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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Bryan Barten, a married man,	)	No. CIV 12-399-TUC-CKJ (LAB)
	)	
Plaintiff,	)	<b>ORDER</b>
	)	
vs.	)	
	)	
State Farm Mutual Automobile Insurance	)	
Company, a foreign corporation doing	)	
business in Arizona,	)	
	)	
Defendant.	)	
_____	)	

Pending before the court is the defendant’s motion for a protective order pursuant to Fed.R.Civ.P. 26(c), filed on April 3, 2013. (Doc. 165)

The plaintiff in this action, Bryan Barten, was covered by a personal injury protection (PIP) policy issued by the defendant, State Farm, when he was involved in an automobile accident and rendered a quadriplegic. Barten claims State Farm breached this policy by failing to pay benefits due and failing to inform him of the extent of his benefits.

On March 11, 2013, Barten served State Farm with a notice of deposition for Tim Crouthamel. (Doc. 165, p. 2) Crouthamel is an associate general counsel for State Farm and heads the litigation support section. *Id.* State Farm moves pursuant to Fed.R.Civ.P. 26(c) for a protective order precluding the deposition, which State Farm argues will not result in discoverable information.

1 The case has been referred to Magistrate Judge Bowman for all pretrial matters  
2 pursuant to the local Rules of Practice. LRCiv 72.2. The court finds this motion suitable for  
3 decision without oral argument.

4  
5 Discussion

6 Pursuant to Rule 26(c)(1)(A), “[t]he court may, for good cause, issue an order to  
7 protect a party or person from annoyance, embarrassment, oppression, or undue burden or  
8 expense . . . forbidding the disclosure or discovery. . . .”

9 “For good cause to exist, the party seeking protection bears the burden of showing  
10 specific prejudice or harm will result if no protective order is granted.” *Phillips ex rel.*  
11 *Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1210-1211 (9<sup>th</sup> Cir. 2002). “If a  
12 court finds particularized harm will result from disclosure of information to the public, then  
13 it balances the public and private interests to decide whether a protective order is necessary.”  
14 *Id.* at 1211. The court has broad discretion “to decide when a protective order is appropriate  
15 and what degree of protection is required.” *Id.*

16 When Barten noticed the Crouthamel deposition, State Farm refused to participate  
17 without some clarification as to the subject of the deposition. State Farm asked Barten  
18 “[w]hat non-privileged matters do you think Mr. Crouthamel is knowledgeable of that are  
19 relevant to Mr. Barten’s claims?” (Doc. 165-3, p. 2) Barten refused to reveal his litigation  
20 strategy, but he offered this cryptic statement, “we suggest that perhaps you should review  
21 Mr. Crouthamel’s title(s) and his public pronouncements.”<sup>1</sup> (Doc. 165-4, p. 2) State Farm  
22 subsequently filed the pending motion for a protective order.

23 In its motion, State Farm argues that because Crouthamel was not involved with  
24 processing Barten’s claim, he has no non-privileged information relevant to the action. (Doc.

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26 <sup>1</sup> The court finds this response somewhat lacking in candor, but judging from State  
27 Farm’s reply brief, the court cannot conclude that a more forthright approach would have  
28 averted the pending motion.

1 165) In his response, Barten explains that he intends to ask Crouthamel about State Farm’s  
2 “centralized document repository.” (Doc. 196, p. 4)

3 Crouthamel is quoted at some length in an article discussing State Farm’s electronic  
4 document archival and retrieval system, which appeared in TechTarget, a technology news  
5 internet site. (Doc. 127-3); (Doc. 196, p. 3) Apparently, Barten intends to ask him how  
6 documents were retrieved in response to his discovery requests.

7 In its reply, State Farm argues that Barten’s proposed deposition is “little more than  
8 a fishing expedition designed to annoy, embarrass, oppress and unduly burden a State Farm  
9 attorney who has no direct involvement in the defense of the present litigation or with the  
10 handling of the underlying claim.” Essentially, State Farm argues Barten’s deposition is  
11 beyond the scope of discovery. The court does not agree.

12 “Parties may obtain discovery regarding any nonprivileged matter that is relevant to  
13 any party’s claim or defense – including the existence, description, nature, custody, condition  
14 and location of any documents or other tangible things . . . .” Fed.R.Civ.P. 26(b)(1).  
15 “Relevant information need not be admissible at the trial if the discovery appears reasonably  
16 calculated to lead to the discovery of admissible evidence.” Fed.R.Civ.P. 26(b)(1).

17 Apparently, Barten intends to ask Crouthamel about how State Farm stores its  
18 documents and how that repository was searched to comply with his discovery requests. He  
19 believes State Farm has been less than forthcoming in responding to his past requests. He  
20 has also come across some peculiar inconsistencies in the responses that State Farm has  
21 provided to date. *See* (Doc. 270, p. 4)


22 The court concludes that Barten’s proposed line of inquiry is allowed under the rules.  
23 He has a right to determine how State Farm processed his past requests and “if there are any  
24 other documents responsive to [his] discovery requests that the defendants have not yet  
25 produced.” *Fair v. Royal & Sun Alliance*, 278 F.R.D. 465, 475 (D.S.D. 2012) Moreover,  
26 if Barten can establish that State Farm has not acted diligently, it would be some evidence  
27 on the issue of the defendant’s credibility. *See Id.*

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State Farm has not shown good cause for a protective order to issue. Accordingly,

IT IS ORDERED that the defendant's motion for a protective order pursuant to Fed.R.Civ.P. 26(c), filed on April 3, 2013, is DENIED. (Doc. 165)

DATED this 16<sup>th</sup> day of August, 2013.

  
\_\_\_\_\_  
Leslie A. Bowman  
United States Magistrate Judge