# Discovery Objections

**ATTORNEY TIME OF HIRE OR CONDITIONS**

Objection. \_\_\_\_\_\_\_ The time and circumstances under which plaintiff employed his or

her attorney is properly excluded from evidence. State v Sexsmith, 185 Wash.

345 (1936). Without waiving objection:

**ALL OR ANY FACTS [**Contention Interrogatories and All Facts Relied Upon]

Objection. \_\_\_\_\_\_\_ This requested discovery is an inquiry for "all facts" for "each and

every" or "all" documents or witnesses which comprise the sum total of Plaintiff's proofs at

trial, or summarize discovery has or will take place. As such, it is outside the scope of Civil

Discovery. Agranoff v. Jay, 9 Wn. App. 429, 512 P.2d 1132 (1973), Hickman v. Taylor, 153

F.2d 212, 329 U.S. 495 (Pa. 1945).

The discovery request exceeds the allowable scope of discovery and invades work product privilege. Weber v. Biddle, 72 Wn.2d 22, 29, 431 P.2d 705 (1967) (discovery "asking for the identity of persons who had information on material issues in the case" is warranted but "the opposing party cannot be required to put on a dress rehearsal of the trial" in discovery).

OBJECTION: The interrogatory is overbroad and burdensome and overly vague. The interrogatory requires action that is oppressive and creates an unfair burden in that it is impossible to recall or state each "each" and "every" or "all" ' facts" and/or "occasions" or "statements". Flour Mills of America v. Pace, 75 F.R.D. 676 (1977); Barnett v. Sears Roebuck Co., 80 F.R.D. 662 (1978); see also in re: U.S. Financial Securities Litigation,74 F.R.D.497. Whitman v. Taylor, 153, Fed. 2d 212, 329 US 495 (Pa 1945)

OBJECTION: The interrogatory is an inquiry for "all facts" for "each and every" or "all" documents or witnesses which comprise the sum total of Plaintiff's proofs at trial, or summarize discovery that has or will take place. As such, it is outside the scope of Civil Discovery. Agranoff v. Jay, 9 Wn. App. 429,512 P.2d 1132 (1973), Hickman v. Taylor, 153 f.2d 212t 329 U.S. 495 (pa. 1945).

OBJECTION: This requested discovery goes beyond seeking "The identity and location of persons having knowledge of relevant facts to the issues in this lawsuit". See CR 33, Cr 26 (b)(l) allows only discovery of the identity and location of persons having knowledge of discoverable matter. Weber v. Biddle, 72 Wn.2d 22t 431 P.2d 705 (1967). This Interrogatory improperly asks for "all facts" for "each and every" or "all" documents or witnesses which comprise the sum total of Plaintiff's proofs at trial, or requests a summary of all discovery that has or will take place. As such, it is out side the scope of Civil Discovery. Agrano.ff v. Jay, 9 Wn.App.429, 512 P.2d 1132 (1973), Hickman v. Taylor, 153 F.2d 212t 329 U.S. 495 (pa. 1945). The question also requests disclosure of attorney work product, it is privileged and exempt from discovery. CR 26(b)(3).

OBJECTION: This requested discovery is an attempt to obtain attorneys' work product. Hickman v. Taylor, 153 F.2d 212; 329 U.S. 495 (Pa. 1945) and Arganoff v. Jay, 9 Wn. App. 429, 512 P.2d 1132 (1973). this question calls for mental impressions, conclusions, opinions, and/or legal theories of this party's attorneys and/or consulting experts and is prohibited by CR 26(b)(3). Further objection is made based on Crenna v. Ford Motor Company, 12 Wn. App. 824, 532 P.2d 290 (1975), and Detwiler v. Gall, Landau & Young Construction Company., 42 Wn. App. 567, 712 P.2d 316 (1986).

OBJECTION. This requested discovery is an inquiry for "all facts" for "each and every" or "all" documents or witnesses which comprise the sum total of Plaintiff's proofs at trial, or summarize discovery has or will take place. As such, it is outside the scope of Civil Discovery. Arganoff v. Jay, 9 Wn. App. 429,512 P.2d 1132 (1973), Hickman v. Taylor, 153 f.2D 212,329 U.S. 495 (Pa. 1945).

Objection, insofar as this interrogatory requests defendant to “state with particularity *all* facts upon which each affirmative defense is based.” Defendant is not required to state all facts that will come into evidence in trial in answer to an interrogatory. Question is overly broad. See *Derring Millikin Research Corp. v. Tex-Elastic Corp.*, 320 F.Supp 806 (D.S.C. 1970). Subject to this objection and without waiving the same, the basis for defendant’s affirmative defenses are as follows:

The discovery request exceeds the allowable scope of discovery and invades work product privilege. Weber v. Biddle, 72 Wn.2d 22, 29, 431 P.2d 705 (1967) (discovery "asking for the identity of persons who had information on material issues in the case" is warranted but "the opposing party cannot be required to put on a dress rehearsal of the trial" in discovery).

**COLLATERAL SOURCE**

Objection. \_\_\_\_\_\_\_\_ Collateral source. Without waiving objection:

**CUMULATIVE OR DUPLICATIVE**

Objection. \_\_\_\_\_\_\_\_ The discovery sought is unreasonably cumulative or duplicative,

or can be obtained from some other source that is more convenient, less burdensome, or

less expensive. Without waiving objection:

**EXPERTS**

Objection to the request for experts “contacted.” Per Detweiler v. Gall, et al., 42 Wn.App. 567, 712 P.2d 316, “identities of nonwitness experts are not discoverable absent a showing of exceptional circumstances.” (42 Wn.App. at 572.)

Objection. This interrogatory is not a proper subject for discovery under CR 26(b)(4)(B). See Detwiler v. Gall, Landau &. Young Co., 42 Wn. App. 567, 712 P.2d 316 (1986). This interrogatory seeks information that is protected by the attorney work-product rule. Plaintiffs' counsel is willing to enter into an agreement with defense counsel regarding the mutual disclosure of experts: See Weber v. Biddle, 72 Wn.2d 22, 29,431 F.2d 705 (1967); Agranoff v. Jay, 9 Wn. App. 429, 512 P.2d 1132 (1973).

**INCOME TAX RETURNS**

Objection, the tax returns requested are private and confidential. In the absence of a wage loss claim, the returns requested are neither admissible nor reasonably calculated to lead to the discovery of admissible evidence. CR 26(b)(1).

Objection, the request unnecessarily invades plaintiff's privacy and is unduly burdensome. W-2 forms would provide the income information relevant to plaintiff's wage loss claim, without the harm of disclosing complete tax returns, social security numbers, spouse and children social security numbers, etc. Without waiver of objection, plaintiff responds that . .

Objection. Defendant has failed to show a need for income tax records given other available methods to establish facts sought. Request is denied pending further discovery. There is a strong policy against unnecessary disclosure of such return. See Premium Servo Corp. v. Sperry & Hutchinson Co., 511 F.2d 225, 229 (9th Cir.l975); Watkins v. FMC Corp., 12 Wn.App. 701, 707, 531 P.2d 505 (1975).

**INVESTIGATIVE REPORT:**

Objection. This interrogatory seeks information protected by the attorney work-product rule and attorney-client privilege. It is overly broad, unreasonably burdensome and not answerable in its present form. It asks for trial preparation information which is privileged. It asks for information that is from sources accessible to the defendant.

Objection, to the extent this interrogatory requests legal conclusions.

**LEGAL CONCLUSION**

Objection, to the extent this interrogatory requests legal conclusions.

**NAMES OF INSURERS (HEALTH, AUTO OR GOVT. ENTITY) WHO HAVE PAID ANY EXPENSES**

Objection. Information relating to plaintiff's insurance is not discoverable per CR 26(b)(2), nor is it reasonably calculated to lead to admissible evidence.

**NAMES AND ADDRESSES OF ALL PHYSICIANS, ETC. IN PREVIOUS TEN YEARS:**

Objection. The requested information is overly broad and unduly burdensome. CR 26(b)(1). Without waiver of objection, plaintiff provides the following information . . .

**MEDICAL PROVIDERS AS EXPERTS**

Plaintiff may call a treating medical provider at trial or hearing, but such witnesses are fact witnesses not expert witnesses. Paiya v. Durham Const. Co., Inc., 69 Wn. App. 578, 580-81, 849 P.2d 660, review denied 122 Wn.2d 1014 (1993) (medical witness whose opinions are developed for purposes of treatment and not litigation is a fact witness and not an "expert witness").

**PRIVILEGE**

Objection. \_\_\_\_\_\_\_ Attorney Client Privilege. Without waiving objection:

Objection, to the extent this request covers materials subject to attorney/client and work product privileges.

**RELEVANCE OBJECTION**

Objection, the information requested is irrelevant and inadmissible, and furthermore is not reasonably calculated to lead to the discovery of admissible evidence. CR 26(b)(1).

Objection. The interrogatory is not relevant to the subject matter of the pending

action and is not reasonably calculated to lead to the discovery of admissible evidence.

Without waiving objection:

Objection. \_\_\_\_\_\_\_ The interrogatory is not relevant to the subject matter of the pending

action, is not admissible and is not reasonably calculated to lead to the discovery of

admissible evidence. Without waiving objection:

[pre-existing condition] Objection. \_\_\_\_\_\_\_ The interrogatory is not relevant to the subject matter of the pending action, is not admissible and is not reasonably calculated to lead to the discovery of admissible evidence. Even when an accident lights up and makes active a preexisting condition that was dormant and asymptomatic immediately prior to an accident, the

preexisting condition is not a proximate cause of the resulting damages. Harris v. Drake,

152 Wash.2d 480, 99 P.3d 872 (2004). Without waiving objection:

**OVERBROAD**

Objection, overbroad, burdensome, not expected to lead to admissible evidence.

Objection; overbroad and burdensome as to *any*, not expected to lead to admissible evidence.

Objection, overbroad, and burdensome, especially with respect to identifications of “any documentary, tangible or demonstrative items tending to establish any aspect of your claims in this case.” Plaintiff is not required to identify or produce every item that will come into evidence in trial in answer to an interrogatory. See *Derring Millikin Research Corp. v. Tex-Elastic Corp.*, 320 F.Supp 806 (D.S.C. 1970).

**SETTLEMENT DISCUSSIONS**

Objection. Settlement discussions are not admissible and are not reasonably

calculated to lead to the discovery of admissible evidence. Without waiving objection:

**SOCIAL SECURITY NUMBER**

Objection, the information requested is irrelevant, inadmissible, and not reasonably calculated to lead to the legitimate discovery of admissible evidence. CR 26(b)(1). Moreover, § 7 of the U.S. Privacy Act of 1974, Public Law 93-579, confers a federal right to refuse to disclose one’s Social Security Number. Schwier v. Cox, 340 F.3d 1284 (11th Cir. 2003). In addition, disclosure of one's social security number can lead to identification theft, and therefore responding to this request is unduly burdensome under CR 26(b)(1)(C).

Plaintiff objects that §7ofthe Privacy Act and the Voting Rights Act of1870,42 U.S.C. § 1971, § 1983 unambiguously confers a federal right to refuse to disclose one's Social Security Number. Schwier v. Cox, 340 F.3d 1284 (11th Cir. 2003). Plaintiff further objects that the information sought is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. With the present day risks associated with identity theft, it is important to not disclose this information when it is not relevant. Without waiving that objection, Plaintiff agrees to supply Plaintiff's Social Security number to defense counsel in a separate letter with the agreement that the Social Security number is to remain confidential and not be filed with the court.

**THIRD PARTY INFO: INFROMATION IN POSSESSION OF THIRD PARTY**

Objection. \_\_\_\_\_\_\_\_ The discovery sought is information in the possession of third

parties. Without waiving objection:

Objection. \_\_\_\_\_\_\_\_ The information necessary to properly and fully answer this

interrogatory is in possession of defendant. Without waiving objection:

Objection. \_\_\_\_\_\_\_\_ The information necessary to properly answer this interrogatory is

in possession of defendant or the health care professionals who provided treatment to the

plaintiff. Without waiving objection:

Objection. \_\_\_\_\_\_\_\_ The discovery sought is information in the possession of this

defendant. This information has been requested from defendant in plaintiff’s discovery to

this defendant. Without waiving objection:

[Insurere] Objection. \_\_\_\_\_\_\_ The discovery sought is information that exists and is in the

possession of the insurer. This information has been requested from the insurer in

plaintiff’s discovery to the insurer. Without waiving objection:

[HEALTH CARE PROVIDER]

Objection. The information necessary to properly answer this interrogatory is in

possession of defendant or the health care professionals who provided treatment to the

plaintiff. Without waiving objection:

[We asked you]

Objection. The discovery sought is information in the possession of the Petitioner. This information has been requested from the Petitioner in Respondent’s discovery to the Petitioner. Without waiving objection:

**TRIAL WITNESSES**

This inquiry exceeds the scope of allowable discovery. CR 26(b)(1). Discovery requesting a list of trial witnesses is improper and unauthorized. Agranoff v. Jay, 9 Wn. App. 429, 512 P.2d 1132 (1973). In addition, the request is for information protected by the attorney work product privilege. Hickman v. Taylor, 329 U.S. 495 (1945). The discovery requests disclosure of mental impressions, conclusions, opinions, legal theories or strategy decisions of this party's attorney or consulting experts and is therefore prohibited by CR 26(b)(4). Discovery of or about consulting experts is not authorized. CR 26(b)(5)(B), Detwiler v. Gall, Landau & Young Construction Co., 42 Wn. App. 567, 572, 712 P.2d 316 (1986). Objection is also made because the inquiry requests information beyond seeking "[t]he identity and location of persons having knowledge of relevant facts to the issues in this lawsuit" allowed by CR 33 or beyond seeking "the identity and location of persons having knowledge of discoverable matter." CR 26(b)(1)

Objection. \_\_\_\_\_\_\_ Discovery of witnesses whom the opposing party intends to call at

the trial of the cause is not proper. Agranoff v. Jay, 9 Wash.App. 429, 512 P.2d 1132

(1973). Without waiving objection:

**UNDULY BURDENSOME**

Objection. \_\_\_\_\_\_\_\_ The discovery is unduly burdensome or expensive, taking into

account the needs of the case, the amount in controversy, limitations on the parties

resources, and the importance of the issues at stake in the litigation. Without waiving

objections:

**WORK PRODUCT**

Objection. Attorney work product privilege. Without waiving objection:

Objection. \_\_\_\_\_\_\_ This requested discovery is an attempt to obtain attorneys' work

product. Hickman v. Taylor, 153 F.2d 212; 329 U.S. 495 (Pa. 1945) and Agranoff v. Jay,

9 Wn. App. 429, 512 P.2d 1132 (1973). This question calls for mental impressions,

conclusions, opinions, and/or legal theories of this party's attorneys and/or consulting

experts and is prohibited by CR 26(b)(3). Further objection is made based on Crenna v.

Ford Motor Company, 12 Wn. App. 824, 532 P.2d 290 (1975), and Detwiler v. Gall, Landau

& Young Construction Co., 42 Wn. App. 567, 712 P.2d 316 (1986). Pappas v. Holloway*,* 114 Wn.2d 198, 212, 787 P.2d 30 (1990) (attorney mental impressions are absolutely protected by work product doctrine).

Objection. \_\_\_\_\_\_\_ Attorney Work product privilege. Without waiving objection:

[Statement of Plaintiff to Insurer]

Objection, the requests seeks documents and information protected under the work product doctrine. CR 26(b)(4);Heidebrink v. Moriwaki, 104 Wn.2d 392, 400-01, 806 P.2d 212 (1985) ("a statement made by an insured to an insurer following an automobile accident is protected from discovery" by the work product doctrine). This work product protection even extends to reports by PIP medical examiners hired by the PIP insurer to examine its insured. Harris v. Drake, \_\_\_\_ Wn.2d \_\_\_\_, \_\_\_\_ P.3d \_\_\_\_ (2004) (PIP medical exam report not discoverable by tortfeasor).

Work product protection prevents disclosure of statements by an insured to the insurer and information gathered in the PIP claim even to the insured's UIM insurer, because the UIM insurer stands in the shoes of the tortfeasor and is therefore treated like the tortfeasor in discovery. Jain v. State Farm Mut. Auto. Ins. Co.*,* 130 Wn.2d 688, 695, 926 P.2d 923 (1996) ("UIM is meant to place the insured's insurance carrier in the shoes of the underinsured tortfeasor.");

[PIP IME]

Objection: WORK PRODUCT. The report of, and opinions gained from, a medical examination of an insured conducted pursuant to the terms of personal injury protection (PIP) in an automobile insurance policy, could be considered work product in the subsequent litigation between the insured the tortfeasor. Work product protection can be claimed even after the personal injury protection (PIP) litigation or arbitration has terminated. [CR 26(b)(4)](http://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW6.07&fn=_top&sv=Split&tc=-1&findtype=L&docname=WARSUPERCTCIVCR26&db=1005378&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Washington). In general, both a party and the party's representative may assert the protection of the work product rule, and a party's representatives may include those retained or employed by the party's insurer. [CR 26(b)(4)](http://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW6.07&fn=_top&sv=Split&tc=-1&findtype=L&docname=WARSUPERCTCIVCR26&db=1005378&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Washington). ***Harris v. Drake,***152 Wn.2d 480, 99 P.3d 872 (2004).

**WITNESS STATEMENTS**

Objection, witness statements are protected work product. CR 26(b)(4), Limstrom v. Ladenburg**,** 136 Wn.2d 595, 611, 963 P.2d 869 (1998). Objection is also made because the inquiry requests information beyond seeking "[t]he identity and location of persons having knowledge of relevant facts to the issues in this lawsuit" allowed by CR 33 or beyond seeking "the identity and location of persons having knowledge of discoverable matter." CR 26(b)(1).

**KITCHEN SINK**

Objection, seeks information which is outside the scope of discovery, outside plaintiff’s possession and knowledge, potentially within the attorney/client and work product privileges of other parties and/or confidentiality agreements of other parties, not expected to lead to admissible evidence. Without waiving objection, plaintiff has none in his possession.

Objection. This interrogatory requests information that is irrelevant, not calculated to lead to the discovery of relevant evidence and is unduly prejudicial.

Discovery is ongoing; will supplement.