

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

PROVIDENCE PIERS, LLC,	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 12-532S
	:	
SMM NEW ENGLAND, INC.,	:	
Defendant.	:	

MEMORANDUM AND ORDER

The conundrum posed by an insurer’s invocation of the attorney-client privilege and work product doctrine to shield its claim file is presented by two Motions for Compliance with Subpoena (ECF Nos. 63 and 65) filed by Defendant SMM New England, Inc. (“SMM”). In this case, Providence Piers, LLC (“Providence Piers”) sued SMM over the impact of its scrap metal pile on Providence Piers’ adjacent building. Several months after filing the case, Providence Piers submitted a claim to its insurer, non-party Great American Insurance Company of New York (“Great American”), which immediately commissioned a report from non-party Exponent, Inc. (“Exponent”). After learning of the Exponent report, SMM subpoenaed Great American and Exponent for documents related to the claim. Great American and Exponent have refused to produce most of the subpoenaed documents, prompting SMM to file the Motions for Compliance, which have been referred to me for determination.

I held a hearing on March 7, 2014, at which Providence Piers, SMM, Great American and Exponent were all represented by counsel. At the conclusion of oral argument, I accepted the withheld documents for *in camera* review. Because I find that some of the requested documents are protected by attorney-client privilege and the work product doctrine while others are not, the motions are GRANTED IN PART and DENIED IN PART.

I. BACKGROUND

Providence Piers owns a commercial building on the Providence waterfront that it renovated at significant cost. SMM is Providence Piers' neighbor; in 2011 it began stockpiling and shipping scrap metal on land directly adjacent to Providence Piers' renovated building. According to Providence Piers, SMM allows the pile to grow to seventy feet in height and upwards of 100 million pounds in weight before it is removed by ship and begun anew. Providence Piers claims that the pile has caused movement and cracks in the structure of its building, in addition to damage from falling debris and other environmental harms. Providence Piers also claims lost business income from vacating tenants. In July 2012, Providence Piers retained counsel and filed this suit, which was removed to this Court by SMM based on diversity of citizenship.

Six months later, in January 2013, Providence Piers informed its insurer, Great American, of a potential claim; on March 25, 2013, Providence Piers made formal notice of claim under its policy with Great American based on the property damage and the lost business income caused by the pile. ECF No. 68 at 4-5. With the litigation between Providence Piers and SMM looming in the background, Great American immediately initiated its investigation of the claim, focusing on both coverage and potential subrogation issues. In connection with that investigation, within ten days of the March 25, 2013, notice of claim, it had engaged Exponent to provide a causation analysis and Young & Associates ("Young") to provide a damage analysis. Apart from the fact that the notice of claim arrived after its insured had already put its claim into suit,¹ Great American presents no evidence to establish that either the Exponent or the Young engagements

¹ It must be noted that Great American does not concede that there is a one-to-one relationship between the claims asserted and remedies sought by Providence Piers against SMM in the pending lawsuit and what might be covered by its insurance policy. For example, the lawsuit seeks to enjoin ongoing injury from the pile, while the insurance policy covers specified damage occurring during a discrete policy period.

were initiated based on the advice of any lawyer or in anticipation of either future coverage litigation with its insured that might follow if it denies the claim or future subrogation litigation with SMM (or unknown others) that might follow if it pays the claim.

Two weeks after the work on the Exponent and Young reports had started, Great American retained a law firm to represent it regarding insurance coverage issues; it has also consulted with its national coverage counsel and a third firm regarding subrogation. In addition, Providence Piers and Great American began corresponding regarding the brewing coverage dispute between them, focused particularly on the delayed notice of claim. Great American's investigation remains ongoing. While it has reserved its rights, Great American still has not made a decision whether this is a covered loss under its policy with Providence Piers.

Meanwhile, the SMM/Providence Piers litigation was deep into the discovery phase. In response to a document request, Providence Piers produced communications with Great American referring to the Exponent report. ECF No. 64 at 2. Armed with this information, on November 22, 2013, SMM served a subpoena issued by the District Court in the Southern District of Ohio on Great American, which is headquartered in Ohio, requiring it to produce in Providence, Rhode Island, eleven categories of documents relating to the Providence Piers insurance policy, including its claim file, related correspondence with Providence Piers and documents related to Great American's investigation of the Providence Piers claim.

Pursuant to Fed. R. Civ. P. 45(d)(2)(B), Great American responded by producing the insurance policy and one insurance document. It objected by letter to production of the balance in reliance on the work product doctrine and attorney-client privilege, as well as because the subpoena requested information pertaining to its insured while the adjustment of the loss was ongoing. A good faith conferral with SMM regarding the subpoena followed, but Great

American refused to produce more. SMM responded with another subpoena, issued by this Court and served on Exponent, seeking records pertaining to testing Exponent had done for Great American in connection with the Providence Piers claim. On February 3, 2014, Great American sent a second letter objection to SMM, objecting for itself and on behalf of Exponent based on the attorney-client privilege and the work product doctrine.

Neither of Great American's objection letters complained of the requirement that Great American comply by delivery of responsive documents to SMM's counsel in Providence, Rhode Island, nor did either include a privilege log. After SMM's brief pointed out the latter defect, Great American served its log, which describes 1,600 pages of documents covered by the subpoena: (1) Great American documents generally pertaining to its insurance relationship with Providence Piers, which are not relevant to the SMM claim; (2) communications and drafts exchanged between Great American and its counsel; (3) the Exponent and Young reports and related documents pertaining to the claim investigation; (4) communications between Great American and Providence Piers, both with its litigation counsel in the SMM suit and directly with its principal. ECF No. 71-1.

At the hearing, the parties clarified their positions. SMM conceded that Great American's relevancy objection to the first category of documents is well founded so that its motion for compliance as to unrelated documents, which are marked with the bates ranges listed on Exhibit A(1), may be denied. As to the balance, Great American pressed its attorney-client/work product objections and proffered the records for *in camera* review, while Exponent made clear that its argument claiming attorney-client privilege and work product protection for the records subpoenaed from it "rises and falls" with that of Great American.² Providence Piers

² Because copies of all of the documents covered by the Exponent subpoena were located in the Great American claim file, they are also included within the set submitted for *in camera* review. Accordingly, this Court's

confirmed that its failure to move for a protective order or file a written objection was deliberate in that it considers both the correspondence between it and Great American and the materials it sent to Great American, which are now located in the Great American file, to be related to the incipient coverage dispute as to which Providence Piers and Great American are adverse and lack any common interest.³ At the conclusion of the hearing, the Court accepted the Great American documents for *in camera* review.

II. ANALYSIS OF DOCUMENTS AND APPLICABLE PRIVILEGES

A. Documents Exchanged Between Great American And Its Counsel

The documents provided by Great American for *in camera* review include many communications between it and the legal advisors it engaged to assist it with the Providence Piers claim, implicating the attorney-client privilege; the file also contains drafts of letters (some ultimately sent, some not) represented to have been prepared with the assistance of counsel, implicating the work product doctrine. In a diversity case like this one, Rhode Island law controls with respect to the attorney-client privilege, Vicor Corp. v. Vigilant Ins. Co., 674 F.3d 1, 17 n.15 (1st Cir. 2012), while federal law governs the application of the work product doctrine. S.D. Warren Co. v. E. Elec. Corp., 201 F.R.D. 280, 282 (D. Me. 2001). Under Rhode Island law, “[i]t is well established that communications by a client to [an] attorney for the purpose of seeking professional advice, as well as the responses by the attorney to such inquiries, are privileged communications not subject to disclosure.” Giammarco v. Giammarco, 959 A.2d 531, 533 (R.I. 2008). Similarly, the thoughts and impressions of Great American’s counsel expressed

determination of the applicability of the asserted privileges to the Great American documents amounts to a determination as to Exponent.

³ Providence Piers carved out one exception to this blanket statement: it represented that it might have provided Great American with a copy of a work product-protected expert report it had procured in connection with the litigation. It argues that delivery of that report to Great American does not waive its work product protection. This Court need not struggle with whether the work product protection for such a report was waived because no copy was found in the Great American file during the *in camera* review.

on legal matters such as drafts prepared in anticipation of potential litigation are clearly protected by the work product doctrine. See Fed. R. Civ. P. 26(b)(3)(A) (party “may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative”); Ivy Hotel San Diego, LLC v. Houston Cas. Co., 10CV2183-L, 2011 WL 4914941, at *6 (S.D. Cal. Oct. 17, 2011). Accordingly, Great American has sustained its burden of showing that this group of documents should not be produced. See Safeguard Lighting Sys., Inc. v. N. Am. Specialty Ins. Co., No. 03-4145, 2004 WL 3037947, at *1-2 (E.D. Pa. Dec. 30, 2004) (insurer’s communications with coverage counsel protected by attorney-client privilege).

Based on the foregoing and my *in camera* review, I find that the documents marked with the bates ranges listed on Exhibit A(2) are protected by the attorney-client privilege, with exceptions noted on Exhibit A(2). I further find that the documents marked with the bates ranges listed on Exhibit A(3) are protected by the work product doctrine.

B. The Exponent and Young Reports and Related Investigation Documents

Great American (joined by Exponent) asserts work product protection for the documents that constitute, or relate directly to, its claim investigation. These include the Exponent report, the Young report, Great American’s summary of the initial investigation and related materials.

Federal law makes clear that the party asserting work product protection bears the burden of showing that it applies. Vicor Corp., 674 F.3d at 17. This burden requires the demonstration by specific and competent evidence that the documents were created in anticipation of litigation. Weber v. Paduano, No. 02-3392, 2003 WL 161340, at *4 (S.D.N.Y. Jan. 22, 2003). When documents are prepared for business reasons, the “prospect of litigation” in connection with their subject matter is insufficient to pull them under the protective shadow of the work product

umbrella. United States v. Textron Inc., 577 F.3d 21, 26, 29-31 (1st Cir. 2009) (work papers required by audit rules prepared because of “prospect of litigation” not covered by work product doctrine). Adjustment of insurance claims always involves the possibility of litigation, yet an insurance company’s ordinary business is the investigation of claims. In the insurance context as a result, the difficult challenge of distinguishing materials prepared in the ordinary course of business, which are not protected by work product, from documents prepared in anticipation of litigation, which are protected, has spawned a range of approaches in the federal courts. Milder v. Farm Family Cas. Ins. Co., CA 08-310S, 2008 WL 4671003, at *1 (D.R.I. Oct. 21, 2008); see generally S.D. Warren Co., 201 F.R.D. at 282-85 (outlining approaches).

In this District, determining whether an insurer’s investigation file is protected work product is a fact-specific inquiry. Milder, 2008 WL 4671003, at *1 (adopting majority test laid out in S.D. Warren Co., 201 F.R.D. at 282-85). Since “the very business of the producing party is to evaluate claims that may ultimately ripen into litigation,” investigations into the causes and effects of an accident, undertaken soon after the event itself, are generally considered part of an insurance company’s ordinary course of business. Weber, 2003 WL 161340, at *4, 7. It is well settled that evidence that the insurer has involved its counsel in its claim investigation does not transform the investigation to one undertaken in anticipation of litigation. Am. Home Assur. Co. v. United States, No. 09-CV-258, 2009 WL 3245445, at *3 (D.N.J. Oct. 7, 2009). Moreover, while courts generally find insurer-authored documents more likely than attorney-authored documents to have been prepared in the ordinary course of business rather than for litigation, that too is not dispositive. See QBE Ins. Corp. v. Interstate Fire & Safety Equip. Co., Inc., 3:07CV1883, 2011 WL 692982, at *3 (D. Conn. Feb. 18, 2011). Rather, the pivotal inquiry rests on the principle that a party withholding insurance documents may not rely on conclusory

allegations of privilege, but must establish, by objective evidence, that the author of the document anticipated litigation when it was created, and would not have created the document in essentially the same way had the prospect of litigation not existed. Weber, 2003 WL 161340, at *4.

Applying these principles, I find that Great American has not met its burden of showing that its claim investigation, including the Exponent and Young reports, is protected by the work product doctrine. Rather, the evidence establishes that the reports were ordered by the non-attorney adjusters immediately upon learning of the claim and before the engagement of counsel. Great American does not present any proof that this work would not have been done but for the anticipation of litigation. Rather, it represented only that the speed of its procurement of the reports was the result of its insured's decision to initiate litigation against SMM months before giving notice of the claim. Otherwise, it relied only on the potential for either coverage or subrogation litigation that is in the background of every insurance claim at the outset. In short, Great American has presented no evidence to demonstrate that these documents were not produced in the ordinary course of its investigation of Providence Piers' claim. See First Pac. Networks, Inc. v. Atl. Mut. Ins. Co., 163 F.R.D. 574, 582 (N.D. Cal. 1995) ("When it is clear that documents would have been prepared independent of any anticipation of use in litigation [i.e., because some other purpose or obligation was sufficient to cause them to be prepared], no work product protection can attach."). To cinch matters, the *in camera* review of Great American's investigation documents and the reports from Exponent and Young confirm that they have the look and feel of standard insurer fare and contain no hint that they were prepared in anticipation of litigation as opposed to a claim investigation. See Textron Inc., 577 F.3d at 30; Am. Home Assur. Co., 2009 WL 3245445, at *2. Because Great American has not made a

particularized showing to buttress its claim of work product, the documents are discoverable and must be produced. See QBE Ins. Corp., 2011 WL 692982, at *3; Galvin v. Pepe, 09-CV-104-PB, 2010 WL 2720608, at *4 (D.N.H. July 8, 2010); Milder, 2008 WL 4671003, at *2.

Based on the foregoing and my *in camera* review, I find that the documents marked by the bates ranges listed on Exhibit A(4) are not protected by the work product doctrine and must be produced.

C. Communications Between Great American And Providence Piers

The final cache of documents is the communications between Great American and Providence Piers. Providence Piers' litigation counsel in the SMM suit and Providence Piers' principal communicated with Great American on Providence Piers' behalf.

Under Rhode Island law, while the common interest of insurer and insured permits their communications to be shielded by the attorney-client privilege in specified circumstances, the protection does not apply to communications as to matters on which the parties are adverse. See Horowitz v. Le Lacheure, 101 A.2d 483, 487 (R.I. 1953); cf. Fid. Nat. Fin., Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, No. 09CV140, 2012 WL 4443993, at *4 (S.D. Cal. Sept. 25, 2012) (attorney-client privilege not automatically waived by insured's independent counsel when an otherwise privileged document disclosed to insurer who shared common defense interest). Similarly, work product protection is waived if a party discloses it to an adversary, but not when a party shares the materials with another who has a common business interest. Bank Brussels Lambert v. Chase Manhattan Bank, N.A., No. 93-5298, 1996 WL 944011, at *3 (S.D.N.Y. Dec. 19, 1996); In re Crazy Eddie Sec. Litig., 131 F.R.D. 374, 379 (E.D.N.Y. 1990).

At the hearing on these motions, Providence Piers' counsel – who was retained directly by Providence Piers and not by Great American – minced no words. He represented that all of

Providence Piers' communications with Great American have been about the dispute over coverage as to which Great American and Providence Piers are adverse and not aligned. Great American has made no showing to the contrary. See Bank Brussels Lambert, 1996 WL 944011, at *3 (no work product protection when materials disclosed to adversary); Horowitz, 101 A.2d at 487 (no attorney-client privilege when attorney testified about controversy between two clients arising out of common or joint undertaking in which attorney acted for both); cf. First Pac. Networks, Inc., 163 F.R.D. at 579 (attorney-client privilege does not attach when insurer has reserved its rights).

Based on the foregoing and my *in camera* review, I find that the documents marked by the bates ranges listed on Exhibit A(5) are not protected by attorney-client privilege or work product doctrine and must be produced.

III. ANALYSIS OF OTHER ARGUMENTS RAISED BY THE PARTIES

SMM and Great American lobbed collateral arguments at each other both in the papers and at oral argument, none of which are meritorious. I address each in turn.

SMM acknowledges that Great American's two letter objections to the subpoenas invoked attorney-client privilege and work product, but says Great American and Exponent did not provide the privilege log within fourteen days of service as required by Fed. R. Civ. P. 45 (and did not produce a log at all until SMM filed its Motions for Compliance). Therefore, SMM contends that Great American and Exponent have waived their right to assert objections based on privilege and work product. This argument is a non-starter: while it is better practice to include the log with the objection, Fed. R. Civ. P. 45 does not require it as long as the log arrives within a reasonable time. See In re Dep't of Justice Subpoenas to ABC, 263 F.R.D. 66, 70 (D. Mass. 2009) (because fourteen days to object very short; privilege log may follow "within a reasonable

time”) (quoting Tuite v. Henry, 98 F.3d 1411, 1416 (D.C. Cir. 1996)); Horace Mann Ins. Co. v. Nationwide Mut. Ins. Co., 240 F.R.D. 44, 47-48 (D. Conn. 2007) (same). I find that Great American met this standard by producing a log fully compliant with Fed. R. Civ. P. 45(e)(2)(A)(ii) twenty-six days after its second letter objection and twenty-two days after SMM brought its lapse to its attention. Second, SMM maintains that Great American does not have standing to invoke privilege and work product on behalf of Exponent. This argument is equally unavailing. See Estate of Ungar v. Palestinian Auth., 332 F. App’x 643, 645 (2d Cir. 2009) (non-party has standing to claim privilege to challenge subpoena served on other non-party); Barkan v. Dunkin’ Donuts, Inc., No. 05-050L, 2008 WL 1924007, at *1 (D.R.I. Apr. 28, 2008) (standing to object to subpoena when entity sufficiently identifies its interests in the matter). Great American has a legitimate claim of interest sufficient to confer standing to assert objections on behalf of the expert it engaged with respect to the report it commissioned. In re Grand Jury Matter, 770 F.2d 36, 38 (3d Cir. 1985) (“entity claiming a property right or privilege in the subpoenaed documents has standing to contest the denial of a motion to quash the subpoena”).

Third, in an argument that rings of tit-for-tat based on SMM’s insistence on pressing its out-of-time log argument, during the hearing, Great American asserted for the first time that this Court lacks jurisdiction to enforce SMM’s subpoena because the subpoena issued from the Southern District of Ohio (where Great American is located). This argument is derived from the changes to Fed. R. Civ. P. 45 wrought by the amendment effective on December 1, 2013, after SMM issued the subpoena but before it moved for compliance. Great American maintains that the version of the Rule in effect at the time of service of the subpoena applies, which means that the Southern District of Ohio is the only court that can compel production of documents

responsive to the subpoena. Compare Fed. R. Civ. P. 45(c)(2)(B)(i) (version in effect prior to Dec. 1, 2013) (“serving party may move the *issuing court* for an order compelling production or inspection”) (emphasis added), with Fed. R. Civ. P. 45(d)(2)(i) (current version) (“serving party may move the court for the *district where compliance is required* for an order compelling production or inspection”).

Great American is wrong that the Court must apply the old version of Fed R. Civ. P. 45. Amendments to the Civil Rules apply to pending actions unless their application “would be infeasible or work an injustice.” Fed. R. Civ. P. 86(a)(2)(B). Courts typically apply the version of a Rule in effect at the time a motion is filed. Siggers v. Campbell, 652 F.3d 681, 691 n.6 (6th Cir. 2011); In re Application of Republic of Ecuador, 4:11MC73, 2011 WL 10618726, at *2 (N.D. Fla. Dec. 8, 2011); Smith v. Green Tree Servicing, LLC, 2:09-CV-710, 2010 WL 1050350, at *3 n.5 (S.D. W. Va. Mar. 18, 2010). Under the current version of Fed. R. Civ. P. 45, in effect when SMM filed its motions, the District of Rhode Island is the proper venue to compel production because SMM’s subpoena specifies Rhode Island as the place of compliance.⁴ Fed. R. Civ. P. 45(d)(2)(i). Accordingly, I find that this Court has jurisdiction over the subpoena. I further find that this result works no injustice. Great American’s objection to the subpoena did not complain of the requirement that the documents be produced in Rhode Island, a jurisdiction where it does business as an insurer. Hanwha Azdel, Inc. v. C & D Zodiac, Inc., 6:12-CV-00023, 2013 WL 3660562, at *2 (W.D. Va. July 11, 2013) (“Rule 45 requires the recipient of a subpoena to raise all objections at once, rather than in staggered batches, so that discovery does not become a game.”) (quoting Ott v. City of Milwaukee, 682 F.3d 552, 557 (7th Cir. 2012)).

⁴ The requirement of compliance in Rhode Island is unremarkable – under the old version of Fed. R. Civ. P. 45, courts permitted document subpoenas that required compliance more than 100 miles from where the documents were kept. Martinelli v. Petland, Inc., 10-407, 2010 WL 3947526, at *7 (D. Kan. Oct. 7, 2010); Walker v. Ctr. for Food Safety, 667 F. Supp. 2d 133, 138 (D.D.C. 2009); In re Auto. Refinishing Paint, 229 F.R.D. 482, 494 (E.D. Pa. 2005).

Moreover, it voluntarily appeared at the hearing with a full set of documents for *in camera* review, thereby waiving any objection it might have had. Cf. Battle v. Chicago Cycle, Inc., 1:11MC61, 2012 WL 5500507, at *4 n.4 (N.D. Ohio Nov. 13, 2012) (producing responsive documents can waive jurisdictional objection unless it is specifically preserved).

IV. CONCLUSION

For all of the foregoing reasons, and based on my *in camera* review of the documents submitted by Great American, the Motions of Defendant SMM New England, Inc. for compliance with subpoenas by Great American Insurance Company of New York and Exponent, Inc. (ECF Nos. 63, 65) are GRANTED IN PART and DENIED IN PART. Great American shall produce the documents ordered to be produced, as indicated on Exhibit A, within one week following the entry of this Order.

So ordered.

ENTER:

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
March 25, 2014

Exhibit A

1. Documents that are not relevant to any claim or defense, which are not to be produced:

- 00065-00067.
- 00073-01149.
- 01153.

In addition, a copy of Judge Smith's Order is in the claim file at bates ranges 01588-01598; it need not be produced. Similarly, copies of the First and Second Amended Complaints, marked as bates ranges 01222-01238, 01161-01208, need not be produced.

2. Documents protected by the attorney-client privilege, which are not to be produced, with exceptions as noted, which are to be produced:

- 00005: Email from Beck to Aylward and Houser.
- 00007-00009: Email from Houser to Rolashevich and Aylward.
- 00052-00064: Letter from Aylward to Butera.
- 01209-01211: Correspondence from Butera to Aylward.
- 01212-01220: Correspondence from Butera to Aylward.
- 01221: Email from Aylward dated Feb. 12, 2014, and Butera dated Apr. 22, 2013.
 - The remainder of 01221 is not privileged and must be produced.
- 01239: Email from Rolashevich to Aylward and Houser.
- 01243: Emails from Aylward to Prokop dated Feb. 12, 2014, and from Rolashevich to Aylward and Houser dated Jan. 14, 2014.
 - The remainder of 01243, specifically the email from Rolashevich to Nadeau, is not privileged and must be produced. 01244-01249 are not privileged and must be produced.
- 01255: Email from Aylward to Prokop dated Feb. 12, 2014, and email from Rolashevich to Aylward and Houser dated Nov. 29, 2013.
 - The remainder of 01255, specifically the email from Reynolds to Rolashevich, is not privileged and must be produced. 01256-01259 are not privileged and must be produced.
- 01260: Email from Aylward to Prokop dated Feb. 12, 2014, and email from Rolashevich to Aylward dated Nov. 22, 2013.
 - The remainder of 01260, specifically the email from Nadeau to Rolashevich, is not privileged and must be produced. 01261-01263 are not privileged and must be produced.
- 01264-01265: Email from Rolashevich to Aylward and Houser.
- 01269: Email from Rolashevich to Aylward and Houser.

- 01474: Email from Aylward to Prokop dated Feb. 12, 2014, and email from Rolashevich to Aylward dated July 23, 2013.
 - The remainder of 01474, specifically the email from Nagel to Nadeau, is not privileged and must be produced. 01475-01484 are not privileged and must be produced.
- 01485: Email from Aylward to Prokop dated Feb. 12, 2014, and email from Butera to Aylward and Houser dated June 17, 2013.
 - The remainder of 01485, specifically the email from Sykora to Butera, is not privileged and must be produced. 01486 is not privileged and must be produced.
- 01487: Email from Aylward to Prokop dated Feb. 12, 2014, and email from Butera to Aylward and Houser dated June 10, 2013.
 - The remainder of 01487, specifically the emails between Berdan to Butera, are not privileged and must be produced. 01488 and 01489 is not privileged and must be produced.
- 01502: Email from Aylward to Prokop dated Feb. 12, 2014, and email from Butera to Aylward and Houser dated June 10, 2013.
 - The remainder of 01502, specifically the emails from Conley to Butera and Nadeau to Conley, are not privileged and must be produced. 01503-01513 are not privileged and must be produced.
- 01514: Email from Butera to Aylward.
- 01517: Email from Butera to Aylward.
- 01553: Email from Aylward to Prokop dated Feb. 12, 2014, and email from Butera to Aylward and Houser dated Apr. 13, 2013.
 - The remainder of 01553, specifically the email from Berdan to Butera, is not privileged and must be produced.
- 01568: Emails between Aylward, Houser and Rolashevich.
- 01569: Email from Rolashevich to Aylward and Houser dated Nov. 29, 2013.
 - The remainder of 01569 and 01570, specifically the email from Reynolds to Rolashevich, is not privileged and must be produced.
- 01571: Email from Rolashevich to Aylward and Houser dated Nov. 29, 2013.
 - The remainder of 01571, specifically the email from Reynolds to Rolashevich, is not privileged and must be produced.
- 01572-01574: Correspondence between Aylward and Rolashevich.
- 01586-01587: Email from Rolashevich to Aylward and Houser.
- 01599: Emails from Rolashevich and Beck to Houser and Aylward.

3. Documents protected by the work product doctrine, which are not to be produced:

- 00018-00019: Oct. 2013 draft letter from Great American to Providence Piers.

- 00020-00030: Sept. 2013 draft letter from Great American to Providence Piers.
 - 00031-00043: Sept. 2013 draft letter from Great American to Providence Piers.
 - 00068-00069: Internal Morrison Mahoney document regarding claim.
4. Documents not protected by the work product doctrine, which are to be produced:
- 00070-00072: Great American claim reports.
 - 01154: Letter from A.N. Nunes Agency to Great American.
 - 01155-01157: Great American claims analysis.
 - 01158: Property Loss Notice for cause of damage.
 - 01159-01160: Great American Large Loss Inspection Report.
 - 01270-01473: Exponent Building Damage Assessment.
 - 01490-01501: Young & Associates Damage Assessment.
 - 01554-01567: Young & Associates Preliminary Inspection Report.
5. Documents not protected by either the work product doctrine or attorney-client privilege, which are to be produced:
- 00006: Letter from Kelly to Rolashevich.
 - 00012-00014: Correspondence between Conley and Rolashevich.
 - 00015-00017: Letter from Conley to Rolashevich.
 - 00044-00051: Letter from Kelly to Rolashevich.
 - 01150-01152: Email between Conley and Butera.
 - 01240-01242: Correspondence between Conley and Great American.
 - 01250-01254: Letter from Rolashevich to Kelly.
 - 01266-01268: Letter from Conley to Rolashevich.
 - 01515-01516: Letter from Conley to Butera.
 - 01518-01552: Correspondence from Providence Piers to Butera.
 - 01575-01585: Subpoena and letter from Great American to Conley.
 - 01600-01612: Letter from Kelly to Rolashevich and Providence Piers' rent documents.