

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. CV-24-04661-JFW (AGRx) Date: April 8, 2025

Title Nicholas Tomaszewski v. AIG Property Casualty Company, et. al.

---

Present: The Honorable: Alicia G. Rosenberg, United States Magistrate Judge

K. Lozada  
Deputy Clerk

CS 04/08/2025  
Court Reporter / Recorder

Attorneys Present for Plaintiff:  
Daniel Eli

Attorneys Present for Defendants:  
Akhil Sheth

**Proceedings: ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF  
TOMASZEWSKI’S MOTION FOR A PROTECTIVE ORDER (Dkt. No. 63)**

Case is called. Counsel state their appearances.

Pursuant to the Order dated March 21, 2025 (Dkt. No. 61), Plaintiff Tomaszewski filed a motion for protective order. (Dkt. No. 63.) Defendant AIG Property Casualty Company (“AIG”) filed an opposition. (Dkt. No. 64.) Plaintiff filed a reply. (Dkt. No. 65.) The matter came on for hearing.

Plaintiff’s motion seeks two protective orders. The court addresses each in turn.

***I. Plaintiff’s Motion For Protective Order Re: Depositions of Current or Former Employees of the Parris Law Firm***

Plaintiff requests a protective order that either (1) precludes AIG from resuming the deposition of former employee Brittany Hall and taking the deposition of any other current or former employee of the Parris Law Firm; or (2) limits the scope of such depositions “solely to the Parris Law Firm’s communications with AIG.” (Notice of Motion at 1, Dkt. No. 63.)

As background, Plaintiff was in a serious motorcycle accident on August 21, 2015 that left him diagnosed with partial paralysis. The driver of the automobile was insured

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. CV-24-04661-JFW (AGRx) Date: April 8, 2025

Title Nicholas Tomaszewski v. AIG Property Casualty Company, et. al.

by AIG under an auto insurance policy with a \$100,000 limit per person. On September 15, 2015, Plaintiff mailed AIG a policy limits demand (“PLD”) letter that required that Plaintiff receive written acceptance by September 29, 2015 (although the letter did not disclose where written acceptance should be sent). (Exh. 3 to Eli Decl.)

AIG contends that the PLD letter was a bad faith “set up” to ensure that AIG did not actually accept the settlement offer. AIG argues that a bad faith “set up” usually involves one or more of the following techniques: First, the claimant sends a PLD letter soon after the accident in the hope that the insurer’s lack of information or lack of time for investigation will result in the offer expiring without response. Second, a bad faith “set up” will set a very short time limit for acceptance in the hope that the offer will not have worked its way through the insurer’s hierarchy by the time it expires. Third, a bad faith “set up” will make acceptance more difficult. (Opp. at 10.) AIG argues that Plaintiff’s PLD letter contains the hallmarks of a bad faith “set up” in its timing, very short time frame for acceptance, mailing to an incorrect AIG address after first calling to confirm the correct address, and obstacles to acceptance such as failing to include an address for receipt of written acceptance. (*Id.* at 10-11.)

On March 18, 2025, Defendant took the deposition of Ms. Hall, a former employee of the Parris Law Firm. (Hall Depo. at 20:1-10, Exh. E to Eli Decl.) Ms. Hall is not an attorney; she initially worked for the Parris Law Firm in intake and later as an assistant case manager and member of the settlement team before she left in March 2020. (*Id.* at 20:14-21:14.)

Ms. Hall’s attorney terminated the deposition after a series of questions regarding how the Parris Law Firm does business, including how it obtains clients, what it does during intake with new clients, how it obtains police reports or medical records for new clients, whether it speak with a new client’s family members, how early the firm contacts insurance companies on behalf of clients, etc. Ms. Hall’s attorney instructed her not to answer such questions and, after several pages of them, warned twice that he would terminate the deposition if such questions continued to be asked. (*Id.* at 47:14-16, 48:2-

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. CV-24-04661-JFW (AGRx)

Date: April 8, 2025

Title Nicholas Tomaszewski v. AIG Property Casualty Company, et. al.

4.) After the next question regarding the law firm mailings, Ms. Hall’s attorney ended the deposition.<sup>1</sup> (*Id.* at 48:18-21.)

“At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or a party.” Fed. R. Civ. P. 30(d)(3)(A). “If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.” *Id.* “The court may order that the deposition be terminated or may limit its scope and manner as provided in Rule 26(c).” Fed. R. Civ. P. 30(d)(3)(B).

Defendant’s opposition brief wisely does not attempt to justify the deposition questions about how the Parris Law Firm operates except to minimize them as “preliminary questions about Hall’s job duties at Parris Law Firm.” (Opp. at 14.) To the extent Plaintiff seeks a protective order against questions as to the Parris Law Firm’s

Rather, Defendant argues that it should be permitted to ask questions about the bad faith “set up” issues in this case. (*Id.* at 18.)

The Federal Rules of Civil Procedure do not preclude taking the deposition of opposing counsel or that counsel’s employee. Fed. R. Civ. P. 30(a)(1) (permitting party to depose “any person”); Fed. R. Civ. P. 30(a)(2) (requiring court order for deposition under certain circumstances that do not include deposing opposing counsel).

The Ninth Circuit has not yet addressed the appropriate legal standard governing the deposition of opposing counsel or counsel’ employee. In *Shelton*, the Eighth Circuit limited depositions of opposing counsel in a pending case to situations in which “the party seeking to take the deposition has shown that (1) no other means exist to obtain the information than to depose opposing counsel, [citation omitted], (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case. *Shelton v. American Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986).

---

<sup>1</sup> Ms. Hall’s counsel has a colorful way of speaking. Although the court sustains his objections and suspension of the deposition, counsel are urged to maintain decorum and avoid language that may offend others.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. CV-24-04661-JFW (AGRx) Date: April 8, 2025

Title Nicholas Tomaszewski v. AIG Property Casualty Company, et. al.

The *Shelton* standard has been applied by district courts within the Ninth Circuit. *E.g., Stevens v. Corelogic, Inc.*, 2015 U.S. Dist. LEXIS 165874, \*3-\*11 (S.D. Cal. Dec. 10, 2015) (applying *Shelton* to deposition of opposing counsel); *Chao v. Aurora Loan Servs.*, 2012 U.S. Dist. LEXIS 169923, \*8 (N.D. Cal. 2012) (“attorney depositions even for fact discovery generally are allowed only when the discovery cannot be obtained from another place”); *see also Cifuentes v. Costco Wholesale Corp.*, 2025 U.S. Dist. LEXIS 62589, \*14 (C.D. Cal. Mar. 31, 2025) (applying *Shelton* standard in precluding party from calling opposing counsel as a witness at trial).

By contrast, the Second Circuit has articulated a more flexible approach requiring that “the judicial officer supervising discovery take[] into consideration all of the relevant facts and circumstances to determine whether the proposed deposition would entail an inappropriate burden or hardship.” *Official Comm’n of Unsecured Creditors of Hechinger Inv. Co. of Delaware, Inc. v. Friedman*, 350 F.3d 65, 72 (2d Cir. 2003). The relevant considerations “may include the need to depose the lawyer, the lawyer’s role in connection with the matter on which discovery is sought and in relation to the pending litigation, the risk of encountering privilege and work-product issues, and the extent of discovery already conducted.” *Id.*

AIG has satisfied the more stringent *Shelton* standard as to AIG’s theory of bad faith “set up.” Plaintiff argues that there is no “set up” defense under California law, an issue that is more properly addressed to the District Judge. Limited discovery, however, is essential to Plaintiff’s claim that he made a “reasonable demand to settle” his claim, that “failure to accept the settlement demand was the result of unreasonable conduct” by AIG, and AIG’s argument that the time provided for acceptance deprived it of an adequate opportunity to investigate and evaluate its insured’s exposure. (CACI No. 2334; Motion at 10.) It is also directly relevant to AIG’s unclean hands defense.

AIG has made a showing, on the record currently before the court, that no other means exist to obtain the information than to depose the pertinent employees of the Parris Law Firm. *Shelton*, 805 F.2d at 1327. AIG previously argued that, on September 9, 2015, it received a call from a phone number believed to belong to Ms. De Haan, a case manager at the Parris Law Firm at the time. The caller claimed to be a “friend” and

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. CV-24-04661-JFW (AGRx)

Date: April 8, 2025

Title Nicholas Tomaszewski v. AIG Property Casualty Company, et. al.

asked for the name and address of the AIG adjuster assigned to Plaintiff's claim. AIG disclosed the adjuster's name, phone number, and Western Center mailing address. Days later, on September 15, 2015, the PLD was mailed to a *different* address, which, according to AIG, delayed the adjuster's receipt until shortly before the deadline. (Exh. 3 to Eli Decl.; Defendant's Motion at 3-4, Dkt. No. 46.) AIG seeks to discover the identity of the caller and presumably the person who decided where to mail the PLD letter. AIG also seeks discovery as to where receipt of written acceptance was supposed to take place, if anywhere, within 14 days. No other source of this information is apparent on the record. Plaintiff's privilege log does not show direct attorney communication with Plaintiff until October 8, 2015. (Exh. D to Eli Decl.) Plaintiff testified at his deposition that he does not know who the PLD letter was sent to. (Tomaszewski Rough Draft Depo. at 11, Exh. 2 to Barron Decl.) He did not seem to recall what a policy limits demand was, conversations about recovering money from an insurance policy, or attaching a police report to the PLD. (*Id.* at 38, 40-41, 71-72.) In prior briefing, Plaintiff acknowledged that he consulted with and retained counsel before the PLD letter was mailed to AIG on September 15, 2015.

Plaintiff's citation to *Home Indem. Co. v. Lane Powell Moss & Miller*, 43 F.3d 1322 (9th Cir. 1995), is inapposite. This court found, consistent with *Lane*, that Plaintiff did not impliedly waive the attorney client privilege or work product doctrine by asserting a bad faith claim against AIG, even taking into account AIG's argument that the PLD letter was a setup. (Order dated March 21, 2025 at 5-6, Dkt. No. 60.)

Plaintiff's citation to *Bostick v. Atl. Mut. Ins. Co.*, 2008 U.S. Dist. LEXIS 126547 (C.D. Cal. Jan. 16, 2008), is unhelpful for a different reason. The court in *Bostick* addressed counsel's actual objections to questions the defendant actually posed to the plaintiff's counsel at deposition. By contrast, Defendant has not yet asked any questions of the Parris Law Firm's employees directed to the PLD letter in this case. At deposition, Plaintiff may decide to answer the questions, object on the basis of privilege, or waive any privilege. Defendant is entitled to at least ask the questions during discovery so as not to be surprised at trial in the event Plaintiff elects to answer them. The issues are not ripe for this court's adjudication.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. CV-24-04661-JFW (AGRx) Date: April 8, 2025

Title Nicholas Tomaszewski v. AIG Property Casualty Company, et. al.

***II. Plaintiff's Motion For Protective Order Re: Application of Attorney-Client Privilege to Communications Among Plaintiff, Certain of His Family Members, and the Parris Law Firm***

Plaintiff requests a protective order that prevents Defendant from inquiring into privileged communications among “Plaintiff, certain of his family members and current/former employees of the Law Firm.” (Notice at 2.) Plaintiff seeks such a protective order in two contexts: (1) the initial period of the Parris Law Firm’s representation in the underlying claim against AIG’s insured while Plaintiff was incapacitated from his accident injuries; and (2) the Parris Law Firm’s representation of Plaintiff and his family members in depositions in this case.

***A. General Principles***

A client “has a privilege to refuse to disclose, and to prevent another from disclosing a confidential communication between client and lawyer.” Cal. Evid. Code § 954. “The party claiming the privilege has the burden of establishing the preliminary facts necessary to support its exercise, i.e., a communication made in the course of an attorney-client relationship.” *Costco Wholesale Corp. v. Superior Ct.*, 47 Cal. 4th 725, 733 (2009). If the proponent of the privilege satisfies that burden, “the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish the communication was not confidential or that the privilege does not for other reasons apply.” Cal. Evid. Code § 917(a); *Costco*, 47 Cal. 4th at 733.

To be clear, however, under either federal or California law the attorney client privilege “does not protect disclosure of the underlying facts by those who communicated with the attorney.” *Upjohn Co. v. United States*, 449 U.S. 383, 395 (1981); *Costco*, 47 Cal. 4th at 735 (client “cannot protect unprivileged information from discovery by transmitting it to an attorney”). “Obviously, a client may be examined on deposition or at trial as to the facts of the case, whether or not he has communicated them to his attorney.” *Id.*; *Upjohn*, 449 U.S. at 396 (“client cannot be compelled to answer the question, ‘What did you say or write to the attorney?’ but may not refuse to disclose any



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. CV-24-04661-JFW (AGRx) Date: April 8, 2025

Title Nicholas Tomaszewski v. AIG Property Casualty Company, et. al.

relevant fact within his knowledge merely because he incorporated a statement of such fact into his communication to his attorney”) (citation omitted).

***B. Initial Period***

Under California law, the term “client” means “a person who, directly or through an authorized representative, consults a lawyer for the purpose of retaining the lawyer or securing legal service or advice from him in his professional capacity, and includes an incompetent (a) who himself so consults the lawyer or (b) whose guardian or conservator so consults the lawyer in behalf of the incompetent.” Cal. Evid. Code § 951. The term “authorized representative” means “a person who is authorized to obtain legal advice on the client’s behalf.” *NFL Properties v. Superior Ct.*, 65 Cal. App. 4th 100, 111 (1998).

A confidential communication between client and lawyer means “information transmitted between a client and his or her lawyer in the course of that relationship and in confidence by a means which, so far as the client is aware, discloses the information to no third persons other than those who are present to further the interest of the client in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the lawyer is consulted.” Cal. Evid. Code § 952.

In general, “[i]t is no less the client’s communication to the attorney when it is given by the client to an agent for transmission to the attorney.” *San Francisco v. Superior Ct.*, 37 Cal. 2d 227, 236-37 (1951) (including interpreter, messenger, or other agent of transmission); *see also People v. Lines*, 13 Cal. 3d 500, 510 (1975) (finding doctor was “intermediate agent” for communication between client with brain concussion, nerve root damage and nervous shock, and lawyer). Viewed another way, “attorney-client communications in the presence of, or disclosed to, clerks, secretaries, interpreters, physicians, spouses, parents, business associates, or joint clients, when made to further the interest of the client or when reasonably necessary for transmission or accomplishment of the purpose of the consultation, remain privileged.” *Ins. Co. of N. Am. v. Superior Ct.*, 108 Cal. App. 3d 758, 771 (1980).

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. CV-24-04661-JFW (AGRx) Date: April 8, 2025

Title Nicholas Tomaszewski v. AIG Property Casualty Company, et. al.

Defendant does not disagree with these legal principles. Instead, Defendant argues that Plaintiff has not identified which persons were his agents and for what period of time. (Opp. at 20.) Under these circumstances, Defendant contends that the depositions should proceed and that the parties will bring any specific challenges to the court's attention.

At oral argument, the court inquired as to (1) the identity of the person(s) alleged to be Plaintiff's agent(s) for purposes of communications with the law firm in the initial period; and (2) the time frame of Plaintiff's incapacitation in this initial period. Based upon oral argument, it appears Plaintiff claims that his father and sister (and perhaps his mother) were his agents in communicating with the law firm during August 21, 2015 through October 15, 2015. (See also Eli Decl. ¶ 6.) The court expects that this information will be helpful to the parties as they proceed with depositions.

The court declines to issue a protective order at this stage of the proceedings without prejudice to the parties' ability to raise specific challenges to privilege objections in the future if they are not resolved among the parties.

***C. Counsel's Representation of Family Members at Deposition***

Plaintiff's counsel represents that the firm will represent Plaintiff's father, mother, sister, and two friends if they are deposed in this case. (Eli Decl. ¶ 9.) Plaintiff apparently seeks an order to the effect that any communication among Plaintiff and family members represented by the Parris Law Firm that relays information or advice from the law firm is absolutely privileged. At oral argument, Plaintiff agreed that the privilege does not necessarily cover every communication among Plaintiff and family members for the entire almost 10-year period.

Again, Defendant objects to a blanket, vague, pre-deposition order. The court declines to issue a protective order at this stage of the proceedings without prejudice to the parties' ability to raise specific challenges to privilege objections in the future if they are not resolved among the parties.



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. CV-24-04661-JFW (AGRx) Date: April 8, 2025

Title Nicholas Tomaszewski v. AIG Property Casualty Company, et. al.

***III. Order***

IT IS ORDERED that Plaintiff's motion for protective order is GRANTED IN PART AND DENIED IN PART as follows:

1. Defendant may resume the deposition of Ms. Hall under Rule 30(d)(3) at a date, time and location mutually agreed by counsel subject to the terms and conditions in paragraph 2 below.
2. The court sustains the objections and precludes Defendant from further inquiring into the Parris Law Firm's or its employees' policies, practices, and procedures regarding, for example, obtaining clients or referrals; conducting intake of new clients; conducting investigations of actual or potential new matters; handling cases; or otherwise operating its law firm.
3. The court denies the remainder of Plaintiff's motion at this stage of the proceedings without prejudice to the parties' ability to raise specific challenges to objections or answers at deposition in the future if they are not resolved among the parties.

	<u>1:00</u>
<b>Initials of Preparer</b>	<u>kl</u>