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

VICTORIA FIRE & CASUALTY COMPANY

APPELLATE CASE NO: 2019-CA-000747-O

Petitioner,
vs.

FLORIDA HOSPITAL MEDICAL CENTER,
a/a/o CINDY GUAJARDO,

Respondent.
_____/

Petition for Writ of Certiorari
from Victoria Fire & Casualty
Company

Hinda Klein, Esq.
Conroy Simberg
Attorney for Petitioner

Robert J. Hauser, Esq.
Pankauski Hauser, PLLC.
Attorney for Respondent

Before KEST, JORDAN, MARQUES, JJ.

PER CURIAM.

Victoria Fire & Casualty Company ("Petitioner") seeks certiorari review of the trial Court's order compelling the deposition of a non-party, Auto Injury Solutions ("AIS"), and requiring the production of certain documents, dated December 20, 2018. We have jurisdiction and dispense with oral argument. *See* Art. V, § 4(b)(3), Fla. Const.; Fla. R. App. P. 9.030((b)(2)A). For the reasons discussed herein, we grant the instant Petition.

BACKGROUND

This is a first-party breach of a Personal Injury Protection ("PIP") contract case by Florida Hospital ("Respondent'), as assignee of the Petitioner's insured, Cindy Guajardo, against the

Petitioner. The Respondent alleged that Cindy Guajardo was injured in a motor vehicle accident, and it provided her necessary medical care for which the Petitioner failed to entirely reimburse it, leaving $427.59 outstanding. The Petitioner defended that it exhausted the maximum $2,500 in PIP coverage available when there is no determination that the insured had an "emergency medical condition." In February 2017, the Petitioner moved for final summary judgment, arguing that, in accordance with the PIP statute, its policy limited coverage to $2,500 because there was no determination that Cindy Guajardo had an emergency medical condition, and it already paid that amount for her treatment.

After deposing the Petitioner's corporate representative, the Respondent refused to agree to a hearing date for the Petitioner's motion for final summary judgment, claiming it was premature because it needed to depose a corporate representative of AIS, a third-party with whom the Petitioner contracts to provide medical bill intake and administrative services and technology that the Petitioner utilizes to access medical information when adjusting insurance claims. The Respondent moved to compel the deposition of AIS' representative and the Petitioner agreed to coordinate that deposition. The trial court entered an agreed order on the Respondent's motion to compel, but it did not address the scope of the items listed in the Respondent's notice of taking deposition duces tecum.

The parties could not agree on what documents AIS was to produce at the deposition. The Respondent then filed a new "notice" of deposition duces tecum, listing a total of nine items for AIS to produce; however, only relevant to this Petition are numbers 4 and 5:

> 4. Any and all instructions or manuals in Auto Injury Solutions' possession regarding auditing associated with "emergency medical condition" provided to Auto Injury Solutions by Defendant, or any related entity/affiliates or provided to Defendant by Auto Injury Solutions.

5. Any and all documentation regarding evaluation of medical records and bills for purposes of determining "emergency medical condition" provided to Auto Injury Solutions by Defendant, or any related entity/affiliated or provided to Defendant by Auto Injury Solutions.

The Petitioner moved to set aside the trial Court's order compelling the deposition of AIS' corporate representative or, alternatively, for a protective order, emphasizing that the parties never agreed on the documents AIS' representative would have to produce at the deposition. The Petitioner argued that, because the only issue in the case was whether Cindy Guajardo had an emergency medical condition, and because the hospital had already deposed the Petitioner's corporate representative, it did not need to depose a representative of AIS. The Petitioner also argued that, even if the trial court permitted the deposition to take place, Florida law prohibits the discovery of an insurer's internal policies, procedures, claims file, and other materials relating to the manner in which it adjusted the claim, all of which are irrelevant to the issues in a simple breach of contract case.

At the hearing on the motion, the Petitioner argued that the sole issue in this case is whether or not Cindy Guajardo had an emergency medical condition, such that she would be entitled to up to $10,000 in PIP benefits. The Petitioner requested that the trial court either relieve it of the initial agreement altogether or, alternatively, limit the scope of the deposition to relevant issues by not requiring AIS to produce any claims handing manuals, internal procedures, and similar items. The Respondent argued that the bill it provided to the Petitioner reflected that Cindy Guajardo received emergency services, and therefore it established proof of an emergency medical condition. The Respondent reasoned that it needed to depose an AIS representative to determine the manner in which it reviewed the bills and adjusted the claim. The Respondent also argued that, insofar as the Petitioner and AIS had a procedure for adjusting claims, it was entitled to know whether they

followed that procedure in this case, regardless of whether the answer to that inquiry had any relevance to its breach of contract claim.

The Petitioner responded that the case law provides that the reasons for which an insurer denied a claim has no bearing on a first-party breach of contract claim, but rather, that information is discoverable only after the insured establishes a breach of the underlying contract and then sues for bad-faith. The Petitioner also noted that because the hospital itself treated Cindy Guajardo, it already had the records it needed to establish whether its treating physicians determined she had an "emergency medical condition." The Petitioner emphasized that Florida law clearly prohibits discovery into the manner in which an insurer adjusts a claim and its ultimate reasons for denying benefits in a breach of contract case. Because the materials would not be discoverable from the Petitioner itself, it argued that the trial court should not permit Florida Hospital to circumvent the case law by instead seeking those materials from AIS, citing *Nationwide Mutual Fire Insurance Co. v. Joseph*, 10 Fla. L. Weekly Supp. 379a (Fla. 9th Cir. App. Mar. 3, 2003), as support for that proposition.The Respondent argued it was entitled to know what records AIS reviewed, how it interpreted those records, what words it relied on, and other matters involved in the adjustment of the underlying claim.

The trial Court entered an order granting the Petitioner's motion in part and denying it in part. The trial Court granted the motion as to item 3, finding it irrelevant to the Respondent's claim. It also limited item 4 only to instructions or manuals between AIS and the Petitioner, not any related entities or affiliates, but it still failed to address item 5. The trial Court denied the Petitioner's motion for reconsideration, clarification, and/or to stay without a hearing. The trial Court subsequently entered an amended order and attached the notice of deposition, but made no substantive changes to its ruling. This Petition followed.

STANDARD OF REVIEW

It is axiomatic that a petition for writ of certiorari is the proper remedy to review a non-final order compelling discovery. *Bogert v. Walther*, 54 So. 3d 607, 6610 (Fla. 5th DCA 2011). To demonstrate entitlement to certiorari relief, a petitioner must establish that the order at issue: 1) departs from the essential requirements of the law; 2) causes a material injury throughout the proceedings; and 3) the injury cannot be remedied on appeal from a final order. *Mims v. Broxton*, 191 So. 3d 552, 553 (Fla. 5th DCA 2016). An order compelling a deposition that departs from the essential requirements of the law "results in harm that cannot be remedied on appeal in that once the deposition is taken, it cannot be un-taken." *U.S. Bank Nat'l Ass'n v. Williamson*, 273 So. 3d 190, 191 (Fla. 5191 (Fla. 5th DCA 2019) (citation omitted).

DISCUSSION

The Petitioner argues that the trial court's order departed from the essential requirements of law in denying the Petitioner's motion for protective order and compelling the production of its and AIS' internal manuals, policies, and procedures because Florida law prohibits the discovery of these materials in a first-party breach of contract case. Additionally, it argues that the trial court's order will cause irreparable harm because the Respondent will be permitted to review the Petitioner's privileged materials that have no bearing on the issues in this case and the Respondent will be able to improperly use this information in other lawsuits involving these parties.

The Respondent argues that the Petitioner does not have standing to assert any objections on behalf of AIS because they are two different and independent corporate entities; thus, once the deposition goes forward, only AIS has the right to object to and decline to produce any privileged or confidential documents. Additionally, it argues that the instant Petition is premature because the Petitioner and/or AIS can object after the Respondent subpoenas AIS for deposition, therefore,

establishing the Petitioner has not or will not suffer any irreparable harm. Lastly, the Respondent contends that the discovery it seeks from AIS is relevant to "debunk [the Petitioner's] excuse for non-payment of benefits in excess of $2,500, and that certiorari relief is not available based on the irrelevance or over breadth of discovery."

At the outset, we hold that the Petitioner has standing to seek relief from the trial Court's order compelling the production of its confidential materials in AIS' possession. Florida law recognizes that a party has standing to object to discovery directed to a third-party when necessary to protect its own confidentiality rights and to object to a subpoena to a third-party that is unreasonable or oppressive. *See Dade Cty. Med. Ass'n v. Hlis*, 372 So. 2d 117, 121 (Fla. 3d DCA 1979) ("Nevertheless, the DCMA surely has standing to assert its own interest in preserving confidentiality as a means to the effective self-discipline of its members. It likewise may assert the similar interest and concern of those who report and comment upon alleged medical improprieties."); *Sunrise Shopping Ctr., Inc. v. Allied Stores Corp.*, 270 So. 2d 32, 33-35 (Fla. 4th DCA 1972) (holding that an opposing party had standing on behalf of a non-party witness to move to quash a subpoena duces tecum as unreasonable and oppressive, contrary to the contention that only the witness had such standing); *see generally State Dept. of Highway Safety & Motor Vehicles v. State Career Serv. Comm'n*, 322 So. 2d 64, 65-66 (Fla. 1st DCA 1975) (holding that it is the fundamental right of party to an administrative proceeding to question legality of any phase of proceeding which may adversely affect it, therefore, the Department of Highway Safety which was a party to proceeding before Career Service Commission regarding discharge of a Department employee had standing to question subpoenas issued by the Commission to other Department employees). Because AIS is directly involved in the intake and claims adjusting processes on

behalf of the Petitioner, we find that the Petitioner clearly has a legally cognizable interest that would be affected by the outcome of this controversy, should the trial Court's order be enforced.

Because the trial Court's order compelled the production of discovery from a subpoena that is contrary to the requirements of Florida law, we find the subpoena to be unreasonable and oppressive. Florida courts have long held that an insurer's internal manuals, policies, procedures, claim files, and other materials relating to the manner in which it adjusts a claim are not discoverable in a first-party breach of contract case until the obligation to provide coverage and damages has been established. *See Allstate Indem. Co. v. Ruiz*, 899 So. 2d 1121, 1129-30 (Fla. 2005); *Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 94 (Fla. 1995); *State Farm Mut. Auto. Ins. Co. v. Premier Diagnostic Ctrs., LLC*, 185 So. 3d 575 (Fla. 3d DCA 2016); *Illinois Nat'l Ins. Co v. Bolen*, 997 So. 2d 1194, 1195-96 (Fla. 5th DCA 2008); *Old Republic Nat'l Title Ins. Co. v. HomeAm. Credit, Inc.*, 844 So. 2d 818, 819 (Fla. 5th DCA 2003); *Am. Bankers Ins. Co. of Fla. v. Wheeler*, 711 So. 2d 1347, 1348 (Fla. 5th DA 1998); *State Farm Fire and Cas. Co. v. Martin*, 673 So. 2d 518, 519 (Fla. 5th DCA 1996); *Allstate Ins. Co. v. Swanson*, 506 So. 2d 497 (Fla. 5th DCA 1987). This Court in *Nationwide Mutual Fire Insurance Co. v. Joseph*, 10 Fla. L. Weekly Supp. 379a (Fla. 9th Cir. App. Mar. 3, 2003), quashed an order compelling an insurer to provide information regarding a third-party with whom the insurer contracted to provide medical services at a pre-arranged contractual rate, which is analogous to the third-party relationship between the Petitioner and AIS, and held that the reasons or motivations for an insurer's actions have no bearing on a breach of contract claim. As we explained in *Joseph*, disclosure of an insurer's internal manuals, policies, procedures, claim files, and other materials relating to the manner in which it adjusts a claim, like the materials in this case, are irrelevant and amount to premature discovery in support of an unripe, unpled bad-faith claim that causes irreparable harm because the disclosure

cannot be undone. *Joseph*, 10 Fla. L. Weekly Supp. 379a. The Respondent's claim that the Petitioner has not established irreparable harm because AIS could object to the disclosure is also without merit. The trial court has already compelled AIS to produce these materials at the deposition of its corporate representative, therefore, there is no speculation as to whether AIS must comply with the order, absent relief from this Court.

Based on the foregoing, we find that the trial court's "Order on Defendant's Motion to Set Aside and/or Reform the July 23, 2018, Order on Plaintiff's Motion to Compel the Deposition of Auto Injury Solutions' Corporate Representative, or in the Alternative Amended Motion for Protective Order," as it pertains to items 4 and 5, departs from the essential requirements of the law and causes the Petitioner harm that cannot be remedied on appeal.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that the Petitioner's Petition for Writ of Certiorari is **GRANTED** and the trial Court's "Order on Defendant's Motion to Set Aside and/or Reform the July 23, 2018, Order on Plaintiff's Motion to Compel the Deposition of Auto Injury Solutions' Corporate Representative, or in the Alternative Amended Motion for Protective Order," as it pertains to items 4 and 5, dated December 20, 2018, is **QUASHED**. The Respondent's Conditional Motion for Appellate Attorneys' Fees is **DENIED**.

DONE AND ORDERED in Orlando, Orange County, Florida this _____day of March, 2020.

/S/
JOHN MARSHALL KEST
Presiding Circuit Judge

JORDAN and MARQUES, JJ., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order has been furnished to **Hinda Klein, Esq.**, Attorney for Petitioner, **Conroy Simberg**, 3440 Hollywood Boulevard, Second Floor, Hollywood, Florida 33021; and to **Robert J. Hauser, Esq.**, Attorney for Respondent, **Pankauski Hauser, PLLC.**, 415 South Olive Avenue, West Palm Beach, Florida 33401, this _____ day of March, 2020.

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Judicial Assistant