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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

IN RE: INCRETIN-BASED  
THERAPIES PRODUCTS  
LIABILITY LITIGATION

CASE NO. 13md2452-AJB (MDD)  
  
ORDER ON DISCOVERY  
DISPUTE REGARDING  
INSURANCE COVERAGE OF  
DEFENDANT AMYLIN  
PHARMACEUTICALS  
  
(ECF NO. 223)

On December 19, 2013, the parties filed a Joint Motion For Consideration of Insurance Coverage Issue. (ECF No. 223). Specifically, Plaintiffs seek to compel Defendant Amylin Pharmaceuticals (“Amylin”) to produce the amount of insurance coverage available under its insurance policies or, in the alternative, the amount of coverage that has been consumed by defense costs and payment of claims. Defendant Amylin objects on the grounds that this discovery is not authorized under the Federal Rules of Civil Procedure. As provided below, Plaintiffs’ motion to compel, as presented in this Joint Motion, is **DENIED**.

Discussion

Plaintiffs assert that disclosure of available coverage or amount of coverage consumed is either mandatory under Fed.R.Civ.P.

1 26(a)(1)(A)(iv)<sup>1</sup> or is subject to discovery under Rule 26(b). Defendant  
2 Amylin counters that that Rule 26(a)(1)(A)(iv) requires only the  
3 disclosure of insurance agreements or policies and not the extent of  
4 coverage remaining on any such policy. Regarding whether this  
5 information generally is discoverable under Rule 26(b), Defendant  
6 Amylin asserts that the amount of coverage remaining would not be  
7 admissible at any trial, is not relevant to any claim or defense and is not  
8 reasonably calculated to lead to the discovery of admissible evidence.

9       The Court agrees with Defendant Amylin that the amount of  
10 coverage remaining under insurance agreements or policies is not  
11 required as a mandatory initial disclosure under Rule 26(a)(1)(A)(iv).  
12 Rule 26(a)(1)(A)(iv) requires a party to disclose, without awaiting a  
13 formal discovery request, “any insurance agreement under which an  
14 insurance business may be liable to satisfy all or part of a possible  
15 judgment in the action or to indemnify or reimburse for payments made  
16 to satisfy the judgment.” The plain reading of the Rule supports  
17 Defendant Amylin’s position that only copies of the applicable insurance  
18 policies are required to be disclosed. *See Excelsior College v. Frye*, 233  
19 F.R.D. 583, 586 (S.D.Cal. 2006). In *Excelsior*, U. S. Magistrate Judge Leo  
20 S. Papas of this Court ruled that information regarding remaining policy  
21 limits is not covered under the rule requiring mandatory initial  
22 disclosures of insurance information. This Court believes that Judge  
23 Papas was correct.

24       Unlike the situation in *Excelsior*, this case also presents the  
25 question whether information regarding remaining policy limits  
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27       <sup>1</sup> In the Joint Motion Plaintiffs erroneously refer to a prior version of  
28 Rule 26 in which the requirement to produce insurance agreements was  
contained at Rule 26(a)(1)(D). The relevant provision actually is located at  
Rule 26(a)(1)(A)(iv).

1 generally is discoverable. In one of the cases now within this Multi-  
2 District Litigation, plaintiff Robin Raesky propounded an Interrogatory  
3 to Defendant Amylin specifically requiring Defendant to identify the  
4 extent to which any available insurance had been impacted or diminished  
5 by any settlements, awards or judgments. (ECF No. 223-1, Interrogatory  
6 14(c)). The question then becomes primarily one of relevance.

7       The Federal Rules of Civil Procedure generally allow for broad  
8 discovery, authorizing parties to obtain discovery regarding “any  
9 nonprivileged matter that is relevant to any party’s claim or defense. . .”  
10 Fed. R. Civ. P. 26(b)(1). Also, “[f]or good cause, the court may order  
11 discovery of any matter relevant to the subject matter involved in the  
12 action.” *Id.* Relevant information for discovery purposes includes any  
13 information “reasonably calculated to lead to the discovery of admissible  
14 evidence,” and need not be admissible at trial to be discoverable. *Id.*  
15 District courts have broad discretion to determine relevancy for discovery  
16 purposes. *See Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002).

17       Plaintiffs suggest that the issue of coverage remaining bears on  
18 Defendant Amylin’s ability to pay in the event of a punitive damage  
19 award and to adequate capitalization. Defendant counters that there is  
20 no basis to conclude that the extent of remaining insurance coverage can  
21 become relevant and admissible at trial. Nor, says Defendant, could this  
22 information reasonably lead to admissible evidence on any claim or  
23 defense. The Court agrees with Defendant Amylin. This is a personal  
24 injury case based upon alleged detrimental health effects of certain  
25 diabetes drugs and claims of inadequate warnings. Plaintiffs have not  
26 identified any similar case in which the extent of remaining insurance  
27 coverage was considered relevant. The scenarios posited by Plaintiffs  
28 are not plausible in suggesting that the requested information either

1 could be admissible at trial or could lead to the discovery of admissible  
2 evidence at trial.

3 It is not unheard of for a defendant voluntarily to disclose limits  
4 remaining on available insurance in connection with settlement  
5 discussions. The requested information may have some bearing on  
6 settlement. Relevance for discovery purposes, however, is limited to  
7 information which may be admissible at trial or which reasonably may  
8 lead to discovery of admissible information. The information here  
9 requested satisfies neither prong. Nor is the Court prepared to find good  
10 cause which may expand discovery to include matters relevant to the  
11 subject matter involved in the action. Even if good cause was presented  
12 and accepted, the information requested would remain irrelevant as it is  
13 unlikely to lead to the discovery of admissible evidence.

14 Conclusion

15 Plaintiffs' Motion to Compel, as presented in the instant Joint  
16 Motion is **DENIED**.

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18 IT IS SO ORDERED.

19 DATED: December 30, 2013

20   
21 Hon. Mitchell D. Dembin  
22 U.S. Magistrate Judge  
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