UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re: OTERO COUNTY HOSPITAL ASSOCIATION, INC.,

Debtor.

Case No. 11-11-13686 JL

UNITED TORT CLAIMANTS, as individuals,

Plaintiffs,

v.

QUORUM HEALTH RESOURCES, LLC,

Defendant.

Consolidated Misc. Adv. No. 13-00007
Adversary Nos:

12-1204j through 12-1207j, 12-1209j, 12-1210j, 12-1212j through 12-1215j, 12-1221j, 12-1235j, 12-1238j through 12- 1241j,12-1243j, 12-1244j, 12-1246j, 12-1248j, 12-1249j, 12-1251j through 12-1261j, 12-1271j, 12-1276j and 12-1278j,

ORDER ON MOTION TO COMPEL DISCLOSURE (DISCOVERY REGARDING INSURANCE ISSUES)

THIS MATTER is before the Court on the Motion to Compel Disclosure ("Motion to Compel") filed by the United Tort Claimants[1]. *See* Docket No. 437. QHR opposes the Motion.

[1] The United Tort Claimants ("UTC") consist of all of the remaining plaintiffs in the adversary proceedings identified by the adversary proceeding numbers identified in the above caption, except for Otis and Judy Ferguson. The Court granted summary judgment against plaintiffs in adversary proceeding numbers 12-1208j, 12-1211j, 12-1216j, 12-1218j, 12-1219j, 12-1220j, 12-1222j, 12-1223j, 12-1242j, 12-1245j, and 12-1247j, and against plaintiffs Otis and Judy Ferguson in adversary proceeding number 12-1278j. *See* Docket Nos. 345 through 354, and Docket Nos. 356 through 358 (separate judgments were also entered in each of the adversary proceedings). The Court entered partial non-final summary judgment against plaintiff Barbara Olson in adversary proceeding number 12-1278j. *See* Docket No. 355; and Adv. No. 12-1278 – Docket No. 79. These adversary proceedings were among the adversary

See Quorum Health Resources, LLC's Response to the United Tort Claimants' Motion to Compel Disclosure ("QHR's Response") – Docket 457.[2] UTC seek to compel QHR to provide discovery relating to insurance coverage of the claims of UTC against QHR asserted in these adversary proceedings (the "Claims") or any obligations of an insurer of QHR to pay any judgment that UTC may obtain against QHR in these adversary proceedings ("Insurance Discovery"). UTC also seeks discovery relevant to whether it may have a claim for sanctions against QHR and various of its counsel for failing to provide discovery relating to insurance ("Sanctions Discovery"). Insurance available to cover Claims or otherwise to pay any one or more judgments that UTC may obtain against QHR in the adversary proceedings referenced in the caption of this Order hereafter is called "Available Insurance." Such adversary proceedings hereafter are called the "Adversary Proceedings."

The Court heard oral argument on the Motion to Compel on August 12, 2015. At the close of oral argument, the Court directed UTC to file of record their proposed discovery and set deadlines for QHR to file objections and UTC to respond. UTC filed their proposed discovery on August 19, 2015. *See* UTC Submission Regarding Discovery ("UTC's Discovery Submission") – Docket No. 464. QHR filed an objection on August 24, 2015, and UTC filed a response on August 27, 2015. *See* Docket Nos. 465 and 466.

UTC seek to take the following types of Insurance Discovery and Sanctions Discovery: 1) depositions; 2) service of subpoenas duces tecum to obtain documents from third parties; and 3) requests for production of documents to be served on QHR. For the reasons explained below,

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proceedings that the Court consolidated for purposes of conducting a single trial on liability. *See* Order Establishing Master Docket for Consolidated Matters, entered August 15, 2013 in this Consolidated Misc. Adv. No. 13-00007. *See* Docket No. 1. The Court removed adversary proceeding numbers 12-1208j, 12-1211j, 12-1216j, 12-1218j, 12-1219j, 12-1220j, 12-1222j, 12-1223j, 12-1242j, 12-1245j, and 12-1247j from the caption in Miscellaneous Proceeding No. 13-00007.

[2] UTC also filed a reply. *See* Docket No. 460.

the Court will allow UTC to depose Benjamin Huddleston, not allow UTC to depose any of QHR's counsel unless permitted to do so by further order of the Court, allow UTC to serve the proposed subpoenas duces tecum on third parties subject to the right of the third parties to seek relief under Fed.R.Civ.P. 45, and allow UTC to serve their requests for production on QHR. The Court's rulings on QHR's objections to UTC's request for production limits the documents QHR must produce.

BACKGROUND

UTC commenced the Adversary Proceedings by removing to this Court forty-seven actions commenced in state court before Otero County Hospital Association, Inc. d/b/a Gerald Champion Regional Medical Center (the "Hospital") filed its voluntary petition under Chapter 11 of the Bankruptcy Code. Each state court action named the Hospital, QHR, and others alleging that negligent acts by each defendant caused the injuries allegedly suffered by each plaintiff.[3]

The Court confirmed a Chapter 11 plan in the Hospital's bankruptcy case on August 7, 2012. *See* Case No. 11-11-13686 JA – Docket No. 712. By confirming the plan, the Court approved a global settlement between UTC and defendants in the Adversary Proceedings other than QHR. As part of the settlement, UTC agreed it would enforce any judgment it might obtain against QHR solely against available insurance, and not against QHR's assets.[4] The insurance

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[3] The Court created a Master Docket, designated Miscellaneous Proceeding No. 13-00007, for the purpose of filing documents in the Adversary Proceedings relating to consolidated matters. Documents filed on the Master docket are deemed filed on each individual docket.

[4] *See* Term Sheet attached as Exhibit C to Third Amended Chapter 11 Plan of Reorganization for Otero County Hospital Association, Inc., Case No. 11-11-13686 JA – Docket No. 591
The Term Sheet provides:

> The UTC will agree that, should any of the UTC recover a judgment against QHR on any of the Personal Injury Claims, the UTC will enforce all such judgments against the available insurance only, and not against the assets of QHR. The UTC will give QHR a release of all claims, however captioned, for liability on the Personal Injury Claims in excess of QHR's insurance.
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> Term Sheet, ¶ 8.

policies include policies issued by Lexington Insurance Company ("Lexington") and Ironshore Insurance Company. *Id.* at ¶ 3.

The Court consolidated the removed adversary proceedings for the purposes of conducting separate trials on different elements of UTC's negligence claims. *See* Order Establishing Master Docket for Consolidated Matters – Docket No. 1. The Court made all portions of Fed.R.Civ.P. 26 applicable to the consolidated adversary proceedings. *See* Case Management Order for Trial on the Bifurcated Issue of Corporate Liability – Docket No. 6 ("Notwithstanding NM LBR 7016-1, the parties have requested and the Court has agreed to adopt and utilize Fed.R.Civ.P. 26 in these Proceedings."). Following a trial on the merits of the corporate liability issues,[5] the Court issued a decision concluding that QHR owed a duty of care to the UTC and breached its duty in two respects. UTC and QHR subsequently attended a mediation in July 2015 (the "July Mediation") in an attempt to resolve all remaining claims. *See* Mediation Order – Docket No. 327 and Amendment to the Mediation Order – Docket No. 336. The July Mediation was not successful. A second consolidated trial on the causation element of the UTC's negligence claims and on comparative fault issues (the "Causation and Comparative Fault Trial") is scheduled to begin on October 19, 2015.

The Term Sheet was reduced to a Settlement Agreement among the UTC, QHR, CHS/Community Health Systems, Inc., Triad Healthcare Corporation, Community Health Systems Professional Service Corporation, the Hospital, Nautilus Insurance Company, and Christian Schlicht memorializing the settlement approved under the Hospital's confirmed plan. *See* Exhibit 8 to QHR's Response – Docket No. 457. Like the Term Sheet, the Settlement Agreement provides that "the UTC will enforce any and all such judgments against the available insurance only, and not against the assets of QHR . . ." Settlement Agreement, ¶ 4.

[5] The Order Resulting from Hearing on Motion to Establish Discovery and Case Management Procedures ("Case Management Order") defined "Corporate Liability Issues" as "the liability issues relating to QHR" and clarified that the Corporate Liability Issues "do not include issues regarding whether any medical providers committed malpractice or any issues with respect to damages." Case Management Order – Adversary Proceeding no. 12-1204 – Docket No. 44. An identical Case Management Order was entered in each of the forty-seven adversary proceedings initiated upon removal of the state court actions to this Court.

THE COURT'S AUTHORITY TO CONTROL DISCOVERY

The Court enjoys broad discretion to control the discovery process. *See S.E.C. v. Merrill Scott & Associates, Ltd.,* 600 F.3d 1262, 1271 (10th Cir. 2010) (acknowledging the district courts have "broad discretion over the control of discovery") (citation and quotation marks omitted). That includes "substantial discretion in handling discovery requests under Rule 26(b)." *Murphy v. Deloitte & Touche Group Ins. Plan,* 619 F.3d 1151, 1164 (10th Cir. 2010)(citing *Motley v. Marathon Oil Co.,* 71 F.3d 1547, 1550 (10th Cir. 1995)).

Under Rule 26(b)(2)(C), the Court on motion or on its own is required to limit the frequency or extent of discovery otherwise authorized under applicable rules of civil procedure or local rules if it determines that:

> (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
> (ii) the party seeking the discovery has had ample opportunity to obtain the information by discovery in the action; or
> (iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.
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> Fed.R.Civ.P. 26(b)(2)(C).

Deposition discovery of opposing counsel raises special concerns. The Eighth Circuit explained:

> Taking the deposition of opposing counsel not only disrupts the adversarial system and lowers the standards of the profession, but it also adds to the already burdensome time and costs of litigation. It is not hard to imagine additional pretrial delays to resolve work-product and attorney-client objections, as well as delays to resolve collateral issues raised by the attorney's testimony. Finally, the practice of deposing opposing counsel detracts from the quality of client representation. Counsel should be free to devote his or her time and efforts to preparing the client's case without fear of being interrogated by his or her opponent. Moreover, the "chilling effect" that such practice will have on the truthful communications from the client to the attorney is obvious.

Shelton v. American Motors Corp. 805 F.2d 1323, 1327 (8th Cir. 1986).

Animated by these concerns, the *Shelton* court adopted a 3-part heightened standard for depositing opposing counsel. Under the *Shelton* test, deposing opposing counsel "should be limited to where the party seeking to take the deposition has shown that (1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case." *Shelton,* 805 F.2d at 1327 (internal citation omitted).

Although the Tenth Circuit has not adopted the *Shelton* test, it has held that the trial court has the discretion to issue a protective order under Rule 26(c) to prevent the deposition of opposing counsel where any one or more of the three *Shelton* criteria are not met. *See Boughton v. Cotter Corp.,* 65 F.3d 823, 830 (10th Cir. 1995) ("[W]e approve the criteria set forth in *Shelton* . . . but at this time we need only make the more limited holding that ordinarily the trial court at least has the *discretion* under Rule 26(c) to issue a protective order against the deposition of opposing counsel when any one or more of the three *Shelton* criteria for deposition . . . are *not* met.") (emphasis in original).

Although the heightened *Shelton* test was developed to address whether to permit a deposition of opposing counsel, the *Shelton* criteria remain useful factors to consider whether to permit a deposition of in-house counsel who is not trial counsel. *Malcolm D. Smithson and Christine B. Smithson Trusts v. Amerada Hess Corp*., 2007 WL 5685112, *9 (D.N.M. Dec. 19, 2007) (unpublished). Likewise, the *Shelton* criteria remain useful factors to consider whether to permit a deposition of counsel for third parties.

RULINGS ON DISCOVERY REQUESTS

UTC represents that they learned new information about Available Insurance at the July Mediation and from documents filed in litigation between QHR and Lexington Insurance Company ("Lexington") pending in Tennessee (the "Coverage Litigation"). UTC adamantly assert QHR should have disclosed that information in its initial disclosure under Rule 26(a)(1) or in response to UTC discovery requests. More specifically, UTC assert (possibly among other things) that QHR was required to but did not disclose the 2010 Renewal Policy[6] and claims made against QHR other than those of UTC reported by QHR to Lexington under the 2008 Renewal Policy. QHR insists it disclosed everything required of it.

QHR acknowledges Lexington paid an unrelated claim made against QHR by another hospital pursuant to the 2008 Renewal Policy. While maintaining that the 2010 Renewal Policy provides no coverage for UTC's Claims, and that it made all disclosures required of it, QHR offers to provide an "abstract" in lieu of additional Insurance Discovery reflecting: a) notices of claims made against QHR that were reported to Lexington under the 2008 Renewal Policy and the 2010 Renewal Policy; and b) payments made upon each claim under the 2008 Renewal Policy and the 2010 Renewal Policy.

At the close of oral argument, the Court directed UTC to file their proposed discovery and set a schedule for QHR to file objections and UTC to respond. The Court ruled that it would allow UTC to take some additional Insurance Discovery and would consider limited Sanctions Discovery at this time, but reserved ruling on the scope of that discovery pending review of the proposed discovery and its rulings on any objections by QHR

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[6] Lexington issued Lexington Insurance Policy No. 6801409 in 2001. The policy was renewed for the period from August 31, 2008 to August 31, 2010 (the "2008 Renewal Policy") and again was renewed for the period from August 31, 2010 through August 31, 2012 (the "2010 Renewal Policy"). Renewal policies may contain additional or different terms from the originally issued policy or prior renewals. The 2008 Renewal Policy and 2010 Renewal Policy together are called the "Lexington Policies."

A. Deposition Discovery

UTC's Discovery Submission identifies the following nine persons UTC wish to depose: Benjamin Huddleston, Jack Klecan, Tamara Safarik, Amy Schmidt, Sharon Sobers, Terri Souza, Lee Shuchart, John Vidal and David Wood.[7] UTC have not provided any information about the proposed deponents other than their names. Some of the proposed deponents are counsel for QHR in the adversary proceedings before this Court. QHR provided information about several other proposed deponents in its objection to UTC's Discovery Submission.

UTC identified the Areas of Inquiry for Depositions as part of the UTC's Discovery Submissions (hereafter, "Areas of Inquiry"). *See* UTC's Discovery Submissions – Exhibit F. The Areas of Inquiry for Depositions generally cover any knowledge and communications regarding the timing and existence of claims made, reported, paid, and/or denied with respect to the 2008 Renewal Policy and the 2010 Renewal Policy during the period from 2008 through 2012, and any other policy that could be used to satisfy any judgment against QHR, as well as any knowledge and communications about which policies were triggered by claims made relating to the 2008 Renewal Policy and the 2010 Renewal Policy during the period of 2008 through 2012. *Id.* The Court will limit the language in the Areas of Inquiry "and any other policy that could be used to satisfy any judgment against QHR" to mean "and any other policy that could be used to satisfy any judgment in favor of any of the UTC against QHR." Otherwise, UTC would be proposing to inquire into many types of insurance under which QHR is an insured

[7] Copies of the subpoenas and deposition notices for each of these persons, except Mr. Huddleston, are attached as exhibits to the UTC's Discovery Submission. *See* UTC's Discovery Submission, Exhibits A and B. A copy of a notice of deposition for Mr. Huddleston is attached to the UTC's Discovery Submission as Exhibit C.

that is patently irrelevant to the proceedings before this Court, including for example property and automobile insurance.

Depositions of Opposing Counsel

Mr. Klecan and Ms. Safarik represent QHR in these adversary proceedings. Mr. Wood appeared before this Court on behalf of QHR at the August 12, 2015 hearing to argue the Motion to Compel. QHR identifies Lee Shuchart as "QHR's outside counsel serving as supervising litigation counsel through third-party administrator Western Litigation, Inc." *See* Objection, Docket 465.

QHR objects to UTC taking depositions of Jack Klecan, Tamara Safarik, Lee Shuchart and David Wood, in part, on grounds that UTC have failed to demonstrate they are entitled to depose opposing counsel under the three-part test articulated in *Shelton v. American Motors Corp.,* 805 F.2d 1323 (8th Cir. 1986). UTC do not object to the application of the *Shelton* test, and assert that test supports allowance of depositions of QHR's counsel.

Applying the *Shelton* criteria, the Court will not allow UTC to depose any counsel for QHR in furtherance of Insurance Discovery, including Lee Shuchart, David Wood, Jack Klecan, or Tamara Safarik, unless after completing their other Insurance Discovery UTC demonstrate to the Court that UTC have no other means to obtain information in furtherance of such discovery and such counsel are likely to have non-privileged relevant information. UTC would be expected to show why discovery of information relating to Available Insurance, such as claims made, reported, and paid under the Lexington Policies, cannot be obtained from QHR (other than from its counsel) and representatives of Lexington and its claims administrators and handlers.

In addition, the Court will not permit QHR to depose any counsel for QHR in furtherance of Sanctions Discovery prior to completion of the trials on the merits in the adversary

proceedings without a further order of the Court permitting such discovery. A five- to six- day trial is set in October 2015. If the Court rules for UTC on the causation element of its claims, another 5-day trial is set in December 2015 on damages issues common to all claims, to be followed by numerous individual damages trials. Taking depositions of opposing counsel before completion of the trials would divert time and attention away from the merits of the litigation, could detract from the quality of client representation in relation to trials on the merits, and could interfere with the professional working relations between and among the various counsel representing parties in the litigation before the Court. If UTC still wish to depose opposing counsel in furtherance of Sanctions Discovery after completion of all trials on the merits in the adversary proceedings, UTC can notice the depositions at that time. If QHR objects by timely filing a motion or motions for protective order, the Court will rule on the issue at that time.

Deposition of Benjamin Huddleston

UTC wish to depose Benjamin Huddleston. QHR identifies Benjamin Huddleston as Vice President of Quorum Legal Services. *See* Objection, Docket 465. QHR objects to UTC taking the deposition of Benjamin Huddleston, Vice President of Quorum Legal Services on grounds that 1) such deposition is vexatious and calculated to harass QHR; 2) any information Mr. Huddleston could provide is privileged. The Court may preclude a deposition under Rule 26(c) "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Fed.R.Civ.P. 26(c)(1). QHR asserts that the only source of information Mr. Huddleston may have regarding the availability of any insurance policies subject to the UTC's claims is communications with QHR's counsel in facilitating or providing legal services to QHR, and that such communications would therefore be privileged. That is an issue the Court will decide based on objections to specific questions during a deposition. The Court will allow the

UTC to take Mr. Huddleston's deposition. QHR may object during the deposition to any question it believes Mr. Huddleston should not be required to answer and instruct him not to answer questions seeking privileged information.

Depositions of Amy Schmidt, Sharon Sobers, Terri Souza, John Vidal

QHR did not object to UTC's proposed deposition subpoenas for Amy Schmidt, Sharon Sobers, Terri Souza, or John Vidal. However, UTC did not identify who those persons are, other than by name, except in the proposed Notice of Deposition of Terri M. Souza which identifies her as somehow associated with Western Litigation, Inc. *See* UTCs Discovery Submission, Exhibit B at p. 4. Because the Court has no other information about these individuals, the Court cannot determine whether UTC should be allowed to take the depositions. Before the Court rules on whether UTC may take these depositions, UTC must file a supplement to the Motion to Compel identifying each of these individuals by position and/or affiliation and the type of information UTC believe each person may have that is relevant to the Areas of Inquiry. The Court will rule on UTC's request to depose Amy Schmidt, Sharon Sobers, Terri Souza and John Vidal once UTC have filed their supplement.

B. <u>Request to Serve Subpoenas Duces Tecum on Non-parties</u>

UTC wish to serve subpoenas to compel production of documents upon the following third parties: 3) Chartis Insurance ("Chartis"); 2) Lexington Insurance Company ("Lexington"); 3) Western Litigation, Inc. ("Western Litigation"). *See* UTC's Discovery Submission, Exhibit D. A party may serve a subpoena compelling production of documents on a non-party to the litigation consistent with Rule 34(c) and Rule 45. *See* Fed.R.Civ.P. 34(c), made applicable to adversary proceedings by Fed.R.Bankr.P. 7034 ("As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection."); Fed.R.Civ.P.

45, made applicable to bankruptcy cases by Fed.R.Bankr.P. 9016 (governing subpoenas). The subpoenas UTC wish to serve upon Chartis, Lexington, and Western Litigation generally request the same types of documents, namely, documents relating to claims made against QHR and/or reported to Lexington or Chartis regarding the Lexington Policies or any other policy that could be used to satisfy any judgment against QHR; documents relating to payment or denial of coverage of such claims; and claims files for such claims. *See* UTC's Discovery Submission – Exhibit D.

QHR's objection includes an objection on behalf of Western Litigation to the document subpoena. The Court will overrule QHR's objection and allow the UTC to serve the subpoenas on Lexington, Western Litigation, and Chartis, subject to any objection or other relief those non-parties may assert or seek under Rule 45 after service of the subpoenas. Lexington is the insurance company that issued the Lexington Policies. The 2010 Renewal Policy identifies Chartis as the "Claim Administrator" under the section titled "Claim Reporting." Although neither the UTC nor QHR have fully explained Western Litigation's connection to the Lexington Policies, it appears that Western Litigation served as claims administrator or provided claims-handling services for claims reported under the Lexington Policies. Serving in either role, Western Litigation may have information concerning Available Insurance. If QHR objects to production of individual documents based on privilege, the Court will rule on the objections after a privilege log is created.

C. Request for Production from QHR

UTC prepared twenty-six requests for production they wish to serve on QHR. The requests seek documents concerning claims against QHR for which the 2008 Renewal Policy and/or 2010 Renewal Policy may provide coverage, and any other insurance that could be used to satisfy any judgment the UTC may ultimately obtain against QHR, including when claims were made or reported to Lexington, Chartis, or Western Litigation. The requests are aimed at determining the amount of Available Insurance and also pertain to Sanctions Discovery. QHR objected to UTC's requests for production of documents generally as to all requests for production and specifically as to each request. After reviewing the requests for production and QHR's objections, the Court will allow UTC to serve the requests for production on QHR, subject to the limitations set forth in its ruling below.

WHEREFORE, IT IS HEREBY ORDERED:

A. UTC may depose Brian Huddleston on matters within the Areas of Inquiry. However, the language in the Areas of Inquiry "and any other policy that could be used to satisfy any judgment against QHR" must be limited to "and any other policy that could be used to satisfy any judgment in favor of any of UTC against QHR."

B. UTC may not depose any counsel for QHR in furtherance of Insurance Discovery, including Lee Shuchart, David Wood, Jack Klecan, or Tamara Safarik, unless after completing their other Insurance Discovery UTC demonstrate to the Court that UTC have no other means to obtain information in furtherance of Insurance Discovery sought to be obtained in depositions of opposing counsel and such counsel are likely to have non-privileged relevant information.

C. UTC may not depose any counsel for QHR in furtherance of Sanctions Discovery prior to completion of all trials on the merits in the adversary proceedings without a further order of the Court permitting such discovery. If UTC still wish to depose opposing counsel in furtherance of Sanctions Discovery after completion of the trials on the merits, UTC may notice the depositions at that time. If QHR objects by timely filing a motion or motions for protective order, the Court will rule on the issues raised by the motion(s) for protective order at that time.

D. UTC may not depose Amy Schmidt, Sharon Sobers, Terri Souza or John Vidal unless permitted to do so by further order of the Court. Before the Court rules on whether UTC may take these depositions, UTC must file a supplement to the Motion to Compel identifying each of these individuals by position and/or affiliation and why UTC believe each person may have information relevant to the Areas of Inquiry. The Court will rule on UTC's request to

depose Amy Schmidt, Sharon Sobers, Terri Souza and John Vidal once UTC have filed such a supplement.

E. UTC may serve their proposed subpoenas duces tecum on Chartis, Lexington, and Western Litigation, subject to the rights of those entities to seek relief under Fed.R.Civ.P. 45.

F. UTC may serve their requests for production on QHR, subject to the following:

(1) Rulings on QHR's General Objections.

(a) QHR will not be required to produce any requested documents protected by the attorney-client or work product privileges. Within 30 days after service of the requests for production (the "Response Date"), QHR must provide to the UTC a privilege log with respect to any documents responsive to the requests for production that QHR asserts are privileged. If UTC asserts that QHR should be required to produce any documents on the log, UTC should file an appropriate motion to bring the issue before the Court.

(b) By the Response Date, QHR must provide a log to UTC with respect to any documents responsive to the requests for production that QHR asserts are protected in whole or in part by any right or agreement of confidentiality. If QHR asserts a document is so protected only in part, QHR must produce the document with the portion redacted that QHR asserts is protected. If UTC asserts that QHR should be required to produce any documents on the log, UTC should file an appropriate motion to bring the issue before the Court.

(2) Rulings on QHR's Special Objections.

(a) *Request for Production No. 1.*

(i) QHR objects that the request is overbroad, burdensome and oppressive, not reasonably calculated to lead to admissible evidence, and calls for irrelevant information to the extent it calls for each and every document having anything to do with the Lexington Policies. The Court overrules this objection to the extent it is not addressed in the Court's other rulings on QHR's other objections.

(ii) QHR objects that the phrase "claims made and/or reported to Lexington" is vague. To the extent any clarification is needed, for purposes of the discovery this language will mean "claims made against QHR and/or reported by QHR to Lexington directly or to Lexington's claims administrators, claim handlers or other agents or representatives."

(iii) QHR objects to the definition of "you" and to use of the phrase "in your possession, custody or control" on the ground that the definition and phrase are vague and ambiguous and the definition is overbroad. QHR elaborates that, for example, it has no ability to obtain documents from Lexington to produce to UTC.

(x) For purposes of the discovery, "you" will mean QHR and its employees, representatives and agents.

(y) QHR is required only to produce responsive documents within its possession, custody or control. The meaning of the phrase "possession, custody or control" is amplified by case law. Given the existence of the various disputes between QHR and Lexington, and the separate discovery QHR may undertake from Lexington, a document will not be deemed to be in QHR's possession, custody or control because is it in Lexington's possession, custody or control or in the possession, custody or control of a claims administrator or claims handler for Lexington. If QHR is an insured under any policy issued by an entity other than Lexington that may provide coverage for any claims made by UTC against QHR, then QHR, by the Response Date, must make a written request to such insurer for documents responsive to RFP No. 1, with a copy of the request to UTC, and produce any documents received in response to the written request within five days after receipt. QHR is not required to make any further efforts to obtain such documents. If any documents responsive to RFP No. 1 may be in the possession of a parent company or subsidiary of QHR, QHR must make reasonable efforts to obtain such documents from the parent or subsidiary and produce any documents so obtained within five days after receipt. Reasonable efforts do not require any litigation on the part of QHR.

(iv) QHR objects to production of "any other policy that could be used to satisfy any judgment against QHR" on various grounds. For purposes of all of the requests for production using this phrase, the language is narrowed to mean "any other policy that could be used to satisfy a judgment in favor of any of the UTC against QHR that may be granted in any of the Adversary Proceedings." If QHR is aware of an insurance policy issued by an insurer other than Lexington that may provide coverage for UTC's claims against QHR or under which the insurer may pay all or part of any judgment UTC may obtain against QHR in these adversary proceedings, QHR must provide the requested documents relative to that insurance policy.

(v) QHR objects to the request for production as overbroad. The Court sustains the objection in part. In response to RFP No. 1, QHR is required to produce documents in its possession, custody or control that contain information that:

(aa) a claim made or threatened against QHR was reported by QHR or anyone else to Lexington during the policy period of either of the Lexington Policies, whether reported directly or through a claims administrator, claims handler or other agent or representative of Lexington;

(bb) when and by whom such claim was so reported;

(cc) the amount and general nature of such reported claim and by whom such claim was made or threatened;

(dd) the insurer's response(s) to QHR relative to coverage of such claim;

(ee) whether and how much Lexington paid on any such claim (subject to QHR's confidentiality objection); and/or

(ff) if such claim is in litigation the court docket for the litigation (but not any pleadings or deposition transcripts). In addition, the same type of information must be provided with respect to any claim made or threatened against QHR reported under any other insurance policy under which the insurer may be liable to satisfy a judgment in favor of any of the UTC against QHR that may be granted in any of the Adversary Proceedings.

(b) *Request for Production No. 2.*

(i) To the extent QHR's objections are the same or similar to its objections to RFP No. 1, the Court makes the same rulings on QHR's objections to RFP No. 2 as the Court made on QHR's objections to RFP No. 1 (adapted for variances in the language of the requests for production). For example, RFP. No. 2 asks about claims made and/or reported to Chartis. The phrase "claims made and/or reported" in RFP No. 2 is narrowed the same as in the ruling on objections to RFP No. 1. And in applying the rulings on objections to RFP No. 1 to RFP No. 2, "Charis" should be substituted for "Lexington" as appropriate.

(ii) QHR objects to use of the term Chartis on the ground that it is vague and ambiguous. According to documents submitted to the Court, AIG Domestic Claims Inc. is or was the Claim Administrator for the 2010 Renewal Policy and Chartis Claims is or was the Claim Administrator for the 2010 Renewal Policy. Even though the request for production is limited to Chartis, the term Chartis as used in Request for Production No. 2 should be construed by QHR to mean the Chartis entity that serves or served as claims administrator for Lexington under the 2010 Renewal Policy.

(c) *Request for Production No. 3.*

(i) To the extent QHR's objections are the same or similar to its objections to any of the prior RFPs, the Court makes the same rulings on QHR's objections to RFP No. 3 as the Court made on QHR's objections to the prior RFPs (adapted for variances in the language of the requests for production).

(d) *Request for Production No. 4.*

(i) To the extent QHR's objections are the same or similar to its objections to any of the prior RFPs, the Court makes the same rulings on QHR's objections to RFP No. 4 as the Court made on QHR's objections to the prior RFPs (adapted for variances in the language of the requests for production).

(ii) If CHS is redefined as Community Health Systems for purposes of RFP No. 4.

(e) *Requests for Production Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15.*

(i) To the extent QHR's objections are the same or similar to its objections to any of the prior RFPs, the Court makes the same rulings on QHR's objections to RFP Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 as the Court made on QHR's objections to the prior RFPs (adapted for variances in the language of the requests for production).

(f) *Request for Production No. 16.*

(i) To the extent QHR's objections are the same or similar to its objections to any of the prior RFPs, the Court makes the same rulings on QHR's objections to RFP No. 16 as the Court made on QHR's objections to the prior RFPs (adapted for variances in the language of the requests for production).

(ii) QHR's objections to RFP No. 16 otherwise are overruled. Requesting documents relating to QHR's requests to pay policy limits under the Lexington Polices is reasonably calculated to lead to the discovery of information relevant to the amount of the policy limits applicable to UTC's claims against QHR and which Lexington Policies QHR believed to cover those claims.

(f) *Request for Production No. 17.*

(i) To the extent QHR's objections are the same or similar to its objections to any of the prior RFPs, the Court makes the same rulings on QHR's objections to RFP No. 17 as the Court made on QHR's objections to the prior RFPs (adapted for variances in the language of the requests for production).

(g) *Request for Production No. 18.*

(i) To the extent QHR's objections are the same or similar to its objections to any of the prior RFPs, the Court makes the same rulings on QHR's objections to RFP No. 18 as the Court made on QHR's objections to the prior RFPs (adapted for variances in the language of the requests for production).

(2) QHR objects in part to the extent the request asks for "each and every document having anything to do with Lexington's reservation of rights, and coverage denials in whole or in part, of claims under the Policy and the Renewal, which are voluminous and which include all pleadings, discovery and correspondence in coverage litigation between QHR and Lexington to which the UTC are parties and have equal access." The Court sustains the objection to the extent the request for production asks for pleadings, discovery and correspondence in the Coverage Litigation.

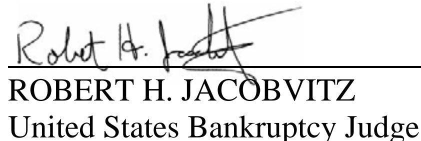
(h) *Request for Production No. 19, 20, 21, and 22.*

(i) To the extent QHR's objections are the same or similar to its objections to any of the prior RFPs, the Court makes the same rulings on QHR's objections to RFP Nos. 19, 20, 21 and 22 as the Court made on QHR's objections to the prior RFPs (adapted for variances in the language of the requests for production).

(ii) These requests for production appear to be the same as RFP Nos. 1, 2, 3 and 4 except the word "files" is substituted for "documents." Fed.R.Civ.P. 34(b)(2)(i) requires that a "party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request." It is unclear what UTC requests in RFP Nos. 19, 20, 21 and 22 not already requested by RFP Nos. 1, 2, 3 and 4. QHR's objection to use of the word "files" instead of "documents" in RFP Nos. 19, 20, 21 and 22 is sustained.

(i) *Request for Production No. 24, 25 and 26.*

(i) To the extent QHR's objections are the same or similar to its objections to any of the prior RFPs, the Court makes the same rulings on QHR's objections to RFP No. 24, 25 and 26 as the Court made on QHR's objections to the prior RFPs (adapted for variances in the language of the requests for production), including but not limited to the ruling set forth in paragraph F(2)(a)(v).



ROBERT H. JACOBVITZ
United States Bankruptcy Judge

Date entered on docket: September 14, 2015

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