

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
WISCONSIN

Sumit Patel, et al. v. Federated Mutual Insurance Company

Patel · No. 24-CV-767 · Decided April 2, 2026

SUMMARY

The United States District Court for the Eastern District of Wisconsin denied Federated Mutual Insurance Company’s motion to quash subpoenas seeking claim-investigation records from four entities. The court held that Federal Rules of Civil Procedure 26(b)(4) and 45 do not broadly prohibit subpoenas for documents in the possession of an opposing party’s expert or the expert’s employer, and that Federated had not identified a specific protected document or undue burden warranting relief.

CASE DETAILS

COURT	United States District Court for the Eastern District of Wisconsin
WRITING FOR THE COURT	Byron B. Conway
JURISDICTION	United States District Court for the Eastern District of Wisconsin
DECIDED	April 2, 2026
DOCKET	24-CV-767
DISPOSITION	other
PROCEDURAL POSTURE	Defendant Federated Mutual Insurance Company moved under Federal Rule of Civil Procedure 45 to quash subpoenas issued by the plaintiffs to four entities involved in investigating the plaintiffs' insurance claim.
STANDARD OF REVIEW	The moving party bears the burden of demonstrating that the subpoena seeks privileged information or subjects a person to an undue burden. The court also required the movant to identify a live dispute concerning specific documents before modifying or quashing the subpoenas.
PRECEDENTIAL VALUE	Unknown; unpublished federal district court decision
PARTIES	Sumit Patel, et al. v. Federated Mutual Insurance Company

TOPICS

- discovery dispute
- insurance
- civil procedure
- commercial litigation

PRACTICE AREAS

civil procedure

insurance

commercial litigation

QUESTIONS PRESENTED

1. Whether Federal Rule of Civil Procedure 45 broadly prohibits a party from subpoenaing documents in the possession of an opposing party's expert or the expert's employer.
2. Whether Federal Rule of Civil Procedure 26(b)(4)(D), which protects consulting experts from interrogatories and depositions, also limits subpoenas for documents.
3. Whether the subpoenas were premature because Federated had not yet designated its testifying experts.
4. Whether the possibility that the subpoenas could encompass documents protected under Rules 26(b)(4)(B) or (C) and 45(d)(3)(A) required the court to modify or quash them.

HOLDINGS

1. Neither Federal Rule of Civil Procedure 26 nor Rule 45 broadly prohibits a party from subpoenaing documents in the possession of an opposing party's expert or the expert's employer.
2. Rule 26(b)(4)(D) protects consulting experts from interrogatories and depositions but does not limit subpoenas for documents.
3. The subpoenas were not subject to quashing as premature because the expert-designation deadline had passed while the motion was pending, and Federated failed to identify a specific document whose discoverability depended on the designation.
4. A subpoena should not be modified or quashed merely because it could encompass documents already protected by the Rules; the movant must identify a live dispute over specific documents.

KEY QUOTATIONS

“Thus, nothing in Rule 26 or 45 that broadly prohibits a party subpoenaing documents in the possession of an opponent’s expert (or an expert’s employer).”

“The hypothetical existence of a gap is insufficient for Federated to sustain its burden to prove the court must modify or quash the subpoena.”

“Rather, the movant must identify a live dispute over specific documents.”

FACTUAL BACKGROUND

The plaintiffs' insurance claim investigation involved four entities, and the plaintiffs subpoenaed those entities for records related to the claim. Federated argued that the subpoenas were improper or premature because it might designate persons from the entities as testifying or consulting experts. Federated identified only the potential existence of documents protected by expert-discovery rules and did not identify any specific protected document.

PROCEDURAL HISTORY

The plaintiffs issued subpoenas seeking claim-related records from four entities involved in investigating their insurance claim. Federated moved to quash, arguing that the subpoenas were improper or premature because it might designate individuals from those entities as experts and that the records could be protected under Federal Rule of Civil Procedure 26(b)(4). The district court denied the motion.

DISPOSITION

other

CASES CITED

- Roman v. City of Chi., No. 20 C 1717, 2023 U.S. Dist. LEXIS 2509 (N.D. Ill. Jan. 6, 2023)
- IQL-Riggig, LLC v. Kingsbridge Techs., No. 19 CV 6155, 2021 U.S. Dist. LEXIS 58939, at *16, 127 A.F.T.R.2d (RIA) 2021-1410 (N.D. Ill. Mar. 29, 2021)
- Cty. of Cook v. Wells Fargo & Co., No. 14 C 9548, 2021 U.S. Dist. LEXIS 39991, at *4 (N.D. Ill. Mar. 3, 2021)
- Illiana Surgery & Med. Ctr. LLC v. Hartford Fire Ins. Co., No. 2:07 cv 3, 2010 U.S. Dist. LEXIS 122827, at *4 (N.D. Ind. Nov. 18, 2010)
- Hodgdon v. Northwestern University, 245 F.R.D. 337, 341 (N.D. Ill. 2007)

OPINION

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF WISCONSIN SUMIT PATEL, et al., Plaintiffs, v. Case No. 24-CV-767 FEDERATED MUTUAL INSURANCE COMPANY, Defendant. DECISION AND ORDER Federated Mutual Insurance Company seeks to quash subpoenas that the plaintiffs issued to four entities. (ECF No. 41.) Those four entities were involved in the investigation of the plaintiffs' insurance claim that gave rise to this action.

The plaintiffs seek the records that those entities have related to the claim. Federated argues that the plaintiffs' subpoenas are improper, or at least premature, because Federated may be designating persons from these entities as experts. It argues that the records are protected under Fed. R. Civ. P. 26(b)(4) and the plaintiffs are trying to evade these protections by serving their subpoena before the April 2, 2026 deadline for Federated to disclose its experts.

Federated's motion appears to rely on two premises. First, it is improper for a party to use a subpoena to obtain documents from an opponent's expert. Second (or alternatively), what is discoverable by way of a subpoena depends on whether a person is designated a testifying or consulting expert.

As explained below, both premises are incorrect, and therefore the court will deny Federated's motion to quash. Experts are commonly divided between testifying and non-testifying or consulting experts. A testifying expert must disclose certain information, see Fed. R. Civ. P. 26(a)

(2), and, if a testifying expert is required to provide a written report, that expert can be deposed only after the report is provided, Fed.

R. Civ. P. 26(b)(4)(A). The disclosures required for a testifying expert under Rule 26(a)(2) represent the minimum and are not exhaustive. *Roman v. City of Chi.*, No. 20 C 1717, 2023 U.S. Dist. LEXIS 2509, at *2, *12-*14 (N.D. Ill. Jan. 6, 2023). A party may use a subpoena under Rule 45 to get additional information. *Id.* at *37. Notably, the only limitation in Rule 45 specifically related to experts is that a court may quash or modify a subpoena to protect “an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party.” Fed.

R. Civ. P. 45(d)(3)(B)(ii). If the rule makers intended to broadly limit subpoenas for documents in the possession of an expert (or an expert’s employer) they surely would have. *Roman*, 2023 U.S. Dist. LEXIS 2509, at *16. Consulting experts, on the other hand, are not subject to any automatic disclosure obligations.

Moreover, consulting experts are exempt from interrogatories or depositions. Fed. R. Civ. P. 26(b)(4)(D). However, Rule 26(b)(4)(D) is narrow. It provides no limit on a subpoena for documents. *IQL-Riggig, LLC v. Kingsbridge Techs.*, No. 19 CV 6155, 2021 U.S. Dist. LEXIS 58939, at *16, 127 A.F.T.R.2d (RIA) 2021-1410 (N.D. Ill. Mar. 29, 2021) (“Here, this rule is not applicable at this time because Kingsbridge subpoenaed the materials and did not serve interrogatories on Got Docs, or subpoena Meilinger for a deposition.”); see also *Cty. of Cook v. Wells Fargo & Co.*, No. 14 C 9548, 2021 U.S. Dist.

LEXIS 39991, at *4 (N.D. Ill. Mar. 3, 2021) (“Rule 26(b)(4)(D) by its express terms applies to discovery sought by ‘interrogatories or deposition,’ and thus does not apply where, as here, a party seeks discovery via a request for production.”).

Thus, nothing in Rule 26 or 45 that broadly prohibits a party subpoenaing documents in the possession of an opponent’s expert (or an expert’s employer). Therefore, the court turns to Federated’s argument that any such subpoena is premature because it has not yet decided who it will designate as a testifying expert.

The timing of the subpoena is material only insofar as the proper scope of the subpoena depends on who Federated designates as a testifying expert. Federated points to Fed. R. Civ. P. 26(b)(4)(B) and (C) which states: (B) Trial-Preparation Protection for Draft Reports or Disclosures. Rules 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded.

(C) Trial-Preparation Protection for Communications Between a Party’s Attorney and Expert Witnesses. Rules 26(b)(3)(A) and (B) protect communications between the party’s attorney and any witness required to provide a report under Rule 26(a)(2)(B), regardless of the form of the

communications, except to the extent that the communications: (i) relate to compensation for the expert's study or testimony; (ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or (iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

A consulting expert is unlikely to have prepared a draft report or Rule 26(a)(2) disclosures, but insofar as any exist, such documents are exempt from disclosure by the plain language of the Rule. The protection afforded under Rule 26(b)(4)(C) for attorney communications, however, applies only to a testifying expert and specifically a testifying expert required to prepare a report.

Therefore, it is plausible that the lawful scope of the plaintiffs' subpoena will vary based on who Federated designates as a testifying expert. Federated has not demonstrated that any document exists that fits into this gap; it has shown only that the gap potentially exists.

The hypothetical existence of a gap is insufficient for Federated to sustain its burden to prove the court must modify or quash the subpoena. See, e.g., *Illiana Surgery & Med. Ctr. LLC v. Hartford Fire Ins. Co.*, No. 2:07 cv 3, 2010 U.S. Dist. LEXIS 122827, at *4 (N.D. Ind. Nov. 18, 2010) ("the party seeking to quash a subpoena under Rule 45(c)(3)(A) has the burden of demonstrating that the information sought is privileged or subjects a person to an undue burden" (quoting *Hodgdon v. Northwestern University*, 245 F.R.D.

337, 341 (N.D. Ill. 2007))). More importantly, the deadline for Federated to designate its experts is April 2, 2026. (ECF No. 37.) Therefore, the passage of time during the pendency of the motion has mooted Federated's argument that the plaintiffs' motion was premature.

The fact that the subpoenas could encompass matter protected from disclosure under Rule 26(b)(4) (B) or (C), as well as Rule 45(d)(3)(A)(ii) or (iii) is not a basis to modify the subpoenas. The court does not modify a subpoena simply to remind parties of what is already explicitly exempt from disclosure. Among other reasons, such an order specifying certain exemptions would be susceptible to falling into the trap of *expressio unius est exclusio alterius*.

Rather, the movant must identify a live dispute over specific documents. Federated having failed to do so, there is no basis for a court order. IT IS THEREFORE ORDERED that Federated Mutual Insurance Company's motion to quash is denied. Dated at Green Bay, Wisconsin this 2nd day of April, 2026. s/Byron B. Conway BYRON B. CONWAY U.S. District Judge