

Florida Insurer Required to Produce Its Attorneys' Time and Billing Records to Prevailing Bad Faith Claim Insured

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Summary: Kelly Paton was injured when her vehicle was struck by an underinsured driver ("UIM"). At the time, Paton was covered by an insurance policy issued by GEICO. GEICO failed to pay the full amount due under the UIM provision and Paton filed suit. Paton obtained a jury verdict in her favor on a breach of contract and a bad faith claim. As the prevailing party, Florida's bad faith law entitled Paton to attorneys' fees. Paton then served discovery requests on GEICO seeking to obtain GEICO's billing and time records and lodestar fee interrogatories. GEICO objected, arguing that the records were privileged and irrelevant. The trial court overruled GEICO's objection, but the Court of Appeals quashed the trial court's orders requiring GEICO to produce the time records.

Paton v. GEICO General Insurance Co.

A closely divided Florida Supreme Court reversed, holding the time records must be produced. After discussing previous cases analyzing the relevance of time records from the losing parties' attorneys in a subsequent attempt by the prevailing party to collect attorneys' fees, the Supreme Court held such records are relevant. Time spent by both sides has a tendency to prove the complexity involved in the underlying claims, which is a factor to be considered when awarding fees. Similarly, the amount of time spent by an insurer on a specific issue may refute a claim the prevailing spent an unreasonable amount of time prosecuting that issue.

GEICO's assertions of privilege were also misplaced, primarily because the trial court allowed GEICO to redact any privileged information prior to production. Thus, Patton was not required to make an additional showing in order to obtain the billing records. Additionally, the Florida rules of civil procedure allow an opposing party to obtain privileged information if it can show the information is only available from the other litigant and that the opposing party is unable to obtain the substantial equivalent elsewhere. Since the billing records are only available from GEICO, both prongs of the test were met and any potentially privileged billing records were discoverable.

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