Lawyer Insights

Decision: Underwriting Discovery Is Not Categorically Prohibited in Insurance Coverage Cases

By Andrea DeField and Adriana Perez
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Discovery in insurance coverage actions in Florida is often hotly litigated. Despite the prevalence of discoverydisputes, case law has often failed to provide much uniform guidance to practitioners around the state.Indeed, Florida state and federal court decisions seem to conflict on several aspects of insurance-related discovery, as do the various district courts of appeal. For example, compare State Farm Fire & Casualty v.Valido, 662 So. 2d 1012, 1013 (Fla. 3d DCA App. 1995) (quashing order requiring production of State Farm'sclaim files, manuals, guidelines and documents in a first party coverage dispute, finding documents irrelevant to dispute) and Homeowners Choice Property & Casualty Insurance v. Mahady, 284 So. 3d 582, 583(Fla. 4th DCA 2019) (quashing order allowing discovery of claim files and underwriting files in coverage dispute because "insurer's liability for coverage and the amount of the policy owners' damages have not been finally determined") with American Home Assurance v. Vreeland, 973 So. 2d 668, 672 (Fla. 2d DCA.2008) (allowing limited discovery of underwriting file relevant to whether a party was an insured).

Even courts within the same district have reached seemingly conflicting results in different discoverydisputes, particularly as it relates to the discoverability of the insurer's underwriting file, underwriting manuals, or underwriting guidelines. Compare Corum v. Penn-American Insurance, No. 08-80732-CIV, 2009WL 10666960, at *4 (S.D. Fla. June 12, 2009) ("Any underwriting guidelines the defendant may have consulted before issuing the subject policy have no bearing on whether that policy, as written, provides for coverage inthis case.") and Milinazzo v. State Farm Insurance, 247 F.R.D. 691, 702 (S.D. Fla. 2007) (collecting cases and stating "the decisions suggest the underwriting files are discoverable in bad faith claims, but in breach of contract claims, only discoverable when the contract terms are ambiguous") with GEICO v. Jesus, No. 15-81027-CV, 2016 WL 8813844, at *3 (S.D. Fla. May 23, 2016) (allowing corporate representative deposition togo forward on underwriting topic, but only as it relates to insured, in coverage action) and AIG Centennial Insurance v. O'Neill, No. 09-60551-CIV-ZLOCH, 2010 WL 4116555, at *8 (S.D. Fla. Oct. 18, 2010) (allowing discovery of underwriting documents, including underwriting manual, finding documents "relevant to themateriality aspect of the misrepresentation claim charged by Centennial in its amended complaint.").

The takeaway for insurance litigators is that the seemingly disparate decisions are often considered in the context of relevance to the specific allegations set forth in that insurance coverage dispute. Nonetheless, many Florida courts have attempted to draw a bright line between discovery of underwriting information in insurance coverage cases, such as breach of contract or declaratory actions (discovery typically limited as premature or irrelevant), versus bad faith actions against the insurer (robust discovery permitted). See e.g.,State Farm Florida Insurance v. Gallmon, 835 So. 2d 389, 390 (Fla. 2d DCA 2003) (in breach of insurance contract case, quashing order to State Farm to produce claim files, investigative reports, underwriting files,company policies and manuals, training materials, sales brochures and marketing

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materials, employee files and incentive programs, meeting minutes, and other documents; finding materials "either irrelevant to the first-party dispute that this case presents or privileged work product.").

Fortunately for Florida policyholders, two Florida courts have recently weighed in on the impropriety of such a categorical rule. In Avatar Property & Casualty Insurance v. Simmons, the Fifth District Court of Appeal denied the insurer's petition for certiorari seeking to overturn discovery order compelling production of certain photographs in claims and underwriting files in insurance coverage action. 298 So. 3d 1252, 1254 (Fla.5 DCA 2020). In doing so, the court rejected the insurer's assertion of a "categorical 'claims file' or'underwriting file' privilege" and found that assertion insufficient to support a claim of work product protection sufficient to preclude discovery of the documents.

More recently, Florida's First District Court of Appeals handed down a victory for policyholders when it affirmed a circuit court's order compelling an insurer to produce its underwriting manual in a breach of contract action. In People's Trust Insurance v. Foster, No. 1D21-845 (Fla. 1st DCA Jan. 26, 2022), the policyholder, Mr. Foster, filed a breach of contract claim against his insurer, People's Trust, after People'sTrust failed to pay his insurance claim for damage caused to Mr. Foster's home due to a leaking water pipe. People's Trust denied Foster's claim because "Foster's pipe damage predated the policy's inception."

During discovery Foster requested People's Trusts' underwriting manual(s) in effect at the time his policy was issued or renewed. People's Trust objected to the request. In response, Foster filed a motion to compel production of the underwriting manual(s). After a hearing, the circuit court granted Foster's motion andPeople's Trust sought a writ of certiorari from the First District Court of Appeal to quash the order compelling production.

In its petition, People's Trust argued that it should not have to produce its underwriting manual because the production of underwriting manual(s) is "categorically prohibited in breach of contract cases, like this one, until and unless bad faith litigation commences." The First DCA disagreed. The court held that "this sweeping characterization" is incorrect and noted that although some courts have quashed premature discovery of insurer's business practices –including underwriting manuals—in breach of contract actions, "there is no categorical legal rule prohibiting discovery of underwriting manuals in breach of contract cases, especially if they are relevant."

Foster claimed that some of the inspection related information in People's Trust's underwriting manual(s) was possibly relevant to contesting the insurer's affirmative defense that the pipe damage predated the inception of his policy. The First DCA held that it had "no definitive basis for rejecting" Foster's assertion regarding the relevancy. Thus, People's Trust could not meet its high burden of showing a violation of a clearly established principle of law and the court denied Peoples Trusts' petition for a writ of certiorari.

The First DCA's decision in People's Trust makes clear that a bright line categorical rule precluding underwriting-related discovery in insurance coverage actions is improper. Thus, policyholders should seek discovery of insurers' underwriting manuals, and other business records, if they can show these documents are relevant to the allegations or defenses raised in the policyholder's breach of contract case.

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