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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CATHOLIC MUTUAL RELIEF SOCIETY et al., Petitioners, v. THE SUPERIOR COURT OF THE COUNTY OF LOS ANGELES, Respondent. ROMAN CATHOLIC ARCHDIOCESE OF SAN DIEGO et al., Real Parties in Interest.	B178101 (Los Angeles County Super. Ct. JCCP No. 4297) (Peter D. Lichtman, Judge)

ORIGINAL PROCEEDING. Petition for writ of mandate granted.

Borton, Petrini & Conron, Rocky K. Copley and Jonathan P. Geen for Petitioners.

No appearance for Respondent.

Kiesel Boucher & Larson, Raymond P. Boucher, Patrick DeBlase, and Anthony M. DeMarco, for Real Parties in Interest.

The Roman Catholic Archdiocese of San Diego (the Church) has been sued by numerous persons claiming they were the victims of childhood sexual abuse by various Church priests. Petitioners are the Church's insurer and the insurer's corporate parent. They seek to vacate a written order by a settlement judge denying their motion to quash deposition subpoenas from the plaintiffs aimed at obtaining documents concerning the insurer's financial condition, including its reserves and any reinsurance agreements. As set forth below, we conclude that the subpoenas sought items that were not discoverable. Accordingly, we grant the petition, reverse the settlement judge's order denying the motion to quash, and direct the court upon remand to enter a new and different order quashing the subpoenas.

FACTS AND PROCEDURAL HISTORY

The Church is the principal defendant in an action brought by approximately 140 persons (plaintiffs) for alleged childhood abuse by certain priests. Those cases, along with others involving the San Bernardino Archdiocese, are known collectively as *Clergy Cases II*, and were coordinated within the Los Angeles County Superior Court with claims against dioceses from other parts of the state.

In September 2003, pursuant to a stipulated order regarding settlement and mediation proceedings, the trial court issued an initial case management order which, among other things, directed the Church to turn over copies of all insurance policies that might provide coverage for plaintiffs' claims. Petitioner Catholic Mutual Relief Society (Relief Society) is a non-profit corporation that administers a self-insurance fund for more than three hundred archdioceses and other Catholic Church entities in the United States and Canada, including the San Diego Archdiocese. The Relief Society is not an insurance company, but its wholly-owned subsidiary, the Catholic Relief Insurance Company of America (Relief Insurance) is. Relief Insurance is the Church's insurer.[1]

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[1] For ease of reference, we will sometimes refer to the Relief Society and Relief Insurance collectively as petitioners.

Petitioners are headquartered in Nebraska but maintain claim and risk management offices in San Diego and San Bernardino. All sexual abuse claims are handled by the home office in Nebraska, however.

In compliance with the case management order, the Church produced copies of its insurance policies from petitioners. Plaintiffs contended this information was insufficient. According to plaintiffs, they also needed to know whether petitioners were financially sound enough to cover their policy obligations. In April 2004, in an attempt to resolve the matter informally, the trial court allowed plaintiffs to serve petitioners a series of questions aimed at obtaining the desired information.[2] Petitioners objected to those questions on several grounds: (1) they sought information concerning their financial condition, reserves, and reinsurance agreements, which was not relevant for discovery purposes or was otherwise not discoverable; (2) much of the material sought was privileged; (3) the requests were overbroad and ambiguous; and (4) the trial court lacked authority to require interrogatory responses from non-parties such as petitioners.

On May 6, 2004, the settlement judge issued an order permitting plaintiffs to serve deposition subpoenas on petitioners in an attempt to secure the information requested by plaintiffs' interrogatories. Those subpoenas sought the following documents:

"1. All WRITINGS PERTAINING TO the financial relationship between [the Relief Society and Relief Insurer] with respect to financial responsibility for sexual abuse claims brought against the [Church].

2. All WRITINGS PERTAINING TO the total amount of funds available to satisfy any defense expenses or indemnify losses in connection with sexual abuse claims against the [Church], whether from reserves, policyholder surplus, reinsurance, or other available sources of funding.

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[2] Those eight "questions," which the parties have denominated "interrogatories," formed the basis for the subpoena requests at issue here. Because of the similarity between the questions and the subpoena requests, it makes little sense to set forth both in detail. Instead, we will recite only the subpoena requests *post*.

3. All WRITINGS evidencing the number of sexual abuse claims that have been filed against policyholders affiliated with the Catholic church and the total amount of damages sought by these claims.

4. All WRITINGS evidencing the annual amount over the past five years of defense costs and indemnity payments incurred in connection with sexual abuse claims against policyholders affiliated with the Catholic church.

5. All WRITINGS evidencing the amount in reserves that have been set for sexual abuse claims against the [Church] by [petitioners].

6. All WRITINGS evidencing the total indemnity reserves, total defense and expense reserves, and total incurred but not reported reserves for sexual abuse claims against the [Church] by [petitioners].

7. All WRITINGS evidencing the amount in reserves that has been set for sexual abuse claims against all policyholders affiliated with the Catholic church.

8. All WRITINGS evidencing the totals for indemnity reserves, defense and expense reserves, and incurred but not reported reserves for sexual abuse claims against all policyholders affiliated with the Catholic church.

9. All WRITINGS PERTAINING TO reinsurance available to [petitioners] to satisfy defense or indemnity costs arising from the sexual abuse claims brought against the [Church].

10. All WRITINGS PERTAINING TO the most recent balance sheets, financial statements, or other financial filings with insurance regulators."

Petitioners moved to quash the subpoenas, contending that by seeking information about their financial condition, the document requests sought information that was not reasonably calculated to lead to the discovery of admissible evidence and were therefore beyond the permissible scope of discovery.[3] The trial court denied the motions to quash,

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[3] Petitioners also argued that the subpoenas exceeded the settlement judge's authority as a mediator, were overbroad and burdensome, and sought privileged information. Because we conclude that the requested documents were not discoverable, we will not reach those other issues.

finding that the subpoena requests—aimed at determining whether petitioners were financially able to pay any judgment that might be entered—were "clearly relevant and discoverable." His order was supported by decisions holding that information which might facilitate settlement was discoverable. Petitioners then brought their petition asking us to overturn the order. On October 30, 2004, we issued an order to show cause why we should not do so.[4]

STANDARD OF REVIEW

We review discovery orders on the scope of permitted discovery under the abuse of discretion standard. That discretion is not arbitrary or unfettered, and must be exercised in conformity with existing legal principles. (*People v. Superior Court (Mouchaourab)* (2000) 78 Cal.App.4th 403, 413.)

DISCUSSION

1. An Insurer's Financial Condition Is Not Included Within Code of Civil Procedure Section 2017, Subdivision (b)

The general scope of discovery is set forth in Code of Civil Procedure section 2017, subdivision (a), which provides, in relevant part: ". . . any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action,

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[4] Oral argument in this matter was set for March 24, 2005. The parties waived oral argument, and this matter, after being fully briefed, was deemed submitted at that time. By letter dated April 12, 2005, plaintiffs' counsel informed us that on that day, Judge Lichtman issued an ex parte order allowing plaintiffs to withdraw the disputed discovery requests and vacating his earlier order denying petitioners' motions to quash the deposition subpoenas. According to plaintiffs, this rendered the writ petition moot, and they asked us to refrain from filing a decision. Petitioners objected that the matter was not moot. We agree for two reasons: (1) the issue is likely to recur, either among these parties, or the many others involved in these consolidated proceedings; and (2) the issue is one of broad public interest that is likely to recur. (*Environmental Charter High School v. Centinela Valley Union High School Dist.* (2004) 122 Cal.App.4th 139, 144.)

if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition, and location of any document, tangible thing, or land or other property."[5]

Evidence of a defendant's liability insurance is not admissible at trial. (Evid. Code, § 1155.) Nor does it relate to a party's claims or defenses at trial. (*Laddon v. Superior Court* (1959) 167 Cal.App.2d 391, 396 (*Laddon*).) Even so, section 2017(b) allows for limited discovery of such information. Under that section, the plaintiff is entitled to discover the "existence and contents of any agreement under which any insurance carrier may be liable to satisfy in whole or in part a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. This discovery may include the identity of the carrier and the nature and limits of the coverage. A party may also obtain discovery as to whether that insurance carrier is disputing the agreement's coverage of the claim involved in the action, but not as to the nature and substance of that dispute. . . ." (§ 2017(b).)

Plaintiffs seek several categories of documents all related to one topic: the financial condition of petitioners, which plaintiffs contend is discoverable under section 2017(b). Petitioners point out that section 2017(b) is restricted to the existence and contents of a defendant's insurance policy. They also note that although a *defendant's* financial condition may be discoverable in a case where punitive damages are sought, (Civ. Code, § 3295, subd. (c)), with the exception of the existence and contents of the defendant's liability insurance policy, it is not otherwise discoverable even though it might arguably encourage settlement. (*Doak v. Superior Court* (1968) 257 Cal.App.2d 825, 831-834 (*Doak*) [assuming that the information was relevant to the subject matter of

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5 All further undesignated section references are to the Code of Civil Procedure. We will refer to section 2017, subdivisions (a) and (b) as section 2017(a) and (b), respectively.

the dispute, but impermissibly invaded the defendant's privacy rights in his confidential financial information].) They argue that more care must be taken to protect the rights of nonparties when discovery is sought by the parties to an action, especially when financial information is involved. (*Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 711-713; *Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282, 1290.) Because petitioners are not parties to this action, they contend there is neither statutory nor decisional authority for the type of discovery proposed by plaintiffs.

As noted, plaintiffs tried to obtain different types of information, such as reserves, reinsurance agreements, available funds, the number of sex abuse claims made, and defense costs incurred for other sex abuse claims. While the parties devote a fair portion of their briefs to these discrete categories—most notably to reserves and reinsurance information—taken individually or collectively, each category's discoverability is based on the same underlying premise: that under section 2017(b), a personal injury plaintiff is entitled to discover the assets and financial health of the defendant's insurer in order to determine whether the insurer will be able to meet its coverage obligations and therefore conclude a settlement.[6] Instead of discussing each separate category of information, we will address this overarching theme of plaintiffs' subpoenas.

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[6] Plaintiffs have consistently stated that this was their primary rationale for the discovery requests. In their opposition to petitioners' motions to quash, plaintiffs argued that obtaining the financial information was "critical to the potential resolution of the [plaintiffs' cases]" and that determining whether petitioners could meet their policy obligations was "critical to an eventual negotiated solution of these cases." During an early discussion of the issue at a February 16, 2004, hearing before the settlement judge, plaintiffs' counsel said that he wanted the asset information to see "what's available to resolve these cases" and "what might [be] available to deal with these claims . . . ." In their return to the petition, plaintiffs argued that the information was "critical to the resolution of [their] claims." Finally, the order transferring the case to the settlement judge expressly did so for "**settlement purposes only**" (original boldface), and he justified his order denying the motions to quash based on cases that held information was discoverable if it would facilitate settlement. Therefore, we decline to consider any claims by plaintiffs that the financial information they seek was discoverable for purposes other than settlement.

Section 2017(b) states only that a plaintiff may discover "the existence and contents" of an insurance policy. Nothing in this language even remotely suggests that it was intended to authorize discovery by an injured plaintiff into the financial health of the defendant's insurer. Plaintiffs attempt to augment this plain language by reaching back to cases that predate section 2017(b).

Section 2017(b) was enacted as part of the Civil Discovery Act of 1986 (§ 2016, et seq.). Before then, the discovery statutes did not provide for the discovery of a defendant's liability insurance information. Even though such information was not admissible, a case law exception to its discoverability had evolved. That exception arose from Insurance Code section 11580, which required every policy of liability insurance to state that a plaintiff who obtains a judgment against an insured defendant is then entitled to sue the defendant's insurer to recover the policy benefits. As a result of that statute, a contractual relationship was created between the insurer and every person who might be injured by the insured, giving the injured person a "discoverable interest" in the existence and terms of the defendant's liability policy. (*Superior Ins. Co. v. Superior Court* (1951) 37 Cal.2d 749, 754; *Pettie v. Superior Court* (1960) 178 Cal.App.2d 680, 684-688 (*Pettie*); *Laddon, supra,* 167 Cal.App.2d at p. 395.) The *Pettie* court noted in dicta that allowing such discovery could also help settle more cases because plaintiffs could learn whether there might be no more than a nominal recovery that would not justify extensive trial preparation and, because an insurer generally steps into the shoes of its insured, the plaintiff would be able to deal with his true litigation adversary. (*Pettie, supra,* at p. 690.)

As part of its holding, the *Laddon* court said that an injured plaintiff was entitled to learn of the "existence and extent" of the defendant's liability insurance. (167 Cal.App.2d at pp. 394-395.) Plaintiffs contend that the phrase "existence and extent of liability insurance" used in *Laddon* means more than just the contents of the policy. Instead, according to them, it also includes the petitioners' financial condition, which would provide a measure of the "true extent" of the Church's insurance coverage.

Plaintiffs' argument fails for two reasons. First, *Laddon* cannot be read as plaintiffs contend. At issue in *Laddon* was whether the plaintiff was entitled to discover the existence and *policy limits* of the defendant's policy, with the court using the terms "extent," "limits," and "policy limits" interchangeably. (167 Cal.App.2d at pp. 392-393, 395.) Thus, when *Laddon* spoke about the "extent" of insurance, it authorized discovery of no more than the coverage limits of a defendant's policy and is therefore consistent with section 2017(b). Second, even if *Laddon* can be interpreted as plaintiffs suggest, we cannot ignore the Legislature's plain language and choice of different phraseology when framing the reach of section 2017(b). (*Jurcoane v. Superior Court* (2001) 93 Cal.App.4th 886, 892-893 (*Jurcoane*) [our primary task is to give effect to the Legislature's intent. We first turn to the words themselves; if their meaning is clear and unambiguous and is not at odds with the face of the statute or its legislative history, then the plain language controls].) We therefore hold that section 2017(b) does not authorize the discovery of information related to the financial condition of a defendant's non-party insurer. (See *In re Dana Corp.* (Tex. 2004) 138 S.W.3d 298, 302 (*Dana*) [interpreting virtually identical Texas rule allowing discovery of the existence and contents of a defendant's liability policies; held that the statute could not be construed to include information concerning whether coverage had been eroded by other claims in order to facilitate settlement].)

Plaintiffs next contend that, at a minimum, section 2017(b) applies to reinsurance information because it specifically authorizes discovery of "any agreement under which any insurance carrier" may be liable to satisfy or reimburse a judgment. An understanding of the nature of reinsurance is necessary in order to analyze this contention.

Reinsurance is a "contract . . . by which an insurer procures a third person to insure him against loss or liability by reason of such insurance." (Ins. Code, § 620.) A reinsurance contract is presumed to be a contract of indemnity for the benefit of the insurance company and the original insured has no interest in it. (Ins. Code, § 623; *Ascherman v. General Reinsurance Corp.* (1986) 183 Cal.App.3d 307, 312

(*Ascherman*).) It is " '. . . a special form of insurance obtained by insurance companies to help spread the burden of indemnification. A reinsurance company typically contracts with an insurance company to cover a specified portion of the insurance company's obligation to indemnify a policyholder . . . . This excess insurance . . . enables the insurance companies to write more policies than their reserves would otherwise sustain since [it] guarantees the ability to pay a part of all claims. *The reinsurance contract is not with the insured/policyholder.* When a valid claim is made, the insurance company pays the first level insured, and the reinsurance company pays the insurance company. The reinsurance company's obligation is to the insurance company, and the insurance company vis-à-vis the reinsurer is thus the insured, or more appropriately, the "reinsured." ' " (*Id.* at p. 312, fn. 5, quoting *Excess & Cas. Reinsurance Ass'n v. Insurance Com'r, Etc.* (9th Cir. 1981) 656 F.2d 491, 492 (italics added by *Ascherman* court.)

The California case law antecedents to section 2017(b) were premised on the fact that Insurance Code section 11580 created a contractual relationship with all those who might be injured by an insurer's policyholders, thus vesting any eventual injured plaintiffs with a discoverable interest in the defendant's insurance policies. (*Laddon, supra,* 167 Cal.App.2d at p. 395.) Under Insurance Code section 11580, the injured plaintiff becomes a third party beneficiary of the insured plaintiff's liability policy. (*Shafer v. Berger, Kahn, Shafton, Moss, Figler, Simon & Gladstone* (2003) 107 Cal.App.4th 54, 68.) Because reinsurance contracts are, by statute, solely between the insurer and its reinsurer, and because the original insured has no rights in that reinsurance policy, an injured plaintiff cannot be considered a third party beneficiary to the reinsurance contracts of the plaintiff's liability insurer. Moreover, Insurance Code section 11580 does not list reinsurance policies among those as to which it is applicable. (Ins. Code, § 11580, subd. (a).) Therefore, to the extent section 2017(b) is based on earlier California decisions which established the discoverability of insurance

information as an adjunct to Insurance Code section 11580, it does not apply to reinsurance policies.[7]

Apart from the effect prior California appellate decisions might have when interpreting section 2017(b), that section was derived from former Federal Rule of Civil Procedure 26(b). (*Irvington-Moore, Inc. v. Superior Court* (1993) 14 Cal.App.4th 733, 737 (*Irvington-Moore*).)[8] Some federal and out-of-state cases interpreting that provision or others like it have permitted discovery of reinsurance information, but only in bad faith or declaratory relief coverage actions where the insurer itself was a party and the reinsurance information was relevant to the parties' claims or defenses. (See *Potomac Electric Power Co. v. California Union Ins. Co.* (D.C. 1990) 136 F.R.D. 1 (*Potomac*) [suit by insured who paid judgment against its insurers]; *Nat. Union Fire Ins. v. Continental Illinois Corp.* (N.D.Ill. 1987) 116 F.R.D. 78 (*Union Fire*) [suit by insurer to rescind policies based on claims of misrepresentations by its insured]; (*National Union Fire Ins. Co. v. Stauffer Chemical Co.* (Del. 1989) 558 A.2d 1091 (*Stauffer Chemical*).)

We recognize that *Potomac* and *Union Fire* both stated that because former rule 26(b) referred to "any" agreements by "any insurer," it applied to reinsurance. (*Potomac,*

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[7] Of course, even if reinsurance information were discoverable under section 2017(b), it would be limited to the existence and contents of any such policies.

[8] All further rule references are to the Federal Rules of Civil Procedure. Rule 26(b) was amended in 1993. (See Advisory Committee Notes, Fed. Rules Civ. Proc., rule 26, 28 U.S.C.A. (2004 Supp.) pp. 6-7.) Under the new provision (rule 28(a)(1)(D)), insurance policy information is now automatically discoverable without the need for a formal discovery request. The new rule states, in relevant part: "[A] party must, without awaiting a discovery request, provide to other parties: [¶] . . . [¶] (D) for inspection and copying . . . any insurance agreement under which any person carrying on an insurance business may be liable to satisfy all or part of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment." By its terms, this new provision for insurance discovery applies only to parties. Because even the defendant in a personal injury action is not likely to have knowledge of or access to its insurer's reinsurance policies, if any, the rule could not apply in a case like this, where discovery is sought from the defendant's non-party insurer. It also suggests that its predecessor, former rule 26(b), should not be construed to permit such discovery either.

supra, 136 F.R.D. at p. 2; *Union Fire,* 116 F.R.D. at pp. 83-84.) However, the statement in *Union Fire* came after the court had already held the discovery proper because it was relevant to the claims and defenses in the action. (*Union Fire*, *supra*, at pp. 83-84.) The pronouncement in *Potomac* was made without analysis or citation to authority, and preceded a discussion about why certain reinsurance information was relevant to the issues in the case. (*Potomac, supra,* at p. 2.) In short, both statements appear to be dicta and are best viewed skeptically. Neither case concerned the issue before us: whether the statutory provision permitting discovery of insurance coverage information applied for settlement purposes only to reinsurance information from a non-party insurer.

Most important, however, is a key difference between section 2017(b) and former rule 26(b): section 2017(b)'s addition of language stating that a party could "also obtain discovery as to whether that insurance carrier is disputing the agreement's coverage of the claim involved in the action . . . ." Statutes must be read as a whole in a manner that leads to an internally consistent interpretation. (*Jurcoane*, *supra*, 93 Cal.App.4th at p. 893.) Under this rule, the insurance carrier referred to in the coverage dispute portion of section 2017(b) must be the same insurance carrier described in the first sentence as the one who might be liable under any insurance agreement. The purpose of the coverage dispute language was to "mak[e] explicit the right to discover whether an insurance carrier, although providing a defense, is nonetheless contesting whether its policy covers the occurrence involved in the lawsuit." (*Irvington-Moore, supra*, 14 Cal.App.4th at p. 737.) Reinsurance carriers do not defend the policyholders of their reinsureds, however. (*People v. Highway Insurance Co.* (1974) 57 Ill.2d 590, 594 [reinsurer's liability is solely to its reinsured, and that reinsured, as the defendant's liability insurer, remains liable on its contract and handles all matters before and after the loss].) Based on this, the insurance carriers referred to in section 2017(b) cannot include reinsurers. We therefore conclude that section 2017(b) was intended to reach only a defendant's insurer, not that insurer's reinsurance agreements. Instead, as set forth below, the discoverability of reinsurance information, along with the other items requested by the subpoenas, rests on the general relevancy standards of section 2017(a). (See *Dana*, *supra*, 138 S.W.3d at

pp. 302-303 [while discovery statute that permitted disclosure of existence and contents of defendant's liability policies could not be read to also permit disclosure of information concerning possible erosion of coverage by other claims, the statute did not preclude its discovery. Instead, plaintiff's ability to obtain such information turned on whether it was relevant under general statutory principles of discoverability].)

2. A Non-Party Insurer's Financial Condition Is Not Discoverable For Settlement Purposes Under Section 2017(a)

As mentioned above, information is discoverable if it is relevant to the subject matter of the action and, additionally, is either admissible in evidence or reasonably calculated to lead to the discovery of admissible evidence. (§ 2017(a).) As both federal and California decisions have made clear, information concerning the existence and contents of a defendant's liability insurance policy does not meet this standard. (*Wegner v. Cliff Viessman, Inc.* (N.D. Iowa 1994) 153 F.R.D. 154, 160-161 (*Wegner*) [former rule 26(b)(2) was added to permit discovery of the existence and contents of a defendant's liability policies because that information was not considered relevant for discovery purposes but was deemed useful in allowing counsel to realistically appraise the case and select both settlement and trial strategy]; *Pettie, supra*, 178 Cal.App.2d at p. 690; Evid. Code, § 1155.) Because of these strong policy considerations, explicit statutory authorization was warranted in order to make the information discoverable. If *that* information is not relevant under general relevancy principles, it is difficult, if not impossible, to imagine how the broader class of financial information sought from petitioners might possibly be discoverable under section 2017(a).

Combined with their other arguments concerning the "existence and extent" of insurance coverage as discussed in *Pettie, supra,* 178 Cal.App.2d 680, plaintiffs appear to contend that a wide-ranging inquiry into the financial health of a defendant's insurer is proper because that information will permit them to determine if the insurer can meet its coverage obligations. That information, according to plaintiffs, will facilitate settlement and is therefore discoverable. (See *Garamendi v. Golden Eagle Ins. Co.* (2004) 116

Cal.App.4th 694, 712, fn. 8 [information is discoverable if it might facilitate settlement.)[9] We do not believe that the discovery purpose of facilitating settlements can be read as broadly as plaintiffs contend.

When considering the purposes of discovery statutes, the seminal case is *Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355 (*Greyhound*). (*Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 224-225.) According to the *Greyhound* court, one purpose of the discovery statutes is to "educate the parties in advance of trial as to the real value of their claims and defenses, thereby encouraging settlements . . . ." (*Greyhound, supra,* at p. 376.) That language was recently endorsed by our Supreme Court in *Emerson Electric Co. v. Superior Court* (1997) 16 Cal.4th 1101, 1107. Other courts and some commentators have apparently chosen to shorthand *Greyhound's* holding, stating that one purpose of discovery was to "facilitate settlements," but without mention of *Greyhound's* qualifying language concerning educating the parties about their claims and defenses in order to encourage settlement. (See *Glenfed Development Corp. v. Superior Court* (1997) 53 Cal.App.4th 1113, 1117; *Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1611-1612 (*Lipton*); Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2004) ¶ 8:66.1, p. 8C-1.) Other courts interpreting discovery statutes similar to ours have rejected attempts to discover the financial condition of a defendant's liability insurer in order to facilitate settlement.

At issue in *Dana, supra,* 138 S.W.3d 298, was the discoverability of information from a defendant's insurer concerning whether the insurer's coverage had been eroded by other claims. At plaintiffs' request, the trial court ordered the deposition of an insurance

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9 Information is obviously discoverable for other purposes as well: if it might reasonably assist a party in evaluating the case or preparing for trial. Admissibility is not the test and, unless privileged, information is discoverable if it might reasonably lead to the discovery of admissible evidence. (*Garamendi v. Golden Eagle Ins. Co., supra,* 116 Cal.App.4th at p. 712, fn. 8.) Because the only issue properly before us is whether the subpoenas sought information that might assist in settlement, we need not reach their relevancy for other purposes.

company employee who could testify about the amount of insurance remaining under defendant's policies. The court first held that the information was not covered by the Texas discovery rule that permitted discovery of the existence and contents of a defendant's liability policies. Instead, its discoverability turned on the relevancy principles governing discoverability in general. (*Id.* at pp. 302-303.) In its relevancy discussion, the *Dana* court cited various federal decisions which either allowed or denied discovery of insurance information beyond that permitted under former rule 26(b)(2). In each case mentioned, however, discoverability turned on whether the requested information was relevant to an issue in the case. (*Id.* at pp. 303-304, and cases cited therein.)[10] The court did not reach a holding concerning the relevancy of the information requested by the plaintiff in its own case, however. Instead, the Supreme Court allowed the deposition to go forward, but only because the trial court order permitting the deposition did not specifically address policy erosion. The witness could therefore testify about any relevant matters, with defense counsel free to object to any irrelevant inquiries concerning coverage erosion. Therefore, even though *Dana* did not directly hold that the information requested was irrelevant for discovery purposes, it strongly signaled that it was not discoverable.

The plaintiff in *Wegner*, *supra*, 153 F.R.D. 154, sought discovery from defendant's insurer about the amounts of available coverage that had already been expended, arguing that such information would allow him to make a realistic appraisal of his settlement prospects. After concluding that the requested information could not be sought under rule 26(b)(2), the *Wegner* court cited to a case which permitted discovery of documents showing an insurer's aggregate reserve information, but only because the

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10 This in accord with the only reported California decision to allow the discovery of an insurer's reinsurance information, *Lipton, supra,* 48 Cal.App.4th 1599. In that case, the discovery was allowed because the insurer was the defendant in a bad faith action and the information was relevant to the issues in the case. Discovery was limited to only unprivileged communications between the insurer and reinsurer concerning coverage issues and potential liability. That discovery was allowed under the general relevancy test of section 2017(a), without reference to section 2017(b). (*Id.* at pp. 1617-1618.)

information was relevant to issues raised in the case, including notice, defect, and punitive damages. Based on that, the court concluded that there was no authority which would require the insurer to produce the desired information. (*Id.* at p. 161.)

Both *Dana* and *Wegner* concerned insurance policies where the amount of coverage available might have been reduced by payments on other claims. According to petitioners, however, their policies are not "depleting value," meaning the Church's coverage is not reduced by the payment of other claims or fees. Therefore, the coverage erosion issues which were used to justify the improper discovery requests in *Dana* and *Wegner* are not even present here.

At bottom, the information plaintiffs seek is simply far too remote from the subject matter of this action to be relevant. (See *Snell v. Superior Court* (1984) 158 Cal.App.3d 44, 50-51 [plaintiff in medical malpractice action tried to discover whether the defendant hospital required its physicians to carry malpractice insurance; requested information was "only tenuously connected" to the question whether the hospital was negligent in hiring and evaluating its staff physicians].) Nor, we fear, would allowing this discovery mark the end of plaintiffs' financial information forays. Plaintiffs claim they need to learn about petitioners' reinsurance information because a large portion of petitioners' policy obligations have been laid off on reinsurance coverage.[11] Because the primary purpose behind reinsurance is to spread the primary insurer's risk, we are unsure how the existence or extent of reinsurance would negatively affect petitioners' financial condition. If plaintiffs obtained the reinsurance information, do they next intend to subpoena documents from the reinsurers concerning their own financial condition? While we do not know the answer, the question illuminates the hazards of extending the concept of relevancy as far as plaintiffs wish it to go. Although "fishing expeditions" are sometimes allowed by the discovery rules, there are limits on the catch. (*Tylo v. Superior*

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11 Plaintiffs support this contention by quoting from Best's *Insurance Reports*. They have not asked us to take judicial notice of those reports, have not supplied copies of the original text, and did not raise that issue below.

Court (1997) 55 Cal.App.4th 1379, 1387.) In short, while a rod and reel may be permitted, gill nets are not.[12]

Finally, even if the information were relevant for the purposes identified, plaintiffs do not contend that it would produce admissible evidence or was reasonably calculated to lead to the discovery of admissible evidence. We alternatively conclude that the documents sought are not discoverable under section 2017(a) on that basis.

DISPOSITION

For the reasons set forth above, let a peremptory writ of mandate issue directing the trial court to vacate its earlier order denying petitioners' motions to quash the deposition subpoenas and enter a new and different order granting those motions. Petitioners to recover their appellate costs.

CERTIFIED FOR PUBLICATION

RUBIN, J.

We concur:

COOPER, P.J.

FLIER, J.

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12 Crafting a broad new rule that would permit discovery on a showing that it would facilitate settlement seems ill advised. For example, undoubtedly inquiry into the financial health of *any* defendant or a defendant's insurance company would be useful to a plaintiff in formulating settlement strategy. Conversely, as defendants here argue almost chidingly, many defendants would certainly find discovery of a plaintiff's or its attorney's financial well being helpful to shaping settlement strategy. In any event, given the Legislature's role in enacting discovery statutes, if such a rule is to be created, changes of this nature should come from that body.