**Conditionally Granted and Opinion Filed March 2, 2018**

**In The**
# Court of Appeals
# Fifth District of Texas at Dallas

**No. 05-17-00608-CV**

**IN RE HANOVER LLOYDS INSURANCE COMPANY, Relator**

**Original Proceeding from the 193rd Judicial District Court**
**Dallas County, Texas**
**Trial Court Cause No. DC-16-03065**

## MEMORANDUM OPINION

Before Justices Francis, Brown, and Whitehill
Opinion by Justice Brown

In this original proceeding, Hanover Lloyds Insurance Company seeks relief from an order compelling production of certain documents. After considering Hanover's amended petition for writ of mandamus, American Indoor Sports Facility's response, and Hanover's reply, we conditionally grant the writ of mandamus.

### Background

The underlying dispute is an insurance coverage lawsuit arising from a claim for coverage following storm damage to commercial property. During a roofing inspection in the spring of 2015, Indoor Sports noticed significant hail damage to the metal roof on its building. Indoor Sports made a claim to its insurer, Markel Insurance Company. Markel hired HAAG Engineering to investigate the claim. HAAG determined that the hail that had fallen recently was not large enough to have caused the damage, but that weather data showed a storm on April 3, 2012 had hail large

enough to have caused the damage. Because Markel's policy did not cover claims for Indoor Sports on that date, it denied the claim.

Indoor Sports then filed a claim with Hanover because it provided coverage of Indoor Sports on April 3, 2012. Hanover assigned Brad Taylor to investigate the claim. Taylor investigated and later denied the claim because he could not determine a date the hail damage occurred. Indoor Sports then sued Hanover for breach of contract, violations of the Texas Insurance Code and the Texas Deceptive Trade Practices Act, and bad faith. According to Indoor Sports, Hanover rejected the HAAG report in bad faith because Hanover relies on HAAG to investigate claims and relies on HAAG's decisions on claims. Hanover, on the other hand, contends it properly denied the claim because it was unable to determine the date the hail damage occurred to the property. Hanover also alleges Indoor Sports provided late notice.

In October 2016, Indoor Sports propounded its Second Requests for Production to Hanover seeking production of:

> (1) the last twenty-five Haag Engineering reports on a storm damage claim in Texas for one of its insureds that Hanover Lloyds Insurance Company had received before August 31, 2015 (the date of its decision letter in this case) plus the decision letters in those claims. These reports and decision letters can be easily identified by the checks Hanover Lloyds used to pay Haag Engineering because the claim number will be on those checks. Hanover Lloyds may redact information concerning the individual insureds in this production; and
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> (2) the last twenty-five Haag Engineering reports on a storm damage claim in Texas for one of its insureds that Hanover Lloyds Insurance Company had received after August 31, 2015 (the date of its decision letter in this case) plus the decision letters in those claims. These reports and decision letters can be easily identified by the checks Hanover Lloyds used to pay Haag Engineering because the claim number will be on those checks. Hanover Lloyds may redact information concerning the individual insureds in this production.

Hanover objected to the requests and refused to produce the requested documents. Indoor Sports then filed a motion to compel which was heard by an associate judge. After a hearing, the associate judge granted the motion to compel. Hanover appealed to the district court, which held a hearing and denied Hanover's appeal. Hanover then filed a motion to reconsider. After the district judge denied the motion to reconsider, Hanover sought mandamus relief in this Court.

**Discussion**

Mandamus will issue if the relator establishes a clear abuse of discretion for which there is no adequate remedy by appeal. *In re Odyssey Healthcare, Inc.*, 310 S.W.3d 419, 422 (Tex. 2010) (orig. proceeding) (per curiam); *In re Deere & Co.*, 299 S.W.3d 819, 820 (Tex. 2009) (orig. proceeding) (per curiam); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). "A discovery order that compels production beyond the rules of procedure is an abuse of discretion for which mandamus is the proper remedy." *In re Nat'l Lloyds*, 507 S.W.3d 219, 223 (Tex. 2016) (orig. proceeding) (per curiam) (*Nat'l Lloyds II*) (citing *In re Nat'l Lloyds*, 449 S.W.3d 486, 488 (Tex. 2014) (orig. proceeding) (per curiam) (*Nat'l Lloyds I*)). "Our procedural rules define the general scope of discovery as any unprivileged information that is relevant to the subject of the action, even if it would be inadmissible at trial, as long as the information sought is 'reasonably calculated to lead to the discovery of admissible evidence.'" *Nat'l Lloyds II*, 507 S.W.3d at 223 (citing *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding) (per curiam)). What is "relevant to the subject matter" is to be broadly construed. *Nat'l Lloyds I*, 449 S.W.3d at 488. These liberal bounds, however, have limits, and "discovery requests must not be overbroad." *Id.* A request is not overbroad "so long as it is 'reasonably tailored to include only matters relevant to the case.'" *Id*.

In *National Lloyds I*, the supreme court determined that a trial court's order compelling production of information relating to insurance claims filed by neighboring residents in connection

with storms that damaged the plaintiff's house was an abuse of discretion. *Nat'l Lloyds I*, 449 S.W.3d at 488–89. According to the supreme court, the plaintiff proposed to compare National Lloyds' evaluation of the damage to her home with National Lloyds' evaluation of the damage to other homes to support her contention that her claims were undervalued. *Id*. at 489. The supreme court concluded that National Lloyds' overpayment, underpayment, or proper payment of the claims of unrelated third parties was not probative of its conduct with respect to the plaintiff's undervaluation claims given the many variables associated with a particular claim, such as when the claim was filed, the condition of the property at the time of filing (including the presence of any preexisting damage), and the type and extent of damage inflicted by the covered event. *Id*. The court reasoned that "[s]couring claim files in hopes of finding similarly situated claimants whose claims were evaluated differently . . . is at best an 'impermissible fishing expedition.'" *Id*. Although the discovery order was limited in time to the two storms at issue and limited by location to only properties in Cedar Hill, the "limits in and of themselves [did] not render the underlying information discoverable." *Id*. Thus, the court concluded that without more, the information sought did not appear reasonably calculated to lead to the discovery of evidence that has a tendency "to make the existence of any fact that is of consequence to the determination of the action more probable or less probable." *Id*.

In *National Lloyds II*, the supreme court again concluded the trial court abused its discretion by ordering an insurer to produce evidence related to insurance claims other than the plaintiff's claim. *Nat'l Lloyds II,* 507 S.W.3d at 226. In that case, the trial court ordered production of six categories of documents, including certain management reports and emails. In particular, National Lloyds was "ordered to produce all emails, reports attached to emails, and any follow-up correspondence and information related to those reports which were sent or received by a National Lloyds employee or any affiliated adjusting company employees." *Id*. at 222. Because the reports

encompassed "claims in different counties, experiencing different causes of loss, on different dates from the Hidalgo County storms occurring March 29 and April 20, 2012," the supreme court concluded that the situation in *National Lloyd's II* was nearly identical to that in *National Lloyds I*, except the discovery was even less narrowly tailored, and granted mandamus relief to National Lloyds because the production order was overly broad. *Id*. at 225–26.

Here, like in *National Lloyds I and National Lloyds II*, the discovery order in dispute requires Hanover to turn over evidence related to claims other than the plaintiff's claim so that the plaintiff can compare Hanover's handling of its claim with that of other claims. We conclude the trial court abused its discretion by compelling production of the fifty HAAG engineering reports received by Hanover and that mandamus relief is warranted.

In reaching this conclusion, we necessarily reject Indoor Sports's argument that the requested reports are reasonably calculated to lead to the discovery of evidence relevant to its claims because, unlike the claims in *National Lloyds I* and *National Lloyds II*, Indoor Sports is not seeking the HAAG reports to prove that hail fell on its property or to establish a baseline of Hanover's pricing and compare that pricing to this case. Rather, according to Indoor Sports, it is seeking the information to develop and prove the relationship between Hanover and HAAG, Hanover's reliance on HAAG's training, investigation and reports, and the unreasonableness of the investigation and decision made by Hanover in light of the HAAG report and lack of contradictory evidence. Although there is a remote possibility the requested discovery could lead to the discovery of relevant evidence, we fail to see how Hanover's use of HAAG engineering reports on claims of unrelated third parties is probative of Hanover's conduct with respect to its handling of this claim. Indoor Sports has proposed to compare Hanover's use of an engineering report with Hanover's use of engineering reports in fifty unrelated third-party claims. Without more, the information sought does not appear reasonably calculated to lead to the discovery of

evidence that has a tendency "to make the existence of any fact that is of consequence to the determination of the action more probable or less probable." TEX. R. EVID. 401; TEX. R. CIV. P. 192.3(a).

We conditionally grant mandamus relief and direct the trial court to vacate the portions of the February 17, 2017 discovery order overruling Hanover's objections to real party's second requests for production and granting real party's motion to compel production of the HAAG engineering reports. We are confident the trial court will comply, and the writ will issue only if it fails to do so.

/Ada Brown/
ADA BROWN
JUSTICE

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