<<COURT\_NAME>>

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| <<PROVIDER\_SUITNAME>>,  a/a/o <<INJUREDPARTY\_NAME>>    Plaintiff,  vs.  <<INSURANCECOMPANY\_SUITNAME>>  Defendant.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/ | Case No. <<INDEXORAAA\_NUMBER>> |

**PLAINTIFF’S MOTION TO COMPEL BETTER**

**RESPONSES TO DISCOVERY OVER OBJECTION**

**OR IN THE ALTERNATIVE MOTION FOR IN CAMERA INSPECTION**

Plaintiff, <<PROVIDER\_SUITNAME>>, by and through the undersigned counsel, hereby files this Motion to Compel Discovery as to Defendant, <<INSURANCECOMPANY\_SUITNAME>>, and in support thereof further states:

1. Discovery consisting of interrogatories, request for production and/or request for admissions were propounded upon Defendant, <<INSURANCECOMPANY\_SUITNAME>>, on \_\_\_\_.
2. That on \_\_\_\_\_\_\_\_\_\_\_\_\_\_, Defendant, filed a response to the foregoing discovery.
3. The response to the foregoing discovery is non-responsive, incomplete, unduly vague or asserts objections that are not relevant for the following items:
   * 1. ------------
     2. ------------
     3. ------------
4. In addition to the above referenced objections, Defendant has also failed to provide the Plaintiff verified responses to interrogatories as required per the Florida Rules of Civil Procedure.
5. Plaintiff is entitled to full, complete and verified complete responses to the foregoing discovery requests as the same are relevant and material to the issues of this case and are not privileged. Furthermore, Defendant have not met its burden of proving such documents being withheld are privilege.
6. It is well-settled that “under the work-product doctrine, documents prepared by or on behalf of a party *in anticipation of litigation* are not discoverable.” Liberty Mut. Fire Ins. Co. v. Kaufman, 885 So. 2d 905, 910 (Fla. 3d DCA 2004) (citing Fla. R. Civ. P. 1.280(b)(3)).
7. However, it is equally established that the party asserting privilege has the burden to prove such a privilege should apply. *See, e.g.*, Hartford Acc. & Indem. Co. v. McGann*,* 402 So. 2d 1361, 1362 (Fla. 4th DCA 1981) (“If objection is made necessitating a court hearing, then in the case of a party objecting on grounds of the work product privilege, that party has the burden, first of showing the privilege.”); *see also* Kaufman, 885 So. 2d at 910 (explaining that “the party objecting to the discovery ... maintains the burden to show that the materials were compiled in response to some event which foreseeably could be made the basis of a claim against the insurer”) (citation omitted). **And a party generally cannot carry this burden with a bare assertion that a specific document is held within its claim file.** Homeowners Choice Prop. & Cas. Ins. Co. v. Avila, 248So. 3d 180, 184 (Fla. 3d DCA 2018) (*finding there is no “claims file privilege*”).
8. Most courts agree that materials prepared, and information obtained in the routine and ordinary course of business, or pursuant to public requirements unrelated to litigation, are not entitled to protection.These courts generally accept the principle that the mere likelihood of litigation will not be enough to protect the materials and information from discovery. Thus, investigations and incident reports which follow an accident may not qualify as work product if they are required as part of the ordinary course of business.
9. The 5th DCA has held there is no such thing as a **claim file privilege** and categorical objections serving as the only basis for **work product privilege** is not sufficient. Avatar Property & Casualty Insurance Company v. Simmons, 298 So.3d 1252 (Fla. 5th DCA 2020).The 5th DCAorderedAvatar Property & Casualty Insurance Company to turn over photographs within the insurers clam file after the insurer did not meet its burden of proving that work-product privilege applied to the photographs. The carrier never attempted to demonstrate that photographs were prepared in anticipation of litigation and did not attempt to establish basis for work-product privilege with documentary evidence, such as a supporting affidavit. Id.
10. Generally, an insurer’s claim file constitutes work product and is protected from discovery **prior to a determination of coverage**. Superior Ins. Co. v. Holden, 642 So. 2d [1139,] 1140 (Fla. 4th DCA 1994).
11. In the alternative, if the court find the request documents are privilege, Plaintiff request an in-camera inspection. “When a party asserts the work-product privilege, Florida law requires that the trial court hold an in-camera inspection of the discovery at issue in order to rule on the applicability of the privilege.” Marshalls of M.A., Inc. v. Witter, No. 3D15-2685, 2016 WL 403212, at \*1 (Fla. 3rd DCA 2016) A trial court’s failure to conduct an in-camera inspection will constitute a departure from the essential requirements of the law. Id.

WHEREFORE, Plaintiff, <<PROVIDER\_SUITNAME>>, requests the Court to enter an Order to compel Defendant, <<INSURANCECOMPANY\_SUITNAME>>, to file better responses to the discovery, overrule the Defendant’s objections referenced herein, file verified response to interrogatories or in the alternative grant Plaintiff’s request for an on-camera inspection and grant such other further relief that is just and appropriate under the circumstances.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 19, 2022, a true and correct copy of the foregoing was filed and served on the Defendant through Florida Courts E-Filing Portal.

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