

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

**USAA CASUALTY INSURANCE
COMPANY,**

Petitioner,

CASE NO.: 2012-CA-005317-O

WRIT NO.: 2012-22

Lower Case No: 2009-SC-000097-O
(2010-SC-000570-O consolidated)

v.

JEFFREY B. FRIEDMAN, M.D. P.A.,

as assignee of Justin Presser,

Respondent.

Petition for Writ of Certiorari, from the County Court,
in and for Orange County, Florida,
Heather L. Higbee, County Judge.

Stephen T. Mahler, Esquire, Frank Zacherl, Esquire,
and Dario A. Perez, Esquire, for Petitioner.

Justin H. Presser, Esquire, and
Thomas Player, Esquire, for Respondent.

Before MIHOK, GRINCEWICZ, and THORPE, J.J.

PER CURIAM.

FINAL ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

Petitioner, USAA Casualty Insurance Company (“USAA”), seeks review of the Trial Court’s “Order of Production” entered on February 27, 2012 in favor of Respondent, Jeffrey B. Friedman, M.D. P.A. (“Friedman”) as assignee of Justin Presser (“Presser”). This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(2). We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

Summary of Facts and Procedural History

Friedman previously sued USAA for personal injury protection (“PIP”) benefits based on the submission of a medical bill in the amount of \$144.34 per Presser’s PIP policy with USAA (case no. 2009-SC-000097-O). In November 2009, USAA agreed to settle the case by paying the disputed bill amount and \$17,000 in attorney’s fees and costs to Presser who was also counsel for Friedman in the underlying action.

After the underlying action was settled, Friedman filed a bad faith action against USAA alleging that USAA improperly handled Friedman’s demand for the payment of PIP benefits (case no. 2010-SC-000570-O). Specifically, Friedman alleged that USAA delegated responsibility for receipt, scanning, electronic storage, and transmission of all PIP claims information to a third party that failed to scan and preserve in electronic format the properly completed Disclosure and Acknowledgement form (the D & A form) submitted by Friedman as required by section 627.736, Florida Statutes. Further, Friedman alleged that USAA failed to adopt and implement standards for the proper investigation of claims and failed to adopt policies, procedures, and standards to insure that its third party administrator properly recorded and preserved submitted documents.

Thereafter, a discovery dispute arose from Friedman’s request for production of USAA’s contract with third party vendor, Auto Injury Solutions, f/k/a Concentra, that provides claim utilization/review services to USAA via the contract (“AIS Contract”). In April and May 2011, the parties engaged in discussions in an attempt to resolve the discovery dispute over the AIS Contract. Based on those discussions, Friedman’s counsel requested production of the AIS Contract with the exhibits and amendments 2, 3, 4 and 5, and the documents that address AIS’ procedures for receiving, scanning, and indexing PIP documentation in Florida. In response,

USAA produced the AIS Contract's Table of Contents and redacted portions of the AIS Contract addressing AIS' (Concentra's) involvement in the receipt, scanning, indexing, and retention of Florida PIP documentation and USAA's and AIS' (Concentra's) duties and obligations for the submission of bills and documentations. USAA also produced the claims handling manuals covering USAA's auto-injury claim handling and documentation such as procedures for the medical claims workflow process, medical bill auditing (MBA) process, specifically the mail room process, and general and specialized state requirements.

Ultimately, the parties entered into a Confidentiality Agreement, after which the Trial Court performed an in camera inspection of the AIS Contract and entered the Order of Production finding the AIS Contract to be a trade secret, but also finding that Friedman had demonstrated a reasonable necessity for production thereof, and that USAA's interests were adequately protected by the Confidentiality Agreement. The Order of Production is the subject of USAA's Petition.

In this certiorari proceeding, USAA sought leave to file a copy of subject documents under seal in a password protected CD-ROM format for an in camera review by this Court. Accordingly, this Court entered an Order granting USAA's request to file the documents under seal per Florida Judicial Administration Rule 2.420(g) and ordered that the documents remain sealed during this certiorari proceeding. Accordingly, the sealed documents at issue in this case have been provided by USAA for this Court's in camera review.

Standard of Review

In reviewing a nonfinal order, for which no appeal is provided by statute, a Court's review by certiorari is limited only to whether the order departs from the essential requirements of law and whether it causes irreparable harm to the petitioner throughout the remainder of the

proceedings below, effectively leaving no adequate remedy on appeal. This principle remains the appropriate standard in considering the granting of certiorari relief in pretrial discovery. *Allstate Insurance Co. v. Boecher*, 733 So. 2d 993, 999 (Fla. 1999); *Bogert v. Walther*, 54 So. 3d 607, 610 (Fla. 5th DCA 2011). Further, a departure from the essential requirements of law is more than “a simple legal error” but requires that there be “a violation of a clearly established principle of law resulting in a miscarriage of justice.” *Ivey v. Allstate Insurance Co.*, 774 So. 2d 679, 682 (Fla. 2000) *citing Combs v. State*, 436 So. 2d 93, 95-96 (Fla. 1983).

Arguments

USAA argues that the Trial Court’s Order of Production requires disclosure of confidential information or discovery requests that are overbroad and such disclosure will cause irreparable harm to USAA not remediable by full appeal. Specifically, USAA argues that the remaining undisclosed portions of the AIS Contract that the Order of Production requires be produced are not relevant to the bad faith claim, are privileged as a trade secret, and include USAA’s sensitive, confidential, and proprietary business information. In addition, the disclosure required by the Order is unnecessary because USAA has provided Friedman with sufficient information relevant to the claim including redacted portions of the AIS Contract that are relevant to the claim addressing AIS’ involvement in the receipt, scanning, indexing, and retention of Florida PIP documentation as contained in the claims handling manuals.

Conversely, Friedman argues that the Trial Court did not depart from the essential requirements of the law because USAA failed to meet the jurisdictional threshold for certiorari review by failing to show any irreparable harm from the Order of Production and thus, the Petition should be dismissed for lack of jurisdiction. However, Friedman also argues that even if this Court finds that USAA made a prima facie showing of harm sufficient to warrant certiorari

review, USAA has failed to show a departure from the essential requirements of law for which it would have no adequate remedy by plenary appeal, or that it will suffer material injury for the remainder of the action, particularly in light of the measures the Trial Court took to perform an in camera inspection of the AIS Contract and the Confidentiality Agreement that she ordered the parties to enter into. Lastly, Friedman filed a motion seeking appellate attorney's fees and costs pursuant to sections 627.428 Florida Statutes (2012), and Florida Rule of Appellate Procedure 9.400.

Analysis

This Court has reviewed the sealed documents and finds as follows:

1) The documents on pages 1 through 3,790 and 4,025 through 4,268 address revisions to the automobile insurance policies and primarily include attorney-client e-mail correspondence, comments and comparisons regarding revisions to the policies, actuary and various tables and charts, and documents pertaining to statutory and regulatory compliance. This Court finds that these documents are privileged as a trade secret and include USAA's sensitive, confidential, and proprietary business information with several documents also containing privileged attorney-client correspondence. This Court also finds that these documents are not relevant to Friedman's bad faith claim and notwithstanding the relevancy of these documents, the production of said documents via the Confidentiality Agreement and/or redaction, particularly for the attorney-client correspondence, would not provide adequate protection for USAA.

2) The documents on pages 3791 through 4,024 and 4,269 through 4,517 include the AIS Contract and other related documents. Among these documents are contract checklists and approval forms, amendments, contract values, service level standards, implementation schedules, compensation schedules, a financial guaranty agreement, and USAA's national IME pricing as to

physicians. This Court finds that these documents are privileged as a trade secret and include USAA's sensitive, confidential, and proprietary business information. In the Order of Production, the Trial Court ordered redaction and production of the AIS Contract with the financial information, including the pricing, amounts paid and/or the amounts accepted. However, this Court finds that these remaining undisclosed documents are not relevant to Friedman's bad faith claim that is based on the submission of a single PIP claim for one date of services and involves the alleged failure of USAA's receipt of the D & A form during the time frame of September and October 2008. The claim does not include allegations that relate to the financial arrangement between USAA and AIS and even if these documents on some level were relevant to the claim because they involve the AIS Contract, this Court finds that the degree of relevancy is not sufficient to outweigh USAA's or AIS' interest in protecting said documents from disclosure. *See Tanchel v. Shoemaker*, 928 So. 2d 440, 442 (Fla. 5th DCA 2007) (explaining that discovery should be denied when it has been established that the information requested is neither relevant to any pending claim or defense nor will it lead to the discovery of admissible evidence).

Further, this Court has reviewed the documents previously produced by USAA to Friedman and finds that the disclosure required by the Order of Production is unnecessary because USAA has provided Friedman with sufficient information relevant to the bad faith claim including the redacted portions of the AIS Contract addressing AIS' involvement in the receipt, scanning, indexing, and retention of Florida PIP documentation and as contained in the claims handling manuals. Thus, Friedman fails to show a sufficient necessity for the non-disclosed information especially in light of the documents that USAA has already produced. *See East Colonial Refuse Service, Inc. v. Velocci*, 416 So. 2d 1276, 1278 (Fla. 5th DCA 1982) (holding

that respondent failed to show a sufficient necessity to overcome the petitioner's privilege as to customer lists deemed a trade secret).

Accordingly, this Court finds that the Trial Court in the Order of Production correctly found that the AIS Contract met the criteria for being a trade secret of USAA. However, from review of the subject documents in relation to the pleadings and review of the motions and memorandums filed in the lower court as well as the Petition, Response, and Amended Reply filed in this proceeding, this Court finds that the Trial Court in the Order of Production erred by finding that Friedman demonstrated a reasonable necessity for production of the AIS Contract in its entirety and that USAA's interests are protected by the Joint Stipulation of Confidentiality as to the non-disclosed documents.

Based on the forgoing, it is hereby **ORDERED AND ADJUDGED** that Petitioner, USAA Casualty Insurance Company's Petition for Writ of Certiorari is **GRANTED** and the Trial Court's "Order of Production" entered on February 27, 2012 is **QUASHED** and **REMANDED** to the lower court for further proceedings consistent with this opinion. Also, Respondent, Jeffrey B. Friedman, M.D. P.A.'s "Motion to Tax Appellate Attorney Fees and Costs" filed March 5, 2013 is **DENIED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, this 15th day of January, 2014.

/S/ _____
A. THOMAS MIHOK
Presiding Circuit Judge

GRINCEWICZ and THORPE, J.J, concur.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Order has been furnished to: **Stephen T. Mahler, Esquire, Frank Zacherl, Esquire, and Dario A. Perez, Esquire**, Shutts & Bowen LLP, 201 South Biscayne Boulevard, Suite 1500, Miami Center, Miami, Florida 33131, smaher@shutts.com, fzacherl@shutts.com, dperez@shutts.com; and **Justin H. Presser, Esquire, and Thomas Player, Esquire**, The Nation Law Firm, 570 Crown Oak Centre Drive, Longwood, Florida 32750, sortiz@nationlaw.com, jpresser@nationlaw.com, tplayer@nationlaw.com on this 15th day of January, 2014.

/S/ _____
Judicial Assistant