoting *St. Louis Baptist Temple, Inc. v. FDIC*, 605 F.2d 1169, 1174 (10th Cir. 1979) (remaining citations omitted)).

(res judicata under New Mexico law requires the same parties or their privies and a final judgment) (citations omitted).

This Court has a legitimate interest in determining the preclusive effect of its judgment. *See Paramount Aviation Corp. v. Agusta*, 178 F.3d 132, 144 (3rd Cir. 1999) (stating that "[f]ederal courts have a significant interest in determining the preclusive effects of federal judgments[,]" (citation omitted) and observing further that "'[o]ne of the strongest policies a court can have is that of determining the scope of its own judgments'") (quoting *Kern v. Hettinger*, 303 F.2d 333, 340 (2d Cir. 1962)). Nevertheless, general principles of due process, comity, and judicial economy weigh against this Court deciding the preclusive effect of its Duty and Breach of Duty Ruling in the State Court Litigation. The State Court plaintiffs are not parties before this Court. They have a substantial interest in whether this Court's decision has preclusive effect on their claims pending in State Court, and should be afforded a meaningful opportunity to be heard on the issue. To determine whether the State Court plaintiffs have a meaningful opportunity to be heard in this Court based on their relationship with members of the UTC and their common counsel would require this Court to judge the privity issue without hearing directly from the State Court plaintiffs. It also begs the privity question because the exercise of this Court's jurisdiction to decide whether the Duty and Breach of Duty Ruling has preclusive effect presumes adequate representation, i.e. privity, of the State Court plaintiffs by the UTC. This raises due process concerns.

Further, under principles of judicial comity and judicial economy this Court will defer to the State Court's resolution of the res judicata and collateral estoppel issues, including the privity element. A court of competent jurisdiction may decline to exercise its jurisdiction out of

deference and respect to another court.[8] The res judicata or collateral estoppel effect of this Court's decision in the State Court Litigation, including the privity issue, are already being litigated in the State Court. The parties advised the Court that the potential preclusive effect of this Court's decision has been raised and fully briefed in the State Court Litigation. The privity issue is not relevant to the upcoming trials in the adversary proceedings because the parties to the litigation resulting in the Duty and Breach of Duty Ruling and in the upcoming trials are identical and the State Court has not yet entered a final judgment that could have preclusive effect in this Court.

The Court also notes that litigation of the preclusive effect of this Court's decision in State Court is premature, just as litigation of the preclusive effect of the State Court's decision in this Court would be premature. When QHR filed its Motion to Compel, this Court had made the Duty and Breach of Duty Ruling but had not entered a final judgment. *See* Fed.R. Civ. P. 54(b), made applicable by Fed.R.Bankr.P. 7054 (under that Rule, a judgment on some but not all elements of a claim cannot be a final judgment). The Duty and Breach of Duty Ruling therefore could not have preclusive effect, regardless of the privity issue, because it was not a final adjudication resolving all elements of any of the UTC's negligence claims. Subsequently, this Court entered summary judgments against some members of the UTC. UTC then timely filed motions to alter or amend the summary judgments. Only if the Court denies the motions to alter

[8] *See Rhines v. Weber*, 544 U.S. 269, 273, 125 S.Ct. 1528, 1533, 161 L.Ed.2d 440 (2005) (stating that under the doctrine of comity, "one court should defer action on causes properly within its jurisdiction until the courts of another sovereignty with concurrent powers, and already cognizant of the litigation, have had an opportunity to pass upon the matter.") (internal quotation marks and citation omitted). *See also, Nat'l Bank of Ariz. v. Moore*, 138 N.M. 496, 500, 122 P.3d 1265, 1269 (Ct.App. 2005) ("Judicial comity is the principle in accordance with which the courts of one state or jurisdiction give effect to the laws and judicial decisions of another, not as a matter of obligation but out of deference and respect.") (internal quotation marks and citation omitted). Comity "is applicable not only between courts of coordinate jurisdiction within the same state, but between federal courts and state courts . . ." *In re Marriage of Laine*, 34 Kan.App.2d 519, 525, 120 P.3d. 802, 806 (Ct. App. 2005) (citation omitted).

or amend will the summary judgments become final adjudications with potential preclusive effect. If requested to do so, it is for the State Court to decide whether to reopen discovery on the privity issue after this Court enters a judgment that could have preclusive effect.

B. Whether QHR is entitled to the requested discovery for purposes of damages

When the Motion to Compel was filed, the UTC and QHR were preparing for mediation. QHR asserted that knowledge of the settlement amounts each member of the UTC received was necessary to enable QHR to evaluate each member of the UTC's claims individually and to make individual settlement offers. *See* Motion to Compel, p. 7. Since then, the parties attended the mediation in July 2015 but did not reach a settlement. Therefore, QHR no longer has a need to know individual settlement amounts to prepare for the July 2015 mediation.

For the first time in its reply brief, QHR asserts further that although the individual settlement amounts are pertinent to QHR's evaluation of the claims in preparation for mediation, such information is also relevant to the amount of damages each member of the UTC may ultimately be entitled to recover in this litigation. Because QHR raised this issue for the first time in its reply brief UTC was not required to and did not address the issue in their response. The Court is not deciding whether QHR is entitled to disclosure of individual settlement amounts for purposes of calculating offsets to any judgments the Court may enter, nor is the Court deciding whether QHR is entitled to such offsets. To obtain a ruling on the offset issue, QHR must file another motion to compel that raises the issue.

WHEREFORE, IT IS HEREBY ORDERED that the Motion to Compel is DENIED, without prejudice to QHR filing another motion to compel that raises the offset issue for purposes of calculating offsets to any judgments the Court may ultimately enter.

ROBERT H. JACOBVITZ
United States Bankruptcy Judge

Date entered on docket: September 3, 2015

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