

Appellate Practice Pointer Kranias v. Tsiogas

In <u>Kranias v. Tsiogas</u>, No. 2D06-2269, 2006 WL 2923579 (Fla. 2d DCA Oct. 13, 2006), the Second District Court of Appeal held that a discovery order requiring the production of either a privilege log or all documents relied upon to support an allegation in the complaint was overbroad, "[b]ecause it improperly requires the Petitioners to produce documents which potentially pertain to their claim but may not be offered as evidence at trial." <u>Id.</u> at *1.

In reaching its decision, the Second District relied on <u>Bishop v. Polles</u>, 872 So. 2d 272 (Fla. 2d DCA 2004), wherein the Court held that an interrogatory requesting items that "might conceivably" be offered at trial was overbroad because an item that "might" be offered at trial does not fit within the supreme court's definition of "discoverable" items set forth in <u>Northup v. Howard W. Acken, M.D., P.A.,</u> 865 So. 2d 1267, 1270 (Fla. 2004) (reiterating that discoverable evidence is evidence a party "<u>reasonably expects or intends to utilize</u>" at trial).

Ultimately, the decision in <u>Kranias</u> provides that the mere possibility that a document supporting a claim <u>could</u> be offered as evidence at trial is not sufficient to defeat the work product privilege of the document and make it discoverable.

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