IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

GAUDET & COMPANY, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO.: **1:21-cv-00372**
	)	
	)	
ACE FIRE UNDERWRITERS INSURANCE COMPANY; et al.,	)	
	)	
	)	
Defendants.	)	

PLAINTIFF'S MOTION TO EXCLUDE OR, ALTERNATIVELY, LIMIT THE TESTIMONY ACE'S PROFFERED EXPERT KEVIN HROMAS

COMES NOW the Plaintiff, Gaudet & Company, Inc. ("Gaudet"), by and through undersigned counsel, who moves to exclude or, alternatively, limit the testimony of Kevin Hromas ("Hromas"), Ace's retained expert witness, pursuant to Fed. R. Evid. 401-403 and 702. Hromas must be "qualified" to testify regarding the matters he intends to address, and his opinions must be "relevant," "reliable," and "helpful" to the jury in understanding the evidence and deciding issues of fact. Hromas' opinions fail these tests.

I. PRELIMINARY STATEMENT

Ace has disclosed Kevin Hromas ("Hromas")—an individual with absolutely no experience handling third-party liability claims like the claim at issue—as an expert to offer opinions regarding the appropriateness of Ace's claims-handling conduct in the underlying claim. Hromas was retained on December 13, two days before the expert disclosure deadline, after having previously worked on another case with Ace's counsel.[1] He claims to have spent 30 hours during this two-day period reviewing all of the materials in this case in order to be able to provide neutral

[1] Ex. B, Hromas Dep. at 56:5-60:18.

opinions and impartial opinions about this case.[2] Hromas' Rule 26 report totals four pages, of which only two pages contain his "neutral" opinions.[3] Rule 26(a)(2)(B)(i-ii) requires that an expert's report contain "a complete statement of all opinions the witness will express and the basis and reasons for them [and] the facts or data considered by the witness in forming them." Hromas does not cite to a single piece of admissible evidence that supports any of his opinions, and, in fact, he specifically declines to do so.[4]

Hromas intends to opine, on one hand, that Ace should not be held to any definable standard of care because of the "complexity" of the underlying case and because the Ace Policy was a "new product," but, on the other hand, that Ace met or exceeded the standard of care (even though this opinion is not listed in his Rule 26 report), which Hromas never attempts to define. He also intends to opine that Ace's payment of the $1 million "extinguished" any further duties owed to its insured, Gaudet without stating any basis. Nothing in Hromas' report attempts to explain "how" or "why" he reached any of his conclusions.

While Hromas has no experience managing the defense of a third-party liability claim, he does have extensive experience with being excluded altogether and having his testimony limited.[5] He cannot even keep count of how many times he has been excluded or limited.[6] In fact, just months ago, Hromas was disqualified from acting as an appraiser in a case by a Court in Texas because the Judge specifically found that Hromas was "biased" against the claimant and had an "unfair and bad faith approach to the appraisal."[7] As with his prior cases, Hromas' testimony is due to be excluded in this case.

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[2] *Id*., and at 66:9-67:15.
[3] Ex. A, Hromas Report.
[4] Ex. A, Hromas Report, p. 3 ("The specifics of the investigation by ACE will be addressed in greater detail by the individuals involved in those decisions and will not be repeated here.").
[5] Ex. B, Hromas Dep. at 41:4-49:1.
[6] *Id*.
[7] *Id*. at 67:18-73:3; Ex. D, Order Granting Motion to Disqualify Hromas.

II. LEGAL STANDARD

The Court has the duty to confirm that Hromas is qualified, and that his opinions are relevant, reliable, and helpful.[8] "Fed. R. Evid. 702, which governs expert testimony, provides:"

> "A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
>
> (a) the expert's scientific, technical or other specialized knowledge will help the trier of fact to understand the evidence or determine a fact in issue;
>
> (b) the testimony is based on sufficient facts or data;
>
> (c) the testimony is the product of reliable principles and methods; and
>
> (d) the expert has reliably applied the principles and methods to the facts of the case."[9]

"Rule 702 requires district courts to ensure 'that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand.'"[10] "This 'gatekeeping' function is to be performed with regard to the admissibility of both expert scientific evidence and expert technical evidence."[11] "'This function inherently requires the trial court to conduct an exacting analysis of the foundations of expert opinions to ensure they meet the standards for admissibility under Rule 702.'"[12]

"The Eleventh Circuit requires district courts to conduct a three-part inquiry to determine the admissibility of expert testimony:"

> "(1) the expert [must be] qualified to testify competently regarding the matters he intends to address; (2) the methodology by which the expert reaches his conclusions [must be] sufficiently reliable as determined by the sort of inquiry mandated in *Daubert*; and (3) the testimony [must assist] the trier of fact, through the application

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[8] *See Daubert v. Merrill Dow Pharmaceuticals*, 509 U.S. 579, 589, 597 (1993); *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 142 (1999); *see also* Fed. R. Evid. 401-403.
[9] *Schoen v. State Farm Fire & Cas. Co.*, 638 F. Supp. 3d 1323, 1338 (S.D. Ala. 2022) (Beaverstock, J.).
[10] *Id*. at 1338-39 (citing *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 597, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993)).
[11] *Id*. at 1339 (citing (citing *United States v. Frazier*, 387 F.3d 1244, 1260 (11th Cir. 2004) (citing *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 147, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999))).
[12] *Id*.

> of scientific, technical or specialized expertise, to understand the evidence or to determine a fact in issue."[13]

"The burden is on the proponent of the expert testimony to show, by a preponderance of the evidence, the testimony satisfies each part of this inquiry."[14] Ace is unable to satisfy this burden.

The Court must still "make some kind of reliability determination to fulfill its gatekeeping function."[15] "An expert's opinion testimony becomes inadmissible…where it is connected to existing data only by the ipse dixit of the expert.[16]" "If an expert's opinion is so fundamentally unsupported that it cannot assist the trier of fact, the court should exclude that expert's opinion."[17] "When a witness relies 'solely or primarily on experience, then the witness must explain how that experience leads to the conclusion reached, why that experience is a sufficient basis for the opinion, and how that experience is reliably applied to the facts.'"[18] For example, in *TBL Collectibles, Inc. v. Owners Ins. Co.*, the court excluded certain testimony of an insurance claims handling expert who did "not articulate the factual basis for his conclusions or explain how the standards applied relate to the issue of defendant's reasonableness."[19] Hromas' proffered testimony in this case should be excluded for these same reasons.

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[13] *Id*. (citing *Hendrix ex rel. G.P. v. Evenflo Co.*, 609 F.3d 1183, 1194 (11th Cir. 2010)).
[14] *Id*. Since Hromas is not providing scientific opinions, factors that may assist the *Daubert*-style inquiry include whether Hromas: (1) "unjustifiably has extrapolated from an accepted premise" to a conclusion that cannot fairly be derived from it; (2) "has adequately accounted for obvious alternative explanations" inconsistent with the opinion expressed; and (3) "is being as careful as he would be in his regular professional work outside of his paid litigation consulting." Fed. R. Evid. 702 advisory committee's note (citations and internal quotation marks omitted).
[15] *VIP Products, LLC v. Jack Daniel's Properties, Inc.*, 2016 WL 5408313 at *14 (D. Ariz. Sept. 27, 2016), *aff'd*, 953 F.3d 1170 (9th Cir. 2020); *Hangarter v. Provident Life & Acc. Ins. Co.*, 373 F.3d 998, 1018 (9th Cir. 2004).
[16] *Butler v. First Acceptance Ins. Co.*, 652 F. Supp. 2d 1264, 1272 (N.D. Ga. 2009) (citing *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997)); *see also Frazier*, 387 F.3d at 1295 (11th Cir. 2004) (explaining that expert testimony must be "authenticated by more than subjective belief or unsupported speculation[.]'").
[17] *Dara Corp. v. American Standard, Inc.,* 866 F. Supp. 1481, 1499 (N.D. Ind. 1994) (citation omitted); *Frazier*, 387 F.3d at 1262–63 (explaining that expert testimony "will not help the trier of fact when it offers nothing more than what lawyers for the parties can argue in closing arguments.").
[18] *Butler v. First Acceptance Ins. Co.*, 652 F. Supp. 2d 1264, 1272 (N.D. Ga. 2009) (quoting *Frazier,* 387 F.3d at 1261).
[19] 285 F. Supp. 3d 1170, 1193 (D. Colo. 2018).

III. THE COURT SHOULD EXCLUDE ALL OF HROMAS' OPINIONS REGARDING ACE'S CLAIM HANDLING CONDUCT AND OBLIGATIONS TO ITS INSURED

A. Hromas is not qualified to opine on the reasonableness of Ace's handling of the underlying claim.

Hromas is not qualified to offer any opinions on the claims handling of a third-party liability claim at issue in this case. Hromas has a law degree but has never been an attorney.[20] He has never been employed by an insurance company to work on adjusting, processing, or handling third-party liability insurance claims in any capacity—not as an adjuster, manager, or litigation supervisor.[21] Virtually all of Hromas' experience involves appraisal work/valuation of property damage claims.[22] Hromas has never worked on an appraisal process in Alabama or on an appraisal process proceeding under an Alabama policy.[23]

Hromas was able to explain the difference between first-party and third-party insurance claims:

> Q. What is the difference, Mr. Hromas, between a first party and third-party insurance claims?
>
> A. The first party generally is the named insured requesting coverage under their policy that they have in place, requesting coverage of the carrier for either property damages or any of the issues that may fall within the coverage it's afforded. A third party claim is generally when you have someone that is not a named insured under the policy but they're seeking benefits from an insured who is a named insured. They're seeking benefits that might be found under that policy, and primarily that would be in the liability sections of the policy, but it could involve property damage that was caused by somebody driving into a home or a place of business, other types of damages that may occur.
>
> Q. Okay. Even if it's -- even a third party claim seeking property damage that's generally going to be a liability claim –
>
> A. That's correct.

[20] Ex. B, Hromas Dep. at 15:23-16:6.
[21] *Id*. at 42:14-44:20.
[22] *Id*. at 18:1-23:5.
[23] *Id*. at 23:6-10.

> Q. -- correct? And so if we use third party and liability claims, are those basically interchangeable?
>
> A. It all depends on the circumstances of the actual event. You have -- everything has to be tied to the policy and the details of what's being claimed.
>
> Q. In a third party or liability claim, the claims professional may also be managing a defense of an insured; is that correct?
>
> A. Oftentimes that's the case. If it has gone into litigation, they may be doing so.
>
> Q. And that is different than a first party claim, you are not having to defend your insured in a first party claim; correct?
>
> A. That is correct. You're merely applying the policy coverages as written within the contract.[24]

Hromas then firmly established that he has absolutely no experience whatsoever handling third-party liability claims. He has never worked for an insurer managing third party or liability claims.[25] He has never managed a third party/liability claim since leaving Allstate in 2003.[26] He has never performed the role of managing a claim for an insurer where its insured was being sued in a third party/liability claim, and he has never managed the defense of an insured in a litigated claim.[27] Hromas never even managed the litigation of a first party claim during the 6-7 years he worked for an insurer over twenty years ago.[28]

Hromas has never performed the jobs or functions of any of the Ace employees involved with the handling of the underlying claim.[29] He has never worked for an insurer as in-house counsel.[30] He has never published any materials or given presentations on third party claims.[31] He

[24] Ex. B, Hromas Dep. at 25:1-27:4.
[25] *Id*. at 27:5-8.
[26] *Id*. at 27:9-14.
[27] *Id*. at 27:18-28:6.
[28] *Id*. at 28:7-16.
[29] Ex. B, Hromas Dep. at 29:6-10.
[30] *Id*. at 30:3-6.
[31] *Id*. at 30:23-31:6.

is not a chartered property casualty underwriter.[32] He lists being "currently enrolled" in a program for associate in claims and commercial lines specialist on his CV, even though he last took a few correspondence courses for this certification back almost 20 years ago and that certification has to be completed within 5 years of enrollment.[33]

Hromas has never testified in a third-party liability claim.[34] He has never even been disclosed as an expert in a third-party liability case.[35] He has never testified or been disclosed in an expert in a case where the issue was an insurance company's management of the defense of their insured.[36] He has never testified or been disclosed as an expert in a case about coverage in a third-party liability case.[37] He has never applied the defense obligation in an insurance contract, and he has never rendered a coverage opinion on whether a defense obligation was owed under an insurance contract.[38] He is not aware of any particulars of Alabama law.[39]

General experience or experience in a related area is not sufficient to qualify to testify in another specialized area.[40] Here, Hromas has absolutely no knowledge specific to Alabama or the standard of care under Alabama law standards of care for claims handling in third-party liability claims. Accordingly, he is not qualified to give the opinions he has given in this case.[41] That

[32] *Id*. at 30:12-14.
[33] *Id*. at 31:15-33:19.
[34] Ex. B, Hromas Dep. at 34:13-18.
[35] *Id*. at 34:19-35:3.
[36] *Id*. at 35:4-1.
[37] *Id*. at 35:12-16.
[38] *Id*. at 147:23-148:15.
[39] *Id*. at 152:20-21.
[40] *Beam v. McNeilus Truck & Manuf. Co., Inc.*, 697 F. Supp. 2d 1267, 1277 (N.D. Ala. 2010) (expert's experience with guard devices and warning labels are not sufficient to qualify him as expert because his prior experience did not involve the specific product at issue in the case); *see also U.S. v. Brown*, 415 F. 3d 1257, 1269 (11th Cir. 2005) (generalized experience was insufficient); *Broadcort Capital Corp. v. Summa Medical Corp.*, 972 F. 2d 1183 (10th Cir. 1992) (attorney's securities experience did not relate to large brokerage houses, etc.); *City of Hobbs v. Hartford Fire Ins.*, 162 F. 3d 576, 587 (10th Cir. 1998) ("Though a proffered expert possesses knowledge as to a general field, the expert who lacks specific knowledge does not necessarily assist the jury.").
[41] *See Hobbs*, 162 F. 3d at 587-88 (affirming the trial court's exclusion of a bad-faith expert in part because he did not have specialized knowledge of New Mexico law and the handling of third-party claims).

Hromas has apparently reviewed the claim file and a single Alabama statute does not qualify him to give his opinions in a specialized field in which he has no experience.[42] Moreover, Hromas makes no attempt to explain how or why his experience in appraising first-party claims, which he admits are materially different, could reliably support an opinion that an insurer acted reasonably in third-party liability case like this. Hromas clearly lacks the requisite qualifications, and therefore, and should be excluded.[43]

B. Hromas' opinions are unreliable under Fed. R. Evid. 702 and the *Daubert* standard, and they are not relevant or helpful because they are based on insufficient facts and information, consists of inadmissible legal conclusions

In this case, Hromas proffers to testify as to the following:

1. The scope and reasonableness of the actions by ACE during the course of the investigation of coverages available as found within the applicable policy, and
2. That the complicated nature of the underlying claim as well as the introduction of a new product line created obstacles to the time required to make determinations of coverage and communicate those to the Insured, as well as the considerations for the inclusion of Right at Home as an Additional Insured, and
3. That the ultimate decision made by ACE to extend payment for the full policy limits available extinguished any further duties to the Insured as related to the underlying claim.

These opinions, however, are similar to Hromas' opinions in other multiple recent first-party cases where the Courts either altogether excluded Hromas or significantly limited his testimony because these opinions stated improper and Hromas' Rule 26 report failed to articulate the factual basis for this testimony or explain how his experience informs his testimony.

For example, Hromas was also completely excluded in *E.Z. Aces Gaming Inc. v. Penn-Am. Ins. Co.*, where he expressed the following opinions in his Rule 26 report:

> (1) Mr. Hromas will testy as to the reasonableness of Penn America's claim handling; (2) the reasonableness of the E.Z. Aces's assertions regarding Penn

[42] *Taylor v. Watters*, 655 F. Supp. 801, 805 (E.D. Mich. 1987) ("A course of self-study is not adequate, in the opinion of this Court, to create an expert.").
[43] *Butler v. First Acceptance Ins. Co.*, 652 F. Supp. 2d 1264, 1272 (N.D. Ga. 2009).

> America's actions; (3) the lack of factual support for alleged violations of Louisiana Insurance Code or Louisiana law; and (4) Plaintiff's failure to take required affirmative actions to mitigate damages.[44]

The *E.Z. Aces* Court found all of these expressed opinions to be inadmissible.[45]

In *Slavin v. Garrison Prop. & Cas. Ins. Co.*, Hromas was completed excluded from testifying, with the Court finding:

> I conclude that Mr. Hromas' opinions as to whether Garrison's representatives acted reasonably or with bad faith in handling Plaintiff's claim would not be helpful to the jury. Accordingly, I hold that in my role as a gatekeeper of expert testimony, the opinions expressed by Mr. Hromas are unreliable to the extent that they will not be helpful to a jury and, as such, his expert testimony will be not be admitted pursuant to Rule 702. Mr. Hromas' proffered testimony, as expressed in his expert report, is not the product of reliable principles in that they are based on an inapplicable standard of care, and they rely on an implausible interpretation of Garrison's obligations under the applicable insurance policy. In addition, Mr. Hromas' expressed opinions are replete with legal opinion and conclusions. Plaintiff has failed to prove the foundational requirements of Rule 702 by a preponderance of the evidence and I grant Garrison's motion to exclude Mr. Hromas' testimony.[46]

Hromas' testimony was also "excluded in its entirety" in *Philadelphia Indem. Ins. Co. v. Apple Inc.*.[47] In *5205 Lincoln LLC v. Owners Ins. Co.*, the Court significantly all of Hromas' proffered testimony opinions "to the extent that Mr. Hromas does not state the factual basis for his opinions, supports his conclusions with only 'the totality of the claim file,' or attempts to state a legal

[44] 643 F. Supp. 3d 620, 625 (W.D. La. 2022).
[45] *Id*.
[46] No. 14-CV-01839-LTB-KMT, 2017 WL 2928030, at *9 (D. Colo. July 10, 2017), *aff'd*, 805 F. App'x 561 (10th Cir. 2020).
[47] No. CV SAG-20-003287, 2023 WL 4407582, at *6 (D. Md. July 7, 2023).

conclusion…"[48] He was similarly limited in *Mt. Hawley Ins. Co. v. JBS Parkway Apartments, LLC*.[49]

Here, as in *E.Z. Aces*, *Slavin*, *5205 Lincoln*, Hromas' proffered opinions on the reasonableness of Ace's claim handling, a claimed lack of applicable industry standards, and Ace's duties to Gaudet being extinguished by the payment of policy limits are impermissible legal conclusions for which Hromas fails to state any supporting factual basis. Hromas clearly did "not articulate the factual basis for his conclusions or explain how the standards applied relate to the issue of defendant's reasonableness."[50] His opinions are properly excluded in their entirety.

While "it is proper for a qualified expert witness to testify about insurance industry practices and procedures,"[51] here, Hromas is not qualified. Hromas states both in his report and in his testimony that claim handlers are required to be knowledgeable of relevant Alabama statutes

[48] No. CV-19-05218-PHX-JJT, 2021 WL 5446461, at *3 (D. Ariz. Nov. 22, 2021) ("Mr. Hromas states that he will testify to '[t]he reasonableness of the assertions by the Plaintiff that the actions by [Defendant] gave rise to violations of the Arizona Insurance Code and are thus subject to extra-contractual penalties' (Hromas Report at 2), yet he does not provide the factual basis for this testimony or explain how his experience informs this testimony. In addition, this testimony would be an impermissible legal conclusion…The Court's gatekeeper role requires the Court to 'ensure the reliability and relevancy of expert testimony' in light of the particular facts and circumstances of the particular case, *Kumho Tire Co., Ltd.*, 526 U.S. at 152, which it cannot do when an expert's stated basis for his opinion is as conclusory as "the totality of the claim file." Thus, to the extent that Mr. Hromas does not state the factual basis for his opinions, supports his conclusions with only 'the totality of the claim file,' or attempts to state a legal conclusion, the Court will exclude his testimony.").

[49] No. MO:18-CV-00092-DC, 2020 WL 6821329, at *5 (W.D. Tex. Oct. 5, 2020).

[50] *TBL Collectibles, Inc. v. Owners Ins. Co.*, 285 F. Supp. 3d 1170, 1193 (D. Colo. 2018)

[51] *Hibbett*, 2017 WL 2062955, at *3 (citing *Camacho v. Nationwide Mut. Ins. Co.*, 13 F. Supp.3d 1343, 1366 (N.D. Ga. 2014) ("[B]ecause the average juror is not likely to be familiar with the practices and procedures involved in insurance claims handling, expert testimony on these matters is admissible to assist the trier of fact...An insurance expert may testify regarding what duties are owed by an insurance company during the claims handling process and whether the actions of the insurance company complied with those duties without offering improper legal conclusions."); *Royal Marco Point 1 Condominium Ass'n v. QBE Ins. Corp.*, 2011 WL 470561, *4 (M.D. Fla. Feb. 2, 2011) (allowing expert opinions comparing defendant insurer's claims handling practices to what is standard and typical in the industry)). "And an expert may properly testify as to facts that relate to a legal standard, so long as he or she does not offer opinions as to whether that legal standard has been met." *Id*. (citing *Cordoves v. Miami-Dade County*, 104 F. Supp.3d 1350, 1365 (S.D. Fla. 2015) ("[A]n expert may offer his opinion as to facts that, if found, would support a conclusion that the legal standard at issue was satisfied, **but he may not testify as to whether the legal standard has been satisfied**."); *Camacho*, 13 F. Supp.3d at 1366 (citing as an example of proper testimony an attorney expert opinion that a statement in a prospectus was standard language, because such information helped the jury evaluate defendants' scienter)).

and case law in order to be compliant,[52] but he admits that he reviewed a single Alabama statute and no Alabama case law on claims handling, the construction of conflicting policy language, ambiguities in policy language, defending without issuing a reservation of rights, the effect of a duty to defend covered and uncovered claims, and he otherwise possesses no knowledge or experience on Alabama law as its relates to claims handling and the duties insurers owe their insureds.[53] Moreover, Hromas does not identify a single industry standard or explain how he has analyzed the facts of this case in light of any such standard. His opinions are based on his review of an incomplete timeline prepared by Ace's counsel.[54] He offers no comparison of Ace's claim handling policies and procedures with industry standards. He does not even attempt to address the conduct of any direct Ace employee. Nor does he set forth any reliable reasoning or methodology to support his opinions as required under Fed. R. Evid. 702. Instead, he argues in conclusory fashion that Ace acted reasonably and, even if not, Ace should not be held to a standard of care. Despite disclaimer in his report, Hromas' proffered opinions improperly attempt to tell the jury the result Ace wants it to reach,[55] not information that will help the jury make that independent determination.

The reasons why all of Hromas' legal opinions are inadmissible are explained in detail in the recent case of *O'Sullivan v. GEICO Cas. Co.*, where the District Court struck a careful balance admissible expert testimony that explained and applied insurance industry standards and practices to the facts of the case, on the one hand, and inadmissible expert testimony that offered speculative and otherwise prejudicial opinions in the form of ultimate legal conclusions, on the

[52] Ex. A, Hromas Report, p. 3.
[53] *Id*. at 74:22-79:8; 123:19-125:1 ("What case law did you review in connection with your work on this case? A. I didn't review any.").
[54] Ex. C, Hromas Report, p. 2-4.
[55] *Omar v. Babcock*, 177 Fed. Appx. 59, 63 n.5 (11th Cir. 2006).

other.[56] In *O'Sullivan*, the court allowed the plaintiff's insurance industry expert to "offer testimony articulating what he believes to be the relevant industry standards, and explaining – factually – how [the insurance company's] conduct did or did not comport with those standards."[57] However, the court refused to permit the expert to "offer ultimate legal opinions," or "simply tell the jury what result it should reach without providing any explanation of the criteria on which that opinion is based or any means by which the jury can exercise independent judgment."[58] To illustrate, the court noted that the expert "may offer an explanation...of how [the insurer's] communications with Plaintiff offering him UM/UIM benefits differed from the practices of other insurers or from industry standards."[59] However, the court precluded the expert from offering "an opinion that the [insurer's] information or explanation regarding UM/UIM benefits was ultimately insufficient, since that is a legal conclusion which the jury will be charged to resolve."[60] In short, the court permitted the expert to "testify as to insurance industry standards, but not as to his opinion of what [the] law requires."[61]

The Southern District of Alabama reached a similar conclusion in *Hibbett Patient Care, LLC v. Pharmacists Mut. Ins. Co.*.[62] In *Hibbett*, the Court disallowed the majority of the proffered expert's[63] opinions because they "'merely [told] the jury what result to reach' and recast[ed] [the insurer's] own interpretation of the relevant documents."[64] The proffered expert's opinions largely consisted of interpretations of provisions of the insurance policy and the complaint. The

[56] 2017 WL 491173, at *5-9 (D. Colo. Feb. 7, 2017).
[57] *Id.* at *8 (emphasis added).
[58] *Id.*
[59] *Id.* at *9 (emphasis added).
[60] *Id.* (emphasis added).
[61] *Id.* (emphasis added).
[62] No. CV 16-0231-WS-C, 2017 WL 2062955, at *2 (S.D. Ala. May 12, 2017).
[63] Unlike this case, in *Hibbett* there was no challenge was made to the proffered expert attorney's qualifications to testify as an expert on claims handling.
[64] *Hibbett*, 2017 WL 2062955, at *3.

proffered expert opined that the insurer's interpretations were correct and that the insured's interpretations were incorrect. The court found that the proffered expert's opinions on policy interpretations were inadmissible legal conclusions in that they "'merely [told] the jury what result to reach' and recast[ed] [the insurer's] own interpretation of the relevant documents."[65]

Hromas' proffered testimony will also be unhelpful because his opinions are not based on "sufficient facts or data." Hromas does not set forth a sufficient factual basis for any opinions in his report. His testimony likewise fails to set forth any reliable factual foundation to opine that Ace properly handled the claim in accordance with the applicable standard of care or that Ace should not be held to any standard of care. For example, Hromas contends that Gaudet was fully apprised of all developments throughout the underlying claim because Gaudet had his own attorneys and "simply because there was no written letter in the claim file does not mean that [Gaudet] was not advised of what was going on with the underlying claim."[66] As another example, Hromas claims that "Gaudet knew what was going on with the claims handling at the time" but cannot point to any specific evidence supporting his argument, instead he generally claims "I believe the file reflects that" and "the overall tone" of Rogers conversations reflect this.[67] Hromas does not cite to single piece of admissible evidence in his report. In fact, Hromas specifically declined to delineate any facts supporting his opinions.[68] The only "evidence" Hromas points to in his report is an incomplete timeline prepared by Ace's counsel created by Ace's counsel.[69] He contends this timeline "is a clear example of the complexity of the investigation of the claim as well as the status

[65] *Id*. (citing *Cook*, 402 F.3d at 1111 ("Proffered expert testimony generally will not help the trier of fact when it offers nothing more than what lawyers for the parties can argue in closing arguments.")).
[66] Ex. B, Hromas Dep. at 99:13-100:14.
[67] *Id*. at 106:12-107:17.
[68] Ex. A, Hromas Report, p. 3 ("The specifics of the investigation by ACE will be addressed in greater detail by the individuals involved in those decisions and will not be repeated here.").
[69] *Id*.; Ex. C, Plaintiff's Exhibit 7 to Sandra Sutton Deposition.

of Right at Home as an Additional Insured under the policy" even though there are only 3 entries on counsel's timeline between the time RAH's tender on 2/19/19 and when Ace issued the denial letter on 3/2/20:[70]

- **2/19/19**
  - Philadelphia additional insured tender letter—dated 1/19; received 2/19/19
- **5/30/19**
  - Tara Elliot emails Philadelphia adjuster stating RAH is an additional insured. Needs more information from Philadelphia including its policy and if Philadelphia is defending RAH.
- **5/19—12/19**
  - Litigation is tied up with venue and jurisdictional motions
- **1/20—2/20**
  - Claims investigates coverage for RAH, determines RAH is not AI under the applicable PL policy form; seeks legal opinion
- **3/2/20**
  - Coverage letter to Philadelphia denying AI tender [71]

Hromas simply does not know the facts of this case. And there is no question that his Rule 26 report fails to adequately state the factual basis for any of his opinions. He is unable to point to any specific facts other than "information in the claim file" and the "general tone" or "overall tone" of the case.[72] In *5205 Lincoln LLC v. Owners Ins. Co.*, the Court significantly all of Hromas' proffered testimony opinions "to the extent that Mr. Hromas does not state the factual basis for his opinions, supports his conclusions with only 'the totality of the claim file,' or attempts to state a legal conclusion…"[73] This Court should do the same except with all of Hromas' proffered opinions.

Hromas' opinions are not reliable because his first-party appraisal experience is not a sufficient basis for his opinions, and the opinions are based on insufficient facts and data. Because Hromas is unqualified to opine about the reasonableness of Ace's conduct, Ace cannot explain

[70] Hromas Dep. at 101:22-103:14.
[71] Ex. C, Plaintiff's Exhibit 7 to Sandra Sutton Deposition.
[72] *Id*. at 106:12-108:3; 126:2-128:4.
[73] No. CV-19-05218-PHX-JJT, 2021 WL 5446461, at *3 (D. Ariz. Nov. 22, 2021).

how his experience supports the opinions he offers.[74] Moreover, Hromas' opinions are inadmissible because they consist entirely of improper legal conclusions and contractual interpretations that are completely devoid of any factual support. Hromas cannot simply opine on the result Ace wants the jury to reach.

Because Hromas is not qualified to provide these opinions, they will not be helpful to the jury and are therefore irrelevant.[75] Ace cannot explain how his experience supports the opinions he offers.[76] Moreover, Hromas' opinions are inadmissible because they consist entirely of improper legal conclusions and contractual interpretations that are completely devoid of any factual support. Since his opinions are not reliable, they are neither relevant nor helpful because they amount to nothing more than speculation or conjecture. Consequently, his opinions do "not meet the helpfulness requirements of Rule 702," and are "not the product of reliable facts, as required by Rule 703."[77] As such, Fed. R. Evid. 403 further compels the exclusion of Hromas' opinions for lack of a reliable factual foundation.

V. CONCLUSION

Based on the foregoing, the Court should enter an Order precluding Hromas from offering any of his proffered opinions at trial, or alternatively, limiting his opinions for the reasons set forth herein.

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[74] *Lopez*, 2015 WL 5584898, at *6 (finding expert's opinion unreliable because he failed to "explain how his experience as a lawyer working on insurance related cases has informed" the opinion that the insurer acted reasonably); *Butler*, 652 F. Supp. 2d at 1272 (finding expert's opinions unreliable because expert failed to explain how his experience handling insurance aspects of personal injury claims could support an opinion that the insurer acted unreasonably).

[75] *Butler*, 652 F. Supp. 2d at 1271 (citing *Allison v. McGhan Medical Corp.,* 184 F.3d 1300, 1312 (11th Cir. 1999)).

[76] *Lopez*, 2015 WL 5584898, at *6 (finding expert's opinion unreliable because he failed to "explain how his experience as a lawyer working on insurance related cases has informed" the opinion that the insurer acted reasonably); *Butler*, 652 F. Supp. 2d at 1272 (finding expert's opinions unreliable because expert failed to explain how his experience handling insurance aspects of personal injury claims could support an opinion that the insurer acted unreasonably).

[77] *Id*.

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing upon the attorneys of record and pro se parties in this case by U.S. Mail, properly addressed and first class postage prepaid or by electronically filing the foregoing with the Clerk of the Court using the electronic filing system, on this the 27th day of March 2024.

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