

ALERT

Court Grants Objection to Interrogatory Seeking Information About Other Insureds' Claims, Denies Objection Regarding Other Claims Noticed by the Insured's Affiliates

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A United States Magistrate Judge in the United States District Court for the Western District of North Carolina has denied a motion to compel discovery of all claims for which the insurer had denied coverage based on the desire of an insolvent insured to forfeit coverage. *Lane v. Endurance American Specialty Insurance Co.*, 2011 WL 1791343 (W.D.N.C. May 10, 2011). The court granted, however, the plaintiff's motion to compel the insurer to provide information about all other claims noticed under the policies at issue.

The plaintiff obtained a judgment against an insolvent title agency and then brought an action against the agency's insurer for bad faith breach of the duty to settle or pay the judgment. In discovery, the plaintiff requested that the insurer identify all claims for which it had denied coverage on the basis of "an express desire by an insolvent or defunct insured or the owner of such an insured to forfeit the insured's coverage." The plaintiff contended that this interrogatory was intended to determine whether the insurer's alleged collusion with the named insured to divest its insolvent subsidiary of coverage was a "general business practice." The insurer objected, including on the basis that the interrogatory was overly broad. The court agreed, finding the requested information irrelevant to the bad faith lawsuit and not reasonably calculated to lead to the discovery of admissible information.

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The plaintiff also requested that the insurer identify all other claims noticed under the purportedly relevant policies and disclose the date of notice and the insurer's response. This interrogatory, according to the plaintiff, would show whether the insurer more indulgently regarded late notice issues for claims against solvent subsidiaries of the named insured than for the insolvent entity against which the plaintiff obtained a judgment. The court granted the plaintiff's motion to compel, rejecting the insurer's argument that the information was not relevant. The court concluded that the information sought may lead to the discovery of admissible evidence, noting that the interrogatory "is specifically tailored to seek information related to [the insurer]'s conduct regarding the policies of insurance it issued that are the subject of this litigation."