DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2012

STATE FARM FLORIDA INSURANCE COMPANY,
Petitioner,

v.

MEIR ALONI, as Personal Representative of the Estate of Sonja Aloni,
Respondent.

No. 4D11-4798

[July 18, 2012]

PER CURIAM.

State Farm Florida Insurance Company petitions for a writ of certiorari, seeking review of the trial court's order which allows discovery of activity log notes, emails, and photographs contained in the insurer's claim file. State Farm contends that production of these documents constitutes improper, premature bad faith discovery. Because the order departs from the essential requirements of the law and causes irreparable injury, we grant the petition and quash the order.

The underlying action involves a property insurance coverage dispute. Meir Aloni, as personal representative of the Estate of Sonja Aloni, sued State Farm to recover for roof damage to a residence allegedly caused by Hurricane Wilma. Aloni alleged that he discovered damage to the roof around February 26, 2010, and immediately notified the insurer.

In his first request for production, in Request #2, Aloni asked for State Farm's "complete 'Claims File.'" State Farm produced a number of documents, but objected to Request #2, asserting that this was protected work product and attorney-client privileged material, and that the request seeks proprietary information that is not relevant nor likely to lead to the discovery of admissible evidence. State Farm also objected that this request was vague and overbroad. It produced portions of the claim file for which any privilege was already waived and filed a privilege log for the remaining documents.

Aloni 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. He further 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 whether the policy covers the claim is a disputed issue because Aloni did not report the damage until approximately four and a half years after the hurricane, and that while the coverage issue is pending, the claims file is not discoverable.

State Farm also relied on an affidavit from its litigation specialist, who stated that because the deceased policy holder and her representative, Aloni, did not report the claim until years after the hurricane, State Farm sent Aloni a reservation of rights letter twelve days after receiving notice of the claim to inform him that it would investigate the claim. The affidavit stated that the log notes were prepared after the insurer received notice of the claim, and that the notes contain personal thoughts, evaluations, mental impressions, and recommendations regarding the claim and the possibility of litigation. The affidavit stated that the insurer did not intend the notes to be discoverable by third parties, only litigation counsel; the notes were prepared in contemplation of litigation because the late reported claim was a foreseeable basis for litigation. The affidavit further stated that the log notes include directives to counsel regarding the handling of litigation.

At a hearing on the motion to compel, Aloni asserted that the activity log notes (from the time the claim was made on April 14, 2010 to service of the lawsuit on December 17, 2010), internal emails, and photographs were not protected work product. Aloni argued that in this case the possibility of litigation was not substantial and imminent until State Farm learned of the suit. Aloni also contended that the claim file materials were relevant based on State Farm's position that the claim was not timely reported. According to Aloni, this gave rise to a presumption of prejudice that Aloni had to overcome.

Following the hearing, the court conducted an *in camera* inspection. It then granted the motion to compel in part, ordering production of the activity log notes from April 14, 2010 to December 17, 2010, internal emails, and photographs. State Farm was ordered to file the documents under seal. The trial court denied State Farm's motion for rehearing, but granted a stay pending resolution of this petition.

State Farm argues that the trial court's order departs from the essential requirements of law by allowing premature bad faith discovery in a coverage dispute. It cites Florida case law addressing the protected nature of claim file materials in actions where the coverage issue has not

yet been determined. *See Superior Ins. Co. v. Holden*, 642 So. 2d 1139, 1140 (Fla. 4th DCA 1994) ("We agree with Superior that the order compelling disclosure of its claims file is premature because the issue of Superior's obligation to provide coverage has not yet been determined"); *Balboa Ins. Co. v. Vanscooter*, 526 So. 2d 779 (Fla. 2d DCA 1988).

State Farm also argues that production of claim file material at this stage in the litigation will cause irreparable harm, citing *Seminole Casualty Insurance Co. v. Mastrominas*, 6 So. 3d 1256, 1258 (Fla. 2d DCA 2009) (concluding an order "requiring the disclosure of claim file materials during the litigation of coverage issues would result in irreparable harm that cannot be adequately addressed on appeal").

In *Mastrominas*, the insured sought production of the entire claim file. As in this case, the trial court ordered production of some of the materials in the file, finding they were not protected by attorney-client or work product privileges. The insurer petitioned for certiorari review. Without determining whether this material was work product, the Second District granted the petition, concluding "[a] trial court departs from the essential requirements of the law in compelling disclosure of the contents of an insurer's claim file when the issue of coverage is in dispute and has not been resolved." *Id.*

Similarly, in *Nationwide Insurance Co. of Florida v. Demmo*, 57 So. 3d 982, 983 (Fla. 2d DCA 2011), a first-party breach of contract action, the trial court granted a motion to compel production of some material in the insurer's claim file, including "claims notes, activity logs, property loss notice information, and property loss notice forms." The trial court determined that documents created before the insurer denied the claim were not work product material prepared in anticipation of litigation. The Second District, however, concluded that the trial court departed from the essential requirements of law, citing *Mastrominas* and explaining:

> It appears, however, that the trial court focused on the question of what is and what is not work product with regard to the documents sought. But that is not the determinative issue. Rather, the issue turns on what type of action Demmo has brought. Here she is not pursuing a bad faith claim, but rather seeks relief for breach of contract. "A trial court departs from the essential requirements of the law in compelling disclosure of the contents of an insurer's claim file *when the issue of coverage* is in dispute and has not been resolved." *Seminole Cas. Ins. Co. v. Mastrominas*, 6 So. 3d

> 1256, 1258 (Fla. 2d DCA 2009) (emphasis added). "Further, requiring the disclosure of claim file materials during the litigation of coverage issues would result in irreparable harm that cannot be adequately addressed on appeal." *Id.*

Demmo, 57 So. 3d at 984.

State Farm also cites our recent decision in *State Farm Mutual Automobile Insurance Co. v. Tranchese*, 49 So. 3d 809, 810 (Fla. 4th DCA 2010), which explained that 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 stresses that the requested discovery is irrelevant to the coverage dispute and protected by work-product privilege, and that its disclosure will cause material injury of an irreparable nature.

The insured's personal representative argues that the claim file materials ordered for production are relevant to the issue of prejudice resulting from the untimely reporting of the claim. However, the determinative issue here is the type of action that the insured's representative has brought – a breach of contract action, rather than a bad faith claim. On this issue, *Demmo* is directly on point. 57 So. 3d at 984.

In this case, because the coverage issue is in dispute and has not been resolved, the trial court departed from the essential requirements of the law in compelling disclosure of State Farm's claim file materials. Such disclosure would result in irreparable harm that cannot be adequately addressed on appeal. Accordingly, we grant the petition and quash the discovery order.

Granted.

WARNER, STEVENSON and TAYLOR, JJ., concur.

* * *

Petition for writ of certiorari to the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Michael Gates, Judge; L.T. Case No. 10-42884 (12).

Kara Berard Rockenbach and Kristi Bergemann Rothell of Methe & Rockenbach, P.A., West Palm Beach, for petitioner.

Jason S. Mazer and Matthew B. Weaver of Ver Ploeg & Lumpkin, P.A., Miami, for respondent.

Not final until disposition of timely filed motion for rehearing.