IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SIXTH DISTRICT

STATE FARM FLORIDA
INSURANCE COMPANY,

Petitioner,

v.

TROY ALDEN PETTIS AND
KELLYJO ANNE PETTIS,

Respondents.
_____/

DCA Case No.:

L.T. Case No.: 2024-CA-00548-O

On Certiorari Review from the Circuit Court of the Ninth Judicial Circuit
Orange County, Florida

PETITION FOR WRIT OF CERTIORARI

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Petitioner State Farm Florida Insurance Company seeks a writ of certiorari to reverse an order requiring State Farm to produce its entire underwriting file. A copy of the order is attached as Appendix Exhibit A.

BASIS FOR INVOKING JURISDICTION

The Court has certiorari jurisdiction to review non-final orders from lower tribunals pursuant to Florida Rule of Appellate Procedure 9.030(b)(2)(A). Certiorari relief is appropriate when a trial court's order departs from the essential requirements of law and will result in material injury that cannot be corrected on final appeal. See, e.g., *Royal United Properties, Inc. v. Royal*, 370 So. 3d 1020, 1022 (Fla. 6th DCA 2023).

In this case, the trial court's order departs from the essential requirements of law because it requires State Farm to produce its entire underwriting file without following the proper procedure to make such a ruling. The court did not determine whether any specific document in the underwriting file is relevant to this breach of contract lawsuit. It did not allow State Farm the opportunity to file a privilege log identifying any documents in the file that it claims are protected. And the court did not review any of the documents in-camera to evaluate the claimed protections. Because the order requires production of confidential and proprietary documents, it will result in irreparable harm.

This Petition is timely because it was filed within 30 days of the order to be reviewed, which was rendered on September 11, 2024. See Fla. R. App. P. 9.100(c)(1).

FACTS

State Farm issued a homeowners policy of insurance to Respondents Troy and KellyJo Pettis. (App. 8). In February 2024, a storm damaged the insured property. (App. 9). Respondents reported a claim to State Farm and State Farm extended coverage for the loss. (App. 9). State Farm also prepared an estimate of the cost to repair the covered damage. (App. 9). However, the amount of the estimate did not exceed the policy's deductible. (App. 9).

Respondents disagreed with State Farm's valuation of the claim and filed a lawsuit for breach of contract. (App. 4). Along with the complaint, Respondents served a request for production. (App. 77-82). The request asked State Farm to produce documents related to Respondents' claim. (App. 79-81). State Farm responded by producing certain documents and identifying other documents as privileged, which it listed on a separate privilege log. (App. 83, 94-95).

The request also asked State Farm to produce certain underwriting information, including all underwriting photographs, all underwriting reports,

and the "entire underwriting file" for the insured property. (App. 81). In response to these requests, State Farm objected to producing any documents. (App. 92-93). State Farm asserted that underwriting files are not subject to disclosure in a breach of contract action. (App. 92-93). It also asserted underwriting materials are protected based on work product, confidentiality, and proprietary information. (App. 92-93).

Respondents moved to compel the underwriting materials. (App. 96-127). In the motion, Respondents challenged the claim of privilege, asserting the documents could not have been created in anticipation of litigation because they were prepared prior to the claim at issue. (App. 98). Respondents went on to assert there is no "automatic privilege" for underwriting documents, and that the documents would not reveal any defense strategy or the impressions of counsel. (App. 98). Further, Respondents asserted the "documents are relevant to show any facts which support the Defendant's contention that the damage did not occur in the way Plaintiffs claim it occurred." (App. 98).

In response, State Farm argued Respondents were mistakenly focusing their analysis on whether the underwriting materials are work product and ignoring the part of the analysis that requires them to make a showing that the requested information is even relevant. (App. 131-32).

State Farm argued the requests were overly broad, and the underwriting materials have no bearing on the issues in dispute. (App. 131-32). State Farm noted that none of the affirmative defenses require it to prove the damage occurred prior to the policy period. (App. 128). State Farm then cited several cases in support of its position, including cases outlining the general rule that underwriting materials are not discoverable, and that such documents are protected by work product, and the confidential and proprietary nature of the documents. (App. 130-31).

On September 11, 2024, the trial court entered an order requiring State Farm to "produce its entire underwriting file." (App. 3). This petition followed.

RELIEF SOUGHT

State Farm respectfully requests the Court to quash the order compelling production of its underwriting file.

ARGUMENT

ISSUE

WHETHER THE TRIAL COURT DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF LAW BY ORDERING PRODUCTION OF STATE FARM'S ENTIRE UNDERWRITING FILE.

The trial court erred because it did not follow the proper procedure under Florida law. In a breach of contract lawsuit such as this one, an insurer's underwriting file is typically not relevant and therefore not

discoverable. *American Integrity Insurance Company v. Venable*, 324 So. 3d 999 (Fla. 1st DCA 2021). A party may overcome this general rule by showing that a "specifically articulated document" is relevant to the dispute. See *id*. at 1000. If a court rules that a particular document is relevant, the court must allow the insurer a reasonable time to assert any privilege-based objections and then conduct an in-camera inspection to evaluate the privilege being claimed. *Id*. The trial court's failure to follow this procedure departed from the essential requirements of law and will result in irreparable harm that cannot be remedied on appeal.

I. The Essential Requirements of Law

The First District addressed a situation that is virtually identical to the present case in *Venable*. There, the insureds filed a breach of contract lawsuit after their insurer denied a claim for water damage to the home. During discovery, the insureds requested the insurer's "complete underwriting file." The insurer objected based on overbreadth and privilege. At hearing, the trial court ruled the request was overly broad, so the insureds narrowed the request to only seek inspection reports and photographs. The insurer continued to object and offered to submit the underwriting file for an in-camera review. The trial court declined the offer, overruled the objection,

and ordered the documents produced. The insurer then petitioned for a writ of certiorari.

On review, the First District outlined the general rule that claims files and underwriting files "are not subject to disclosure in a breach of contract action." *Id*. at 1000. The court explained that protection for claims and underwriting files derives from the work product privilege, and from "the confidential and propriety nature" of the documents in those files. *Id*.

The court went on to explain that when a "specifically articulated document" is requested, the insurer may either produce the document or provide a privilege log identifying any claimed protection. *Id*. In the latter situation, the obligation to file a privilege log does not arise until the document is determined to be "discoverable," which occurs when the trial court rules on any non-privilege-based discovery objections. *Id*. at 1001. The trial court must then conduct an in-camera inspection of any documents claimed to be privileged. *Id*.

Applying this procedure, the court granted the insurer's petition, holding the trial court departed from the essential requirements of law by failing to allow the insurer to file a privilege log after ruling on the non-privilege objections. *Id*. The court added that the trial court should have then

conducted an in-camera inspection of any documents the insurer claimed were privileged or confidential. *Id*.

Applying the analysis in *Venable* to the case at bar yields the same result.

A. Discoverability

The rule that an insurer's underwriting file is generally not discoverable in a breach of contract case is well settled in Florida law. *Venable*, 324 So. 3d at 1000; see also *Homeowners Choice Property & Cas. Ins. Co. v. Mahady*, 284 So. 3d 582, 583 (Fla. 4th DCA 2019) ("discovery requests regarding claim files and underwriting files are improper on their face"); *State Farm Mut. Auto. Ins. Co. v. O'Hearn*, 975 So. 2d 633, 637 (Fla. 2d DCA 2008) (quashing order to produce underwriting file and explaining it is not discoverable until the issues of liability and damages are resolved); *State Farm Fla. Ins. Co. v. Gallmon*, 835 So. 2d 389, 390 (Fla. 2d DCA 2003) (holding insurer's underwriting files and other documents are "either irrelevant to the first-party dispute that this case presents or are privileged work product"); *Central Fla. Skates, Inc. v. Thomas*, 393 So. 2d 1200, 1200 (Fla. 5th DCA 1981) (holding underwriting file "contains information which is either irrelevant to the respondent's action or privileged and which is therefore not discoverable").

The reason for this long-standing rule makes sense because the only issues in dispute in a typical breach of contract lawsuit are coverage and damages. *Allstate Indem. Co. v. Ruiz*, 899 So. 2d 1121, 1129 (Fla. 2005). When there is no dispute about the policy being in effect, there is little that can be learned from an underwriting file. *Cf. Am. Home Assurance Co. v. Vreeland*, 973 So. 2d 668, 672 (Fla. 2d DCA 2008) (limiting discovery of underwriting file to documents that pertain to ownership issue in dispute). In the case at bar, State Farm admitted the policy was in effect and that the loss is covered, making the potential relevance of its underwriting materials even more limited.

Respondents' only attempt to show the "entire underwriting file" is relevant is their statement that "[t]he documents are relevant to show any fact which support the Defendant's contention that the damage did not occur in the way Plaintiffs claim it occurred." Such a generic statement does not show any relevance of any potential document. Indeed, State Farm agrees the loss was caused by the storm as Respondents contend. This is not a situation where the insurer is claiming the damage existed before the policy went into effect and the underwriting documents may provide evidence to support or refute the defense. See *People's Trust Ins. Co. v. Foster*, 333 So. 3d 773 (Fla. 1st DCA 2022).

Any dispute in this case is over the extent of damage, including whether the storm caused all of the damage being claimed, or whether some of it resulted from normal wear, tear, deterioration, rot, etc. Respondents did not identify anything in the underwriting file that could potentially impact a determination of the cause of damage. Nor did the trial court make any finding about a potentially relevant document. The court simply ordered production of the ***entire*** file. This was a departure from the essential requirements of law.

Further, even if Respondent had identified a potentially relevant document, it would not justify such an order. At the very least, State Farm's overbroad objection should be sustained, and Respondents should be required to identify a "specifically articulated document" they claim to be relevant to their lawsuit.

B. *Privilege, Confidentiality, and Propriety*

It is also well settled that underwriting files are protected from discovery by several privileges, including work product and the confidential and proprietary nature of the documents included. *Venable*, 324 So. 3d at 1000. See also *Homeowners Choice Prop. & Cas. Ins. Co. v. Avila*, 248 So. 3d 180, 185-186 (Fla. 3d DCA 2018) (Logue, J., concurring) (collecting cases and

explaining “long-standing precedent of the Florida Supreme Court” protecting insurers’ documents, including underwriting documents).

In response to the original discovery requests and the motion to compel, State Farm clearly raised both an objection based on relevance (discoverability) and privilege. When the trial court overruled the objection based on relevance, it did not allow State Farm the opportunity to submit a privilege log identifying any documents in its underwriting file that became “discoverable.” Nor did the trial court conduct an in-camera review of any documents to evaluate the claimed protection.

This was another departure from the essential requirements of law. *Venable*, 324 So. 3d at 1001 (“We hold the trial court departed from the essential requirements of law by failing to allow Petitioner reasonable time after the court had ruled on the non-privilege objections to file its privilege log … The trial court should have then conducted an in-camera inspection of any documents for which Petitioner asserted a claim of privilege or confidentiality”). See also *Life Care Centers of America v. Reese*, 948 So. 2d 830, 833 (Fla. 5th DCA 2007) (“The trial court was required to address the discoverability of the requested documents before ordering Petitioners to review them all for privileged material”); *Avatar Prop. & Cas. Ins. Co. v. Jones*, 291 So. 3d 663, 668 (Fla. 2d DCA 2020) (granting petition with

instructions that trial court allow insurer to file privilege log and conduct in-camera inspection of documents claimed to be protected).

The trial court should have followed the procedure outlined in *Venable* and *Jones* by allowing State Farm to submit a privilege log identifying any documents in the underwriting file that it claimed were work product, confidential, or proprietary.

II. Irreparable Harm Without Adequate Remedy

"Certiorari lies to review a trial court's order compelling production of privilege documents because of the potential for irreparable harm." *Avatar Ins. Co. v. Simmons*, 298 So. 3d 1252, 1254 (Fla. 5th DCA 2020). This is true of both work-product privilege and confidential and proprietary information. *See City of Port St. Lucie v. Follano,* 177 So. 3d 301 (Fla. 4th DCA 2015) ("An order compelling production of privileged work product materials from a litigant's file is exactly the type of discovery order properly reviewable by certiorari."); *Bright House Networks, Ltd. Liab. Co. v. Cassidy*, 129 So. 3d 501 (Fla. 2d DCA 2014) ("Orders improperly requiring the disclosure of trade secrets or other proprietary information often create irreparable harm and are thus appropriate for certiorari review.").

The reason these courts found irreparable harm is easy to see. Compelling documents without engaging in the appropriate privilege analysis

removes the protection without allowing the party claiming protection to make its case, and without requiring the requesting party to meet its burden under the law. *See* Fla. R. Civ. P. 1.280(b)(4) (party may obtain work product materials "only upon a showing that the party seeking discovery has need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means"); *see also Butler v. Harter*, 152 So. 3d 705, 711 (Fla. 1st DCA 2014) ("[t]he work-product privilege is set forth in Florida Rule of Civil Procedure 1.280, which states work product is discoverable only upon a showing of undue hardship and need"); *Fla. E. Coast Ry. L.L.C. v. Jones*, 847 So. 2d 1118, 1119 (Fla. 1st DCA 2003) (attorney's bare assertions of "need" and "undue hardship" are insufficient to satisfy the rigorous prerequisite to disclosure of work product); *Falco v. N. Shore Labs. Corp*., 866 So. 2d 1255, 1257 (Fla. 1st DCA 2004) (proof to overcome claim of work product must be demonstrated by affidavit or other sworn testimony).

There is no question the materials contained in an insurer's underwriting file fall into this category of protection. As the court noted in *Venable*, the protection for underwriting materials derives from work product and "the confidential and proprietary nature of such documents." *Venable*, 324 So. 3d at 1000. Here, the trial court's order requires disclosure of the

entire file, including all confidential and proprietary information. Part of the problem with the court's order is that it was made without knowing exactly what is contained in the underwriting file. This was why the two-step process outlined above exists. For example, if the court found specific photographs or a condition report (assuming those exist) were relevant to Respondents' claim, those could be produced without compromising other irrelevant and protected information. There is no need to order production of an insurer's proprietary business information, such as documentation identifying what risks are acceptable or unacceptable to the insurer, or documentation about setting rates for a given policy. These documents may be included within the file, and without following the procedures described above, will be produced and therefore subject to disclosure to other individuals and competing insurers. The protections under Florida law exist to guard against this exact scenario.

Because the trial court's order directs State Farm to produce documents without being given a full opportunity to assert privilege/proprietary objections, compliance with the order will result in irreparable harm to State Farm that cannot be remedied on direct appeal.

CONCLUSION

For all of the reasons above, State Farm respectfully requests the Court to quash the order compelling production of the entire underwriting file.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this October 11, 2024, a copy of the foregoing document has been electronically served upon the following**:**

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