

Court Orders Insurer to Disclose Claims Information of Other Insureds and Underwriting Materials

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The United States District Court for the Southern District of Ohio has granted an insured's motion to compel its insurer to disclose information regarding claims of other insureds and documents from the insurer's underwriting file. *Chubb Custom Ins. Co. v. Grange Mut. Cas. Co.*, 2009 WL 243034 (S.D. Ohio Jan. 30, 2009).

The insured in this case was one of many insurance companies named as defendants in a class action lawsuit alleging that they had engaged in certain purportedly improper adjustments of first-party claims for bodily injury. The lawsuit against the insured ultimately settled, with the insured agreeing to pay eligible class members an amount of money representing "specific elements of bodily damages." The insurer then brought suit against the insured for a declaration that coverage under its policy for the settlement was barred by the "Benefits Due Exclusion" in an insurance company errors and omissions policy. The insured counterclaimed for indemnification, breach of contract and bad faith.

After the court denied the insurer's motion to bifurcate and stay the insured's bad faith counterclaim, the insured sought discovery of information regarding other defendants in the class action who had sought coverage from the insurer under policies identical to the one at issue in this case. The insured argued that such information was relevant because it allowed for a determination of whether the insurer was consistent in its treatment of similarly situated policyholders. The court agreed, asserting that this was not a situation in which the insured simply was seeking information about claims for coverage for similar incidents, but rather the very same incident for which coverage was sought here. The court also agreed with the insured that the request was not unduly burdensome as the insurer contended. In this regard, the court dismissed the notion that identifying which of the "over 500" defendants in the class action held policies issued by the insurer would be "an enormous undertaking" in terms of time, effort and expense.

The court further agreed with the insured's request for underwriting materials. The insured sought discovery of "any and all documents prepared, approved, reviewed, or analyzed by [the insurer's] underwriting department related to the Benefits Due Exclusion of the Policy." The insured argued that this request was directed at the specific basis for the insurer's denial of coverage here and speculated that the underwriting

file would contain evidence that the underwriters viewed the exclusion the same way that the insured viewed it—that is, not applying in this situation. In response, the insurer characterized the request as a "fishing expedition" and argued that the insured should not be permitted discovery of extrinsic evidence in the absence of a finding of ambiguity in the policy language. The court rejected this position without any discussion or analysis.