



Alerts

Production of All Reports Prepared on Insurer's Behalf Unduly Burdensome

February 15, 2012

Insurance Coverage Alert

In *Nationwide Ins. Co. of Fla. v. Nelson*, 37 Fla. L. Weekly D104b (Fla. 5th DCA 2012) Florida's Fifth District Court of Appeal was called upon to decide whether a trial court order requiring production of all reports prepared nationally by an engineering company hired by an insurer over several years was overly broad and unduly burdensome.

To explore a claim that the engineering company was biased in favor of the insurer, plaintiff homeowner demanded production of each and every report that the engineering company had provided to defendant insurer in the prior five years in every case in which the engineering company did work for the insurer across the country. The insurer objected and the homeowners moved to compel five years' worth of reports prepared by the engineering company at the insurer's request anywhere in the United States.

The trial court granted the motion. Showing some limited consideration of the insurer's protests of how expansive and time consuming the discovery request would be, the trial court ordered only three years of reports to be produced. The insurer sought a rehearing with the trial court, and provided declarations showing that compliance with the court's order would cost more than \$32,000 in out of pocket costs and require in excess of 400 hours of labor by the insurer and its counsel for review and redaction of the responsive reports. Rehearing was denied and the insurer filed a writ of *certiorari* with the Fifth District Court of Appeal.

In granting the writ, the appellate court considered the same evidence of burden and found that the discovery order was a departure "from the essential requirements of law" which left the insurer without other adequate remedy and supported the granting of *certiorari* and quashing of the trial court order. Notably, both the trial court and the appellate court did not question that the insurer was entitled to redact "proprietary information or work product" from any responsive materials.

Practice Note

While the balance between the need for discovery and the burden placed on the responding party vary greatly from one case to another, the appellate court easily found that a request for such a vast number of reports unrelated to the insurance claim at issue was overly broad and burdensome. Business reasons compel insurers to enter into national contracts with vendors to provide services efficiently and following consistent procedures, generally to the benefit of the insurer and to its insureds, who enjoy lower premiums. This decision implicitly rejects that such relationships support a presumption that the vendor is biased as a result of the relationship.

Nationwide Ins. Co. of Fla. v. Nelson, 37 Fla. L. Weekly D104b (Fla. 5th DCA 2012)

For more information, please contact your regular [Hinshaw attorney](#).

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