

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

NATIONAL UNION FIRE INSURANCE)
COMPANY OF PITTSBURGH, PA.,)
)
Plaintiff,)
)
v.)
)
SMALL SMILES HOLDING CO., LLC,)
)
Defendant/Third-Party Plaintiff,)
)
v.)
)
AFFINITY INSURANCE SERVICES, INC.,)
)
Third-Party Defendant.)

**CASE NO. 3:10-cv-00743
Judge Sharp
Magistrate Judge Griffin**

**DEFENDANT SMALL SMILES HOLDING CO., LLC'S
MEMORANDUM IN SUPPORT OF ITS MOTION TO COMPEL
DISCOVERY RESPONSES FROM NATIONAL UNION**

Introduction

Plaintiff National Union has now filed six (6) motions to compel in this matter, complaining about Small Smiles' production of documents and responses to discovery requests. All the while, National Union has operated under two sets of rules: the rules concerning disclosure of information by which it expects Small Smiles to live, and the rules concerning disclosure of information by which it is willing to live. The purpose of this motion to compel is to require National Union to live by the same rules it has sought to impose on Small Smiles.

In this case National Union has produced very few documents to Small Smiles and has stonewalled all other discovery requests.¹ This motion seeks to require National Union to provide meaningful responses to straightforward, narrow discovery requests and to produce all non-privileged documents that are relevant to the central issues in this case.

This motion concerns four different sets of discovery requests by Small Smiles:

1. Small Smiles' First Requests for Production to National Union;
2. Small Smiles' Rule 30(b)(6) Notice to National Union;
3. Small Smiles' Fourth Requests for Production to National Union; and
4. Small Smiles' Second Interrogatories to National Union.

National Union's responses to each of these discovery requests are attached hereto. (*See Exhs. 1 through 4*, respectively). Recently, on July 19, 2011, Small Smiles' counsel wrote to National Union's counsel addressing National Union's responses to each of these discovery requests. Many of National Union's responses had been the subject of earlier correspondence between the parties. The July 19th letter outlines Small Smiles' concerns and attaches all of the prior correspondence between the parties concerning these discovery requests. (July 19th letter with attachments attached hereto as *Exh. 5*). The parties subsequently held a meet-and-confer on August 2 and were able to resolve some, but not all, of the issues raised in the July 19th letter. Small Smiles will address each of the above-referenced discovery requests in the order listed.

I. Deficiencies in National Union's Responses to the First Requests for Production of Documents.

On October 20, 2010, Small Smiles served its First Requests for Production on National Union, to which National Union responded on January 5, 2011. (*Exh. 1*). On April 15, 2011,

¹ In a meet-and-confer held August 2, counsel for National Union stated that National Union had produced additional documents on August 1. While those documents have not yet been received by Small Smiles, they should be forthcoming.

counsel for Small Smiles wrote National Union concerning National Union's deficiencies in its Responses to Small Smiles' First Requests for Production. (Exh. 5, attachment D). Counsel for National Union responded on May 4 (*Id.*, attachment E), essentially refusing to revise any of its responses or produce additional responsive documents.² Small Smiles now moves to compel production of all documents responsive to RFP #s 6, 7, 9, 20 – 22, and 28.

RFP #6

Request for production #6 provides as follows:

6. Produce all underwriting manuals, underwriting bulletins, policy guidelines or directives, and any other documents dated or in effect any time after January 1, 1999 that relate in any way to your procedures, practices, or policies in underwriting or issuing policies of insurance covering professional liability.

In response, National Union agreed only to produce any underwriting guidelines **specifically related** to the Small Smiles policies. (Exh. 1; Exh. 5, attachment E). The request, however, seeks a broader set of relevant documents. National Union's internal underwriting manuals, bulletins, guidelines, or directives that relate to its own internal policies and procedures concerning underwriting and/or issuing professional liability insurance policies (similar to those issued to Small Smiles) are highly relevant. Small Smiles is entitled to know, for example, what National Union's internal policies are concerning the level of underwriting that must be done before a professional liability policy is issued. In this instance, there is no dispute but that National Union simply did not seek any information concerning Small Smiles prior to issuing the policies. It now apparently takes the position that doing nothing was entirely reasonable. Whether complete disregard for risk-related information concerning a potential insured is a

² National Union has since changed its position concerning RFP #26 and has agreed to produce the regulatory filings for the Dentist's Advantage program.

violation of its own internal policies is highly relevant. The documents should be produced as requested.

National Union's only apparent reason for not producing the documents is that it believes the request is overbroad and that its underwriting arrangements with "other insureds" are confidential and proprietary. (Exh. 1; Exh. 5, attachment E). As the Court knows, compared to the requests served by National Union on Small Smiles, this request is incredibly narrow, and whether it calls for information that is confidential and proprietary is irrelevant. The parties have a protective order in place. Moreover, whether a responsive document relates to or mentions a different insured is also irrelevant. If National Union needs to protect the identity of other insureds, it can do so. Small Smiles is entitled to know what National Union's internal documents say about its underwriting practices and responsibilities concerning professional liability policies and whether those internal manuals, bulletins, guidelines, or directives were followed in this case. The Court should order the documents to be produced as requested.

Request #7

Request for production #7 provides as follows:

7. Produce an organizational chart for National Union, Chartis Claims, Inc., and Risk Specialists Companies Insurance Agency, Inc.

National Union has refused to produce an organizational chart concerning National Union and the other Chartis/AIG-related entities. There is no basis for its failure to do so. Based on the documents produced to date by National Union, Small Smiles has not found **one individual** who is actually an employee of "National Union." All of the relevant players on behalf of National Union appear to be employees of other Chartis/AIG-related entities. Small Smiles is entitled to understand for whom these people work and what relation each entity has to the other. The requested organizational chart would help clarify this issue. Recently, in the

August 2nd meet-and-confer, counsel for National Union indicated that National Union would consider producing an organizational chart for the healthcare division if one exists. The parties will continue to seek to resolve this issue.

Request #9

Request for production #9 provides as follows:

9. Produce all communications between you and Dentist's Advantage referring or relating to your relationship with Dentist's Advantage, Dentist's Advantage's authority to act on your behalf, and/or the marketing, underwriting, issuance, renewal, and/or administration of professional liability insurance on behalf of National Union.

In response, National Union has stated that it will limit its production to communications that relate only to the insurance policies **issued to Small Smiles**.

This is ridiculously restrictive. The most critical issue in this case is the tripartite relationship among Affinity/Dentist's Advantage, Intercare, and National Union. Small Smiles is entitled to see **all** communications between National Union and Dentist's Advantage that in any way, shape, or form relate to National Union's relationship with Affinity/Dentist's Advantage and/or Affinity/Dentist's Advantage's authority to act on National Union's behalf, as well as how the Dentist's Advantage program was underwritten, marketed, or administered. These documents could not be more relevant, and they should be produced.

Request #s 20 – 22

Request #s 20 – 22 seek documents concerning National Union's setting of reserves and placement of reinsurance concerning the policies issued to Small Smiles and Small Smiles' claims thereunder. National Union has refused to produce any such documents, saying that such requests are irrelevant and are confidential and proprietary. To the contrary, the requests are highly relevant and, as mentioned above, objections based on confidentiality carry no weight.

The parties have a protective order in place. How National Union has set its reserves concerning the claims made under the policies it issued to Small Smiles and the circumstances surrounding its application and negotiation for reinsurance for these risks relates directly to how National Union evaluates the risks under these policies. In this rescission case, National Union has taken the position that it knew nothing whatsoever about any of the underlying government investigations and related issues. Documents that discuss how and why reserves should be set and/or the need for and negotiation surrounding reinsurance may well shed light on National Union's internal discussions about what it actually knew or suspected concerning these very issues. The documents sought are relevant and should be produced.

II. Deficiencies in National Union's Initial Document Production in Response to First Requests for Production

Following a review of the limited document production National Union made to Small Smiles in response to the First Requests, counsel for Small Smiles contacted National Union's counsel on February 10, 2011, and raised several "general concerns" about the production, as well as several "specific follow-ups." (See Feb. 10, 2011 letter, Exh. 5, attachment A). Counsel for National Union responded on March 11, 2011 (*Id.*, attachment B), and counsel for Small Smiles responded to that letter on April 5, 2011 (*Id.*, attachment C).

The sum and substance of these letters was the following: it was apparent to Small Smiles from a review of the documents that National Union had produced that many of the documents actually referenced other relevant documents or contained attachments that had not been produced. Accordingly, the February 10, 2011, letter to National Union pointed out these specific concerns, directed National Union to each document by specific Bates number, and simply asked National Union to clarify the issues. National Union's response letter of March 11 clarified very little. In the July 19, 2011 letter (Exh. 5), and in the August 2nd meet-and-confer,

Small Smiles' counsel once again asked National Union to clarify the handful of specific issues raised in the February 10, 2011, letter. National Union refused to do so.

Accordingly, Small Smiles seeks the following: with respect to each of the "specific follow-ups" raised in the February 10, 2011, letter (Exh. 5, attachment A), National Union should be required to confirm either (a) that the specific requested documents have now been produced (and, if so, provide a Bates number), or (b) that they have not been produced, in which case National Union should be ordered to produce them. Small Smiles cannot determine whether the handful of additional documents that appear to be highly relevant and that were called to National Union's attention last February have ever been produced. It simply asks for National Union's clarification of this issue.

III. Deficiencies in National Union's Responses to Small Smiles Rule 30(b)(6) Deposition Notice

On November 12, 2010, Small Smiles served a Rule 30(b)(6) deposition notice on National Union, to which National Union responded on December 13, 2010. (*See* Exhibit 2). In its responses to the Rule 30(b)(6) notice, National Union flatly refused to make available a Rule 30(b)(6) witness for five different requested topics: topics 5, 9, 10, 17, and 18. (*Id.*) Each of these topics is highly relevant to the case, and National Union should be ordered to make a witness available for deposition testimony on each topic.

Topic #5

Topic #5 asks for a witness concerning "National Union's procedures, practices, or policies in underwriting or issuing policies of insurance covering professional liability from 2005 to the present." National Union has refused to produce such a witness, instead stating that it will produce a witness concerning only the Dentist's Advantage program. This entire dispute stems from National Union's allegations that Small Smiles failed to notify National Union regarding

government investigations and related issues prior to the time National Union issued malpractice insurance policies to Small Smiles. National Union's policies, practices, and procedures in underwriting and issuing policies of insurance, like those issued to Small Smiles, before and during the time period that National Union issued the very insurance policies at issue in this case are not only relevant, but central to this dispute. National Union should be compelled to produce a witness who can address this entire topic and not merely the Dentist's Advantage program.

Topic #9

Topic #9 seeks a witness concerning "National Union's knowledge regarding the marketing, underwriting, issuance, renewal, and/or administration of professional liability insurance by Dentist's Advantage, Affinity Insurance Services, Inc., Pro-Plus Brokers, and/or Aon Corporation on behalf of National Union." National Union has refused to produce a witness. Topic #9 is central to the allegations in the complaint and to Small Smiles' defenses in this case. Small Smiles is entitled to discover what National Union knows about the efforts Affinity/Dentist's Advantage undertakes on its behalf concerning the marketing, underwriting, issuance, renewal, and/or administration of professional liability insurance. That goes to the heart of what National Union knew and when it knew it, as well as Affinity/Dentist's Advantage's relationship with National Union. The Court should order National Union to produce a witness on this topic.

Topic #10

Topic #10 seeks a witness concerning "[t]he relationship between Intercare Insurance Services and National Union." National Union has refused to produce a witness on this topic. Amazingly, National Union has taken the position that its overall relationship with Intercare is

not a relevant topic. The relevance of this topic is so obvious on its face that it needs no further discussion. National Union should be ordered to produce a witness.

Topics #17, 18

These topics request National Union to produce a witness concerning “National Union’s setting or modifying of reserves with respect to SSHC’s claims for insurance coverage under the Policies” and “[t]he consideration, discussion, negotiation, or placement of any reinsurance coverage for the Policies.” National Union has refused to do so. For the reasons stated above concerning RFP #s 20 – 22, Small Smiles is entitled to discover information related to the setting of reserves and negotiation and placement of reinsurance as that information is directly relevant to how National Union evaluated the risks it now seeks to rescind. National Union should be ordered to produce a witness responsive to these topics.

IV. Deficiencies in National Union’s Responses to Fourth Requests for Production

Small Smiles served its Fourth Requests for Production on National Union on May 31, 2011. As set forth in Small Smiles’ counsel’s letter of July 19, 2011 (Exhibit 5), it did so because, following a meet-and-confer with National Union’s counsel concerning the custodian and search term issues, it became apparent to Small Smiles that National Union had made no effort to produce critical documents concerning the relationship between National Union, Affinity, and Intercare, nor the initiation and implementation of the Dentist’s Advantage program. To avoid any further confusion on that issue, even though many of Small Smiles’ original document requests requested such documents, Small Smiles served seven (7) additional very specific document requests on National Union. These Fourth Requests seek highly relevant documents in this lawsuit, namely (1) documents concerning Affinity’s and Intercare’s authority to act on behalf of National Union, (2) the initiation and implementation of the Dentist’s

Advantage program by and on behalf of National Union, (3) National Union's efforts, if any, to conduct any underwriting concerning Small Smiles or any other Dentist's Advantage insured prior to issuing policies, and (4) communications between two key National Union representatives and three key Affinity/Dentist's Advantage representatives during the nine-month period immediately prior to the issuance of the first National Union policy to Small Smiles.

In response, National Union lodged 19 general objections and otherwise made it clear that it was not going to produce all of the documents **as requested**. These 7 document requests seek not only critical information, but Small Smiles has limited them to cover only a narrow period of time. Accordingly, the documents are easy to locate and should have been produced promptly. Small Smiles wrote to National Union's counsel on July 19, 2011 (Exh. 5), outlining the problems with National Union's responses and making it clear that Small Smiles expected National Union's commitment to produce all non-privileged documents responsive to the requests **as written**. National Union has not done so, and thus the Court should order these documents to be produced.

In the recent August 2nd meet-and-confer, the parties discussed these requests and agreed to continue to talk about ways to resolve these issues. Small Smiles must insist, however, that **all** responsive documents, other than privileged documents, be produced.

A. General Objections #2, 6, 8, 13, and 15 Should Be Stricken

General Objection #2. General Objection #2 objects to the extent information sought would be confidential or proprietary. As stated above, the parties have a protective order in this case, and failure to produce documents because they are confidential or proprietary is

inappropriate. This objection either should be stricken, or National Union should be required to confirm in writing that no documents are being withheld on these grounds.

General Objection #6. General Objection #6 objects to the extent the request for production purports to require National Union to gather information outside its “possession, custody, or control.” As Small Smiles stated in its July 19, 2011, letter (Exhibit 5), it would not normally have a problem with such a boilerplate objection if it were not for the fact that National Union has also objected to Small Smiles’ definition of “National Union” in General Objection #13 to the extent the definition includes other Chartis/AIG-related affiliates who had any dealings with Small Smiles. The problem, however, as mentioned above, is that there appear to be no National Union employees involved in this matter. All of the participants on behalf of National Union who appear in the documents produced to date are employed by other Chartis- or AIG-affiliated entities. Similarly, each of the individuals identified in National Union’s initial Rule 26 disclosures are employees of an affiliated Chartis or AIG entity.

For this reason, Small Smiles included in its definition of “National Union” any other Chartis- or AIG-affiliated entity that had anything to do with the National Union policies issued to Small Smiles. As the Court can see, when General Objection #6 is read together with General Objection #13, these two objections create a major concern that National Union is playing a shell game with key documents. On the one hand, National Union wants to exclude other Chartis/AIG affiliates from the definition of “National Union,” but on the other hand it objects to the extent the requests require National Union to produce information outside “its possession, custody, or control.” National Union cannot have it both ways. While National Union has assured Small Smiles that National Union is not playing a shell game with documents among the many Chartis/AIG entities, Small Smiles has not received adequate written assurances that all

requested, non-privileged documents from **any** AIG or Chartis affiliate are being produced in this matter. The Court should order these objections stricken, and National Union should be required to produce the requested, non-privileged documents regardless of the AIG/Chartis affiliate from which they originate.

General Objection #8. National Union is withholding a substantial number of relevant documents on the grounds that they relate to “other insureds” and thus are “confidential and proprietary.” This objection is nonsense and should be stricken. Small Smiles is entitled to see how National Union has dealt with “other insureds” in similar situations to compare its actions with Small Smiles in this instance. Small Smiles is not the least bit interested in the identity of other insureds. On the other hand, for example, if National Union made underwriting inquiries concerning other Dentist’s Advantage insureds as they were transferred to National Union from Fireman’s Fund, but did not do so concerning Small Smiles, that is a highly relevant fact. Conversely, if National Union made no underwriting inquiries of any other insureds as they were brought into the Dentist’s Advantage program, that, too, is a highly relevant fact. National Union has had no qualms whatsoever requesting Small Smiles to produce documents related to other insurance carriers. When the shoe is on the other foot, however, National Union squawks. What is good for the goose is good for the gander. General Objection #8 should be stricken, and all responsive, non-privileged documents that relate to other insureds must be produced.

General Objection #15. In General Objection #15, National Union once again plays games with the definitions used by Small Smiles. Small Smiles defined “Dentist’s Advantage” to include Affinity or its ultimate parent, AON. National Union in its objection has apparently changed that definition to eliminate the parent company AON. That is unacceptable. If, for example, there were discussions between National Union representatives and employees of AON

concerning the issues in dispute in this case (*i.e.*, whether any underwriting regarding the Dentist's Advantage program ever occurred, what Affinity's authority was to act for National Union, etc.), Small Smiles is entitled to that information. National Union again has represented that no games are being played with documents based on this objection and that assurance is appreciated, but it begs the question of why this objection was made. Nor has that assurance been made in writing. General Objection #15 should be stricken.

B. National Union Should Be Required to Produce the Requested Non-Privileged Documents Without Qualification

Requests for Production #s 1 and 2. Requests for Production #s 1 and 2 of Small Smiles' Fourth Requests provide as follows:

1. Produce all communications with Dentist's Advantage and all internal communications at National Union during 2008 that refer to Dentist's Advantage's authority to act on behalf of or bind National Union with respect to the Dentist's Advantage program.

and

2. Produce all communications with Intercare and all internal communications at National Union during 2008 that refer to Intercare's authority to act on behalf of or bind National Union with respect to the Dentist's Advantage program.

National Union responded by spending more than a page objecting to the requests, including calling them "irrelevant" and "harassing," before stating that "subject to and without waiving either the foregoing or the General Objections, National Union responds that it will produce all non-privileged documents responsive to this request which have not already been produced in this litigation at a mutually agreeable time and place." (*See Exh. 3*). Small Smiles does not know if this means that there are no (non-privileged) documents whatsoever being withheld based on National Union's objections to the definition of "National Union" or the definition of "Dentist's Advantage" or based on any confidentiality or relevancy concerns, or concerns about

“other insureds.” National Union has not clarified this issue appropriately. Accordingly, this Court should order National Union to do so. As the Court can see, nothing in this case could be more relevant than communications and documents during the 2008 period that deal with Dentist’s Advantage’s and Intercare’s authority to act on behalf of and bind National Union.

Requests for Production #s 3 and 4. Requests for Production #s 3 and 4 provide as follows:

3. Produce all communications with Dentist’s Advantage and all internal communications at National Union during 2008 that discuss the initiation or implementation of the Dentist’s Advantage program, including but not limited to the following:
 - a. How the underwriting was conducted for National Union’s policies issued to insureds previously covered by the Dentist’s Advantage program;
 - b. Any efforts by National Union to obtain claims history, loss history, or other information regarding risk of loss concerning insureds previously covered through the Dentist’s Advantage program;
 - c. Why no written underwriting guidelines were in place with Dentist’s Advantage in 2008; and
 - d. Why no written program administrator’s agreement was in place with Dentist’s Advantage in 2008.

and

4. Produce all communications with Intercare or Fireman’s Fund and all internal communications at National Union during 2008 that discuss the initiation or implementation of the Dentist’s Advantage program, including but not limited to:
 - a. how the claims processing/claims feed process would be handled concerning National Union policies issued to insureds previously covered through the Dentist’s Advantage program;
 - b. any effort by National Union to obtain claims history, loss history, or other risk of loss information concerning insureds previously covered through the Dentist’s Advantage program; and

- c. National Union's access to historical claims information regarding insureds previously covered by the Dentist's Advantage program.

Similar to its responses to Requests #s 1 and 2, National Union responded with a page of objections, including that the requests were "harassing" and irrelevant. National Union then concluded by stating that subject to all of its objections, it would produce the non-privileged responsive documents; provided, however, that it would **not produce** any documents relating to any **other insureds**. In the recent "meet-and-confer," National Union maintained this position.

Such a limitation is completely inappropriate. The requests seek not just documents concerning Small Smiles, but rather all documents concerning how the underwriting was conducted for the National Union policies issued to insureds who had previously been covered (like Small Smiles) by the Dentist's Advantage program and all efforts by National Union to obtain any risk-related information concerning any insureds previously covered by the Dentist's Advantage program.

The relevancy of those documents is obvious. It is undisputed that, with respect to Small Smiles, National Union did not lift a finger to conduct any underwriting or make any inquiries concerning Small Smiles' past risk-of-loss history. Whether National Union did so with respect to other insureds who, like Small Smiles, were brought under the National Union umbrella through the Dentist's Advantage program is highly relevant. If National Union made efforts to obtain claims history, loss history, or other information regarding risk of loss concerning other insureds, but did not do so as to Small Smiles, that is highly relevant. Likewise, if National Union made no efforts with respect to any of the insureds brought into the Dentist's Advantage program, that is also highly relevant.

Once again, National Union has sought information concerning Small Smiles' dealings with other insurance carriers, including what it disclosed to other insurance carriers about the issues in this case. Small Smiles is entitled to the same kind of information from National Union, *i.e.*, what efforts, if any, did National Union undertake to learn about the loss histories, claims histories, or any other information concerning risk of loss concerning any of the other insureds who were in a similar position to Small Smiles. The Court should order that these documents be produced as requested.

Requests for Production #s 6 and 7. These requests provide as follows:

6. Produce all communications between Michael Bernstein and Donna Heim, Mark Buczko, or Ken Schmitt of Dentist's Advantage between January 2008 and September 2008.

and

7. Produce all communications between Terry Baawuah and Donna Heim, Mark Buczko, or Ken Schmitt of Dentist's Advantage between January 2008 and September 2008.

In response, National Union stated as follows:

Subject to and without waiving the general objections, National Union will produce all non-privileged documents responsive to this request referring or relating to the Dentist's Advantage program which have not already been produced in this litigation at a mutually agreeable time and place.

(emphasis added) (See Exh. 3).

In the recent "meet-and-confer," National Union indicated that it has broadened the search to include several more representatives from National Union and Affinity. Small Smiles appreciates this but does not want the key persons' communications limited to only those communications "referring or relating to the Dentist's Advantage program." Requests #s 6 and 7 were intentionally drafted to reach a broader category of documents. Small Smiles has reviewed documents produced by National Union and has determined that the five named individuals (two

of whom are AIG employees and three of whom are Affinity/Dentist's Advantage employees) had communications during the start-up phase of the Dentist's Advantage program concerning the initiation of the program, the implementation of the program, and other important topics. Small Smiles has limited this request to only these five people and for only a nine-month period.

If their discussions were broader than just the Dentist's Advantage program, Small Smiles is still entitled to see those documents as they may well relate to AIG's broader relationship with Affinity's parent company, AON, which could bear directly on the question of Affinity/Dentist's Advantage's authority to act for and bind National Union. The fact that a communication between these key people may not directly refer or relate to the "Dentist's Advantage program" does not mean that it may not be relevant to the issues in this case. The communications between these two people from AIG and three people from Affinity during a nine-month period will be a small amount of documents. There is no legitimate reason to limit this to something "referring or relating to the Dentist's Advantage program." Broader discussions between these parties may still affect the critical issues in this case, and Small Smiles has narrowly crafted these requests – in terms of both the people involved and in a temporal sense – such that there can be no argument on burdensomeness. These documents should be produced pursuant to the requests **as written**, not as revised by National Union.

V. Deficiencies in National Union's Responses to Small Smiles' Second Interrogatories

Finally, with respect to National Union's interrogatory responses to Interrogatory #3 of the Second Interrogatories, concerning RFA #s 44 and 45, the responses are inadequate. RFA #s 44 and 45 provide as follows:

44. National Union did not at any time prior to issuance of the 09/10 Entities Policy request any information from Intercare regarding Small Smiles' loss history, claims history, risk profile, or any other information related to the risk associated with National Union insuring Small Smiles.

and

45. National Union did not at any time prior to issuance of the 09/10 Individuals Policy request any information from Intercare regarding Small Smiles' loss history, claims history, risk profile, or any other information related to the risk associated with National Union insuring Small Smiles.

National Union responded to both RFA #s 44 and 45 as follows:

Subject to and without waiving its general objections, National Union states: Denied. Further answering, National Union refers to the Claims Services Agreement entered into by National Union and Intercare to this Request.

In Interrogatory #3 of Small Smiles' second interrogatories, National Union was asked to explain its responses to these RFAs. It answered as follows:

- 44-45. Subject to and without waiving its general objections, National Union states: National Union required, at minimum, documentation and information from Intercare pursuant to the Claims Service Agreement entered into by National Union and Intercare regarding all insureds under the Dentists Advantage Program. National Union otherwise refers SSHC to the Claims Service Agreement in response to this Interrogatory.

(Exh. 4).

The Claims Service Agreement, with exhibits, is over 40 pages long. Small Smiles is entitled to know the particular provisions of the Claims Service Agreement to which National Union is referring in this interrogatory answer. Small Smiles has asked National Union to provide this information, but it has yet to do so. In the recent "meet-and-confer," National Union stated that it would consider this request further. If National Union fails to provide this simple clarification to Small Smiles, the Court should order it to do so.

CONCLUSION

For the foregoing reasons, Small Smiles' Motion to Compel against National Union should be granted.

Respectfully submitted,

/s/ J. Mark Tipps

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by the Court's electronic filing system on all registered users, and by United States mail, first-class postage prepaid on all others, upon the following:

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This 4th day of August, 2011.

/s/ J. Mark Tipps