

Contractor must turn over 3 years of cellphone records in insurance 'mole' case



A Hollywood repair contractor accused of accessing trade secrets via a "mole" inside Heritage Insurance has been ordered to turn over all cell phone numbers three employees used over the past three years.



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Three employees of a Hollywood-based water restoration contractor have been ordered to turn over three years of cellphone records as part of a Heritage Insurance lawsuit accusing the contractor of obtaining trade secrets from a Heritage "mole."

The Feb. 8 order by Pinellas County Circuit Court Judge Cynthia Newton requires three principals of Titan Restoration Inc. — husband and wife Yitshak Levy and Orly Cohen-Levy and son Moshe Levy — to turn over all incoming and outgoing phone numbers and texts from their cellphones for three years through Jan. 31.

Titan attorneys Ely Levy and Richard Lee filed a court notice on the company's behalf Monday stating that its "cell phone information" has been furnished to Heritage attorneys.

Heritage officials did not respond to an email seeking comment about the orders. Titan attorney Lee said via email on Monday that the company would not comment on the merits of the case.

The order followed months of legal wrangling over Heritage's demands for Titan to provide all evidence of communication with any Heritage employee pertaining to water loss claims by Heritage customers.

In the suit originally filed last May, Heritage is accusing Titan of obtaining confidential information about damage claims made by Heritage policyholders so the company could contact the policyholders and perform repairs ahead of Heritage's affiliated contractors.

Heritage operates what's called a managed repair business model, in which customers receive a discount off of their insurance premiums in exchange for agreeing to use Heritage's affiliated contractors.

Titan has denied Heritage's assertions in court filings, saying the Jane Doe "mole" that Heritage named as a co-defendant is "fictional."

The latest order also requires the three Titan principals to provide the names of every cellphone carrier they used over the three requested years so that Heritage can subpoena the phone records directly if Heritage's demand is not satisfied.

Court-ordered examinations of phone records have become standard in civil court cases, particularly in cases involving motor vehicle accidents, said Damien Orato, a partner at Orlando-based Rumberger Kirk & Caldwell. Plaintiffs and insurance companies generally want to see time-stamped records of phone activities to determine whether a driver was distracted at the time of a crash, Orato said.

And courts have determined that people involved in civil cases — either as plaintiffs or defendants — have no right to presume that incoming and outgoing phone numbers are private if the information "is relevant in a given case," Orato said.

Heritage's accusation that Titan was working with a Heritage mole **stemmed from a March 2017 deposition** of a former Titan customer service representative, Rossana Karina Cruz.

In the deposition, Cruz said Yitshak Levy told her he was paying an "inside adjuster" at Heritage for information about new water damage claims by Heritage policyholders.

Titan's employees used the stolen information to contact the Heritage customers and lead them to believe they were sent by Heritage, the suit states.

The scheme came to light when one of the Heritage policyholders called Cruz and angrily demanded to know how Titan found out about her claim, the suit states. It added that Cruz became scared, decided to quit her job and then alerted Heritage to what was happening.

In its defense and counterclaim, Titan said Heritage lacked legal standing to bring the suit against it because the insurer falsely asserted to customers who agreed to use its managed repair program that it had a contractual right to perform repairs. Further, Heritage told customers "it is improper and illegal for a policyholder to contract with third party repair companies" and exclude Heritage from making the repairs, Titan said.

Actually, if a customer chooses to hire a third party repair company, Heritage only has the right to limit what it pays that company "to the lesser of the reasonable cost to make the repairs" or what it would have paid one of its own affiliated companies, Titan said.

An insurance policy limiting the insurer's obligation to "simply making repairs" rather than making monetary payments to homeowners would not be allowed under Florida insurance laws, Titan said.

The judge, Newton, on Jan. 26 denied Heritage's motion to strike Titan's defense and counterclaim from the case. Also, the judge on Feb. 7 denied Heritage's motion to prevent its CEO, Bruce Lucas, from submitting to questions by Titan's attorneys in a deposition. Lucas must submit to a deposition by March 31, Newton ordered.

Another Heritage trade secrets suit against a Palm Beach County attorney — also alleging that a Heritage mole provided private claim information — remains unresolved. That attorney has requested a change of venue from Pinellas County to Palm Beach County.