

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

GOLD COAST CHIROPRACTIC
CENTER, P.A., a/a/o NICHOLAS
GARCIA,
Petitioner,

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 2015CA002654
L.T. NO.: 2012SC004028

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,
Respondent.

Opinion filed: **OCT 20 2015**

Petition for Writ of Certiorari from the County Court in and for Palm Beach County,
Judge Edward Garrison

✓ For Petitioner: Charles J. Kane, Esq.
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PER CURIAM.

This Petition for Writ of Certiorari arises from a discovery order requiring Petitioner, Gold Coast Chiropractic Center, P.A. ("Gold Coast"), to disclose the amounts it has accepted from private health insurers and cash paying patients for the CPT codes at issue in the case below. Because we find that a price term, in and of itself, is not a trade secret we dismiss the petition. We write only to address this point.

Background

Gold Coast served as chiropractor for Nicholas Garcia (“Insured”) after he was injured in an automobile accident. Insured had an insurance policy with Respondent, State Farm Mutual Automobile Insurance Company (“State Farm”), and assigned the benefits under this policy to Gold Coast. Gold Coast then instituted the underlying claim against State Farm seeking recovery of benefits under the policy.

As part of discovery, State Farm served Gold Coast with interrogatories seeking to discover reimbursements Gold Coast had accepted from other private insurers in other circumstances for the same services it performed for Insured. Gold Coast objected to this request claiming the interrogatories sought information that is protected as a trade secret and is irrelevant. State Farm filed a motion to compel Gold Coast to fully respond to its interrogatories. The trial court granted State Farm’s motion to compel in a written order which stated:

[Gold Coast] shall provide a matrix disclosing contracted amounts between [Gold Coast] and private health insurers. [Gold Coast] may keep insurance companies’ name[s] confidential. [Gold Coast] shall provide a range of the lowest amount accepted by cash paying patients to highest amount accepted by cash paying parties for each CPT code at issue in case for 1 month prior and 1 month after.

Standard of Review

A non-final order that is not appealable under Florida Rule of Civil Procedure 9.130 is reviewable as a petition for writ of certiorari when the order is “(1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case (3) that cannot be corrected on postjudgment appeal.” *Bd. of Trustees of Internal Improvement Trust Fund v. Am. Educ. Enters.*, 99 So. 3d 450, 454 (Fla. 2012) (quoting *Reeves v. Fleetwood Homes of Fla., Inc.*, 889 So. 2d 812, 822 (Fla. 2004)). The final two prongs of this test essentially ask

whether the departure from the essential requirements of the law causes “irreparable harm.” *Id.* at 455.

Analysis and Legal Conclusions

Gold Coast argues certiorari is appropriate because the trial court’s order compels it to disclose material that is privileged as trade secrets and is otherwise confidential. Gold Coast argues disclosure of this material would cause irreparable harm. Irreparable harm is a jurisdictional prerequisite to certiorari relief; if a petitioner is unable to demonstrate irreparable harm the petition must be dismissed. *Millennium Diagnostic Imaging Ctr. v. State Farm Mut. Auto. Ins. Co.*, 129 So. 3d 1086, 1089 (Fla. 3d DCA 2013). Compelling discovery of privileged materials without a showing of good case is a departure from the essential requirements of the law that causes irreparable harm. *State Farm Fla. Ins. Co. v. Aloni*, 101 So. 3d 412, 414-15 (Fla. 4th DCA 2012); *see also Cotton States Mut. Ins. Co. v. AFO Imaging, Inc.*, 46 So. 3d 140, 142 (Fla. 2d DCA 2010).

Trade secrets are privileged under section 90.506, Florida Statutes. Section 90.506, however, does not define trade secrets. One must look to the Uniform Trade Secrets Act for a definition. It defines a trade secret as:

information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

§ 688.002(4), Fla. Stat. (2012). While a formula that results in a price may constitute a trade secret, generally a price term in and of itself does not fall within the definition of a trade secret. *Summitbridge Nat. Invs. LLC v. Palm Harbor, L.L.C.*, 67 So. 3d 448 (Fla. 2d DCA 2011).

Here, the trial court did not require Gold Coast to produce any trade secrets. The order does not require Gold Coast to provide any agreements it has entered into with private insurers. Furthermore, the order does not require Gold Coast to produce the formula, methodology, factors, or data any of its private insurer counterparts utilize to determine the reimbursement amounts. Finally, the order does not require Gold Coast to indicate which private insurers it has agreements with. The order simply requires Gold Coast to provide a matrix indicating the price terms of these agreements and the amounts received from cash paying patients. Such price terms, absent any identification of the counterparty or disclosure of the formula used to determine the price, are not privileged as trade secrets.¹ Therefore, because the trial court's order does not compel disclosure of privileged information, Gold Coast has failed to demonstrate the trial court's order departed from the essential requirements of the law causing irreparable harm.

Accordingly, the Petition for Writ of Certiorari is **DISMISSED**. Petitioner's Motion for Appellate Attorney's fees is **DENIED**. Respondent's Motion for Appellate Attorney's fees is **GRANTED** and the matter is remanded to the trial court to determine a reasonable amount of fees. The award of attorney's fees is conditioned on the trial court's determination that the proposal for settlement was properly made and submitted and that Petitioner is otherwise entitled to fees under section 768.79, Florida Statutes and Florida Rule of Civil Procedure 1.442.

SASSER, BRUNSON, and BLANC, JJ., concur.

¹ We note that other county courts have utilized this same method to permit discovery of information relevant to the reasonableness of a provider's charges while ensuring that proprietary information remains protected. *See, e.g., Virtual Imaging Servs., Inc. v. United Auto. Ins. Co.*, 21 Fla. L. Weekly Supp. 808b (Fla. Miami-Dade Cnty. Ct. Apr. 4, 2014); *Virtual Imaging Servs., Inc. v. State Farm Mut. Auto. Ins. Co.*, 22 Fla. L. Weekly Supp. 465b (Fla. Miami-Dade Cnty. Ct. Oct. 15, 2014).