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Pa. Federal Judge Orders Westport To Produce Underwriting Manual, But Not Personnel Files, In Discovery

A federal judge has granted an insured's motion to compel the insurer's underwriting manual in a bad faith case but denied the motion as to production of personnel files. In *Westport Ins. Corp. v. Hippo, Fleming & Pertile* (W.D. Pa. March 7, 2017), U.S. District Judge Kim Gibson decided the discovery dispute in the context of a declaratory judgment action filed by Westport and a bad faith counterclaim against Westport by the insured, the Hippo law firm, which sought coverage after being sued in an underlying case.

Although the insureds brought no claims specifically dealing with underwriting, Judge Gibson wrote that in support of the bad faith claim the law firm argued that there were premium increases imposed by the insurer as a penalty relating to an underlying suit against the law firm. She held, “[g]iven the bad faith claim and the related allegations, the underwriting materials may well be relevant.”

Judge Gibson denied, however, the insured's motion to compel the personnel files of the insurer's employees, which the law firm allegedly sought regarding “the insurer’s corporate policy, standards, and procedures . . . relating to [the insurer’s] state of mind and relationship with its employees, and information regarding the relationship between the corporate policies and the training of the claims employees.”

Judge Gibson employed a balancing analysis to deny the request for the personnel files:

Because there is a strong public policy against disclosure of personnel information, such requests are subject to a heightened relevancy standard . . . [requiring analysis of] whether there is another way for the requesting party to obtain the information sought . . . whether there is other evidence suggesting the personnel files are likely to include relevant information . . . how broad the request is . . . and how closely the personnel files relate to the requesting party’s claims . . . the request is relatively narrow in that it asks for only the files of the employees who worked on its claim and has agreed to a number of redactions, the other factors do not meet the heightened relevancy requirement . . . The reasons supplied . . . for wanting the personnel files such as whether the claims employees had some incentive to deny its claim and the nature of the relationship between the company and its employees could likely be obtained through the depositions of those employees . . . Likewise, [the insured] has not presented any other evidence to support their theory that the personnel files are likely to include information relevant to their claims.

Thus, Judge Gibson granted the motion to compel in part and denied it in part.



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