

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Gross v. Scottsdale Insurance Company

Gross · No. 24-cv-02069-EJD (VKD) · Decided April 15, 2025

SUMMARY

The United States District Court for the Northern District of California resolves a discovery dispute concerning whether attorney work-product protection bars deposition questions directed to an insurance investigator, Mr. Breen. The Court permits questioning about the disclosed Breen report and factual information concerning his investigation, but not undisclosed mental impressions, conclusions, opinions, or legal theories; it also limits the further deposition because fact discovery has otherwise closed.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Virginia K. DeMarchi
JURISDICTION	United States District Court for the Northern District of California
DECIDED	April 15, 2025
DOCKET	24-cv-02069-EJD (VKD)
DISPOSITION	other
PROCEDURAL POSTURE	Order resolving a discovery dispute concerning whether a witness could be deposed about an investigation and report allegedly protected by the attorney work product doctrine.
STANDARD OF REVIEW	The Court applied the Federal Rules of Civil Procedure governing work-product protection and discovery, including the substantial-need and undue-hardship requirements of Rule 26(b)(3)(A), and the heightened protection for mental impressions, conclusions, opinions, and legal theories under Rule 26(b)(3)(B).
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Terry Gross v. Scottsdale Insurance Company

TOPICS

- discovery dispute
- work product doctrine
- insurance bad faith
- insurance
- civil procedure

PRACTICE AREAS

civil procedure

insurance

discovery

QUESTIONS PRESENTED

1. Whether Mr. Breen could be deposed about the contents of the already-disclosed Breen report.
2. Whether Mr. Breen could be questioned about factual information concerning the investigation he conducted.
3. Whether work-product protection barred compelled disclosure of undisclosed mental impressions, conclusions, opinions, or legal theories.
4. Whether assertion of a bad-faith insurance claim or disclosure of the Breen report established an implied waiver of work-product protection over all of Mr. Breen's investigation and mental impressions.

HOLDINGS

1. Mr. Gross may question Mr. Breen in a further deposition regarding the contents of the Breen report because those matters have already been disclosed and any remaining protection over previously disclosed matters has been waived.
2. Mr. Gross may question Mr. Breen about factual information regarding the investigation he conducted.
3. Mr. Gross did not establish a basis to compel disclosure of Mr. Breen's undisclosed mental impressions, conclusions, opinions, or legal theories.

KEY QUOTATIONS

“To qualify for work-product protection, documents must: (1) be prepared in anticipation of litigation or for trial and (2) be prepared by or for another party or by or for that other party’s representative.” (at 1)

“such opinion work product is discoverable only ‘when mental impressions are at issue in a case and the need for the material is compelling.’” (at 2)

“The Court concludes that Mr. Gross may question Mr. Breen in a further deposition regarding (1) the contents of the Breen report, and (2) factual information regarding the investigation he conducted.” (at 2)

FACTUAL BACKGROUND

Mr. Breen conducted an investigation and prepared a report concerning the insurance matter. The report had already been disclosed and was previously held not protected as an attorney-client privileged communication because of waiver. Mr. Gross sought to question Mr. Breen about the report and the factual manner in which he conducted the investigation, while Scottsdale asserted protection over Mr. Breen's work and impressions. Mr. Breen had already testified, without objection, about at least some aspects of his investigation and report preparation.

PROCEDURAL HISTORY

The parties submitted a discovery dispute for resolution under Civil Local Rule 7-1(b). In a prior order, the Court concluded that the Breen report was not protected as an attorney-client privileged communication because of waiver. The parties then disputed whether Mr. Breen could be questioned about his investigation and work leading up to the report. The Court resolved the dispute without oral argument and permitted a limited further deposition.

DISPOSITION

other

CASES CITED

- United States v. Sanmina Corp., 968 F.3d 1107, 1119 (9th Cir. 2020)
- United States v. Richey, 632 F.3d 559, 567 (9th Cir. 2011)
- Admiral Ins. Co. v. U.S. Dist. Ct., 881 F.2d 1486, 1494 (9th Cir. 1989)
- United States v. Nobles, 422 U.S. 225, 238-39 (1975)
- Hickman v. Taylor, 329 U.S. 495, 511 (1947)
- Hatamian v. Advanced Micro Devices, Inc., No. 14-cv-00226-YGR (JSC), 2016 WL 2606830, at *3 (N.D. Cal. May 6, 2016)
- Visa U.S.A., Inc. v. First Data Corp., No. 02-cv-1786 JSW (EMC), 2004 WL 1878209, at *5 (N.D. Cal. Aug. 23, 2004)
- Nidec Corp. v. Victor Co. of Japan, 249 F.R.D. 575, 578 (N.D. Cal. 2007)
- Bittaker v. Woodford, 331 F.3d 715, 719 (9th Cir. 2003)
- ACLU of N. California v. United States DOJ, 880 F.3d 473, 485-87 (9th Cir. 2018)
- Holmgren v. State Farm Mutual Automobile Insurance Co., 976 F.2d 573, 577 (9th Cir. 1992)