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BAD FAITH BLOG

Hands Off My Claims File!!! (At Least in Florida)

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In a first-party insurance dispute, a Florida trial court entered a discovery order compelling disclosure to the insured of portions of the insurer's claim file. The Florida Appellate Court reversed the trial court's order, finding error in compelling disclosure of the insurer's claim file because the coverage issue was still in dispute.

Discovery Dispute in the Trial Court: Insured brought a breach of contract action against his property insurer (State Farm) seeking to recover for roof damage caused by a hurricane. In discovery, the insured asked for State Farm's "complete 'Claims File'." State Farm produced a number of documents but objected to the insured's request for its claims file on grounds of work product and attorney client privilege, and also that it sought proprietary information that was not relevant nor likely to lead to discovery of admissible evidence.

The insured moved to compel production. He argued that State Farm was improperly withholding documents that were created *before* the denial of his claim and not in anticipation of litigation. The insured also argued that work product protection does not attach to portions of the claim file generated in the ordinary scope of the insurer's business.

State Farm responded that it was disputed whether the insured's claim was covered under the policy and that, while the coverage issue is pending, an insurer's claims file is not discoverable. State Farm also relied on the affidavit from one of its litigation specialists that the withheld materials contained, in pertinent part, the personal thoughts, evaluations, mental impressions, and recommendations regarding the claim and the possibility of litigation.

After the trial court conducted an *in camera* inspection, it granted the motion to compel in part, ordering production of the activity log notes from the time that the claim was made until the date in which State Farm was served with the insurance lawsuit. State Farm then petitioned the appellate court for a writ of certiorari seeking review of the trial court's order.

Florida Law: Under Florida law, “a party is not entitled to discovery related to the claim file or the insurer’s business practices regarding the handling of claims until the obligation to provide coverage and damages has been determined.” *State Farm Mutual Automobile Insurance Co. v. Tranchese*, 49 So.3d 809, 810 (Fla. 4th DCA 210). On appeal, State Farm contended that Florida law does not allow for premature bad faith discovery in a coverage dispute and that production of the claim file material at this stage in the litigation would cause irreparable harm.

Florida Appellate Court’s Holding: Generally, an insurer’s claim file constitutes work product and is protected from discovery prior to a determination of coverage under Florida law. An insurer’s claim file need not be produced when the issue of coverage is still unresolved at the time of the insurer’s objection to the request for discovery of its claims file. Therefore, because the Florida appellate court found the coverage issue was still disputed, State Farm should not have been compelled to produce its claim file materials without showing a good cause exception to the work product privilege.

Comment and Significance: Where coverage is disputed, Florida law will generally protect an insurer’s claim file on grounds of the work product doctrine, subject to the good cause exception. The law of other states may not have such bright-line rules and it is an important to know where a bad faith action might be brought because of the impact of substantive state law which would determine issues such as the discoverability of an insurance company’s claim file. In Missouri, for example, the law applicable to the discovery of an insurer’s claim file in a coverage dispute largely depends on whether the claim is a first-party or third-party liability claim.

In *Grewell v. State Farm Mutual Auto. Ins. Co.,* 102 S.W.3d 33 (Mo. banc 2003), the Missouri Supreme Court held that an insurance claim file is akin to the file materials of a client held by an attorney; like a client’s legal file, insureds are entitled to the free and open access to their insurance claim files. On remand, State Farm still refused to provide the entire claims file to its insured. Because insureds have the right to full disclosure of their claims file where the insured and its opponent are both insured by the same company in a third-party liabiltiy setting, the Missouri appellate court found that State Farm breached its fiduciary duty, justifying a trial on punitive damages and attorneys’ fees against State Farm. *Grewell v. State Farm Mutual Auto Insurance Company,* 162 S.W.3d 503 (Mo. App. W.D. 2005); *see also Carr v. Anheuser-Busch Companies, Inc.*, 791 F.Supp.2d 672, 675 (E.D.Mo. 2011) (ERISA matter; key question is whether the communication was made before or after the decision to deny benefits, communications made before a claim is denied should not be protected). However, in the typical first-party setting in Missouri, the claimant and insurer are deemed to be in an adversarial relationship. *State ex rel. Safeco Nat. Ins. Co. of America v. Rauch*, 849 S.W.2d. 632 (Mo.App.E.D. 1993).

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