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FLORIDA SUPREME COURT CHANGES LANDSCAPE FOR WHAT IS DISCOVERABLE IN AN ATTORNEY'S FEES CONTEST

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By: Michael J. Higer

Until recently, Florida had not adopted a hard and fast rule regarding the discovery of opposing counsel's billing records in a contested attorney's fees claim. On March 24, 2016, however, the Supreme Court of Florida issued a favorable opinion to insureds seeking recovery of attorney's fees after prevailing in an underlying action against an insurance company.[1] In Paton v. GEICO, Case No. SC14-282, the Court held that the hours expended by counsel for a defendant insurance company "is relevant to the issue of the reasonableness of time expended by counsel for the plaintiff, and discovery of such information, where disputed, falls within the sound decision of the trial court."

In reaching its decision, the Supreme Court concluded that the billing records of a defendant insurance company's counsel are relevant and discoverable, because these invoices will demonstrate the complexity of the case, the time expended to litigate the case, and potentially deem reasonable a plaintiff's request for a lodestar computation including a multiplier factor. Under Florida law, a court evaluating a claim for fees first looks at the amount of reasonable fees based on a calculation of the reasonable number of hours multiplied at the reasonable rate for those hours. This calculation is known as the lodestar. And depending on the existence of certain factors, a court may enhance that lodestar by a multiplier of anywhere between 1.0 to 2.5. This enhancement often times incentives lawyers to represent clients in matters that would not otherwise be economically feasible and thus fosters access to the courts for citizens who otherwise would not have access to the judicial system for redress. Importantly, although a trial court still has discretion to allow privileged information billing records to be redacted, the Supreme Court held that a plaintiff claiming attorney fees should not be "required … to meet an unnecessarily high standard" to obtain the remaining relevant, non-privileged information.

Notably, the Supreme Court's decision is not limited to disputes between insureds and insurance companies. To the contrary, the Court's decision would be equally applicable to any dispute over the fees where entitlement has been determined regardless of the identity of the parties or the nature of the dispute. This means that a prevailing party as to entitlement to recover legal fees now has a very significant weapon in its arsenal which will not only enhance the chances for success in fee litigation but may also provide useful leverage in negotiating a successful resolution.

If you have any questions, contact Michael J. Higer of Berger Singerman's Insurance Team. As part of his commercial litigation and insurance litigation practice, Mr. Higer also regularly serves as an expert witness in matters in which there is a fee contest.

[1] Paton v. GEICO, Case No. SC14-282. March 24, 2016.

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