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NEWSLETTER

Reserves Information Discoverable Only Where Bad Faith Is Sufficiently Alleged

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Applying Connecticut law, the Superior Court of Connecticut has determined that a title insurer's reserve information was not discoverable because no claim for bad faith had been alleged by the plaintiff, the assignee of a loan for which the defendant allegedly issued a letter of protection. *U.S. Bank Nat'l Ass'n v. Lawyers Title Ins. Corp.*, 2010 WL 1629942 (Conn. Super. March 22, 2010).

The title insurer argued that the plaintiff was not entitled to discovery of its reserves with respect to the underlying claim because such information is irrelevant absent a cause of action based on bad faith. The court agreed, rejecting the plaintiff's argument that its causes of action for breach of the covenant of good faith and fair dealing and violations of the Connecticut Unfair Trade Practices Act (CUTPA) sufficiently implicated bad faith actions on the part of the defendant title insurer. The court determined that the plaintiff had not alleged bad faith and that reserves information "is not relevant to the underlying cause of action merely because the plaintiff has alleged that the defendant breached the implied covenant of good faith and fair dealing as well as alleging a violation of CUTPA, without any specific allegations of bad faith." (emphasis in original).

However, the court rejected the insurer's additional assertion that the reserves information was privileged, finding that this contention was unsupported by any showing that the information was created by an attorney for the purposes of litigation. Accordingly, the court stated that such information "would be subject to discovery if there was a sustainable claim of bad faith."