

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

FLORIDA POWER CORPORATION,)
)
 Petitioner,)
)
v.)
)
EDWARD DUNN and NORMA DUNN,)
his wife,)
)
 Respondents.)
_____)

Case No. 2D02-4027

Opinion filed July 25, 2003.

Petition for Writ of Certiorari to the
Circuit Court for Pinellas County;
Susan F. Schaeffer, Judge.

Richard J. McCrory, St. Petersburg,
for Petitioner.

William F. Blews, P.A., St. Petersburg,
for Respondents.

KELLY, Judge.

Florida Power Corporation petitions this court for a writ of certiorari to
quash the trial court's order denying its motion to compel discovery. We deny the
petition to the extent that Florida Power seeks the discovery of all sealed photographs

and grant the petition to the extent that it seeks discovery of the seventeen accident scene photographs taken on October 14, 2000, which are under seal.

We agree that the trial court failed to observe the essential requirements of law by finding that the photos Florida Power sought to discover were protected work product and that no exception applied to require their discovery. Although we agree that the photographs are work product, we hold that Florida Power is entitled to production of the photographs of the scene as it existed at the time of the accident because it has met the burden in Florida Rule of Civil Procedure 1.280(b)(3) to show that due to exceptional circumstances it is unable to obtain the substantial equivalent of the materials by other means. See Wackenhut Corp. v. Crant-Heisz Enters., Inc., 451 So. 2d 900 (Fla. 2d DCA 1984).

Accordingly, the order under review is quashed to the extent that it denies discovery of the seventeen accident scene photographs taken on October 14, 2000. The petition for certiorari is otherwise denied.

CASANUEVA and DAVIS, JJ., Concur.