The Appellate Advocate:

A Recap of Recent Decisions by NJ's Appellate Courts

Atlantic ER Physicians Team Pediatric Associates v. UnitedHealth Group, Inc.
A-2031-23

Have you ever logged on to a streaming service and, when the thumbnail for the first movie pops up on the screen, said to yourself, "Yep, that is exactly what I was looking for. I need not do any more scrolling"? Lol, of course not. That NEVER happens. It is just as rare for us litigators, who deal with discovery-focused battles so often, to find an Appellate Division decision where ESI discovery is the main character. But this is one such decision.

Atlantic ER Physicians Team Pediatric Associates and other emergency care groups contended that various UnitedHealth entities and cost-management firm MultiPlan, Inc. orchestrated a scheme to drive down reimbursement rates. The plaintiffs argued that UnitedHealth took advantage of their legal obligation to treat emergency patients —regardless of ability to pay—by underpaying them at "shockingly low rates," effectively forcing them out-of-network.

This battle over how much money to pay for medical services soon turned into one over how many documents to produce in discovery. That discovery battle went sideways (very technical legal term) soon after the parties negotiated an ESI discovery plan. Typical of most such plans, it included a provision listing various search terms to guide UnitedHealth's collection of documents for a discovery review. The trial court, however, ruled that there should be no discovery review; UnitedHealth would need to produce all results of its search save for documents that are privileged.

The trial court justified its decision by asserting that, particularly in large-scale electronic discovery disputes, relevance should not be determined by the party producing the documents but rather by the party receiving them. The judge dismissed UnitedHealth's concerns about over-disclosure, insisting that confidentiality provisions and attorney-only access would mitigate any potential harm. The ruling required UnitedHealth to turn over massive amounts of data, including information it claimed had no bearing on the case.

UnitedHealth then had to travel the scenic route to appeal from this decision. UnitedHealth requested leave to file an interlocutory appeal, but the Appellate Division denied the request. UnitedHealth then took the extraordinary step of appealing to the Supreme Court from this denial and—just as extraordinarily—the Supreme Court sided with UnitedHealth. The Supreme Court directed the Appellate Division to hear the appeal.

Though it had initially denied UnitedHealth's request to even bring the appeal, the Appellate Division sided with UnitedHealth on the merits. The panel took issue with the trial court's approach, ruling that it violated state discovery rules. The appellate judges emphasized that relevance remains the polestar for what must be produced in litigation and that the trial court had overstepped by compelling the release of irrelevant materials. The panel also rejected the lower court's reasoning that electronic discovery should be treated differently from traditional discovery, making it clear that even in complex ESI cases, parties should not be forced to hand over irrelevant documents.

Ultimately, the appellate ruling reinforces the principle that producing parties have the right to determine relevance—at least initially. In fairness to the trial court, the appellate opinion does not actually disclose the troublesome search terms that UnitedHealth claimed would produce troves of irrelevant documents. There are certainly some circumstances in litigation where a keyword search (e.g., a party's name) will, depending on the nature of the documents searched, only result in relevant documents. But here the ruling recognizes that, just because documents are part of a discovery search, it does not make the documents discoverable. Those principles apply whether you are gathering documents electronically, or thumbing through a filing cabinet looking for the folder that actually pertains to your litigation among all the others that are irrelevant.

About Thomas Cotton

Thomas Cotton is a litigation partner at Schenck Price, representing clients in trial and appellate courts throughout the United States. In addition to his practice, he authors *The Appellate Advocate*, a semi-weekly blog offering thoughtful yet accessible commentary on recent appellate rulings.

973-540-7333
tjc@spsk.com

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