

# McCAUSLAND

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September 17, 2018

### VIA EMAIL ONLY

[pubcom@finra.org](mailto:pubcom@finra.org)

Jennifer Piorko Mitchell  
Office of the Corporate Secretary  
FINRA  
1735 K. Street N.W.  
Washington, DC 20006-1506

Re: Regulatory Notice 18-22 -- Proposed Amendments to Discovery Guide to  
Require Production of Insurance Information

Dear Ms. Mitchell:

I write to comment on FINRA Regulatory Notice 18-22 (the "Notice"). I am a Shareholder and Chair of the Litigation Group of McCausland Keen + Buckman. My practice is devoted to the representation of individuals and institutions in disputes with the financial services industry. I am a former member of the Board of Directors of the Public Investors Arbitration Association (PIABA), and a former member of FINRA's National Arbitration and Mediation Committee (NAMC). I currently serve as Chair of FINRA's Discovery Tasks Force.

I wholeheartedly endorse the proposed amendments to the Discovery Guide's Firm/Associated Persons Document Production List to add a new List Item (the "Item") requiring production of information relating to insurance coverage obtained through third-party carriers.

As the Notice clearly acknowledges, most states and the Federal Rules of Civil Procedure require the production of insurance information. It is generally recognized that the discovery of insurance information facilitates the claimant's ability to evaluate its case and facilitates discussion of settlement. To understand the existence and limitations of coverage, the presumptively discoverable information should include the entire policy and declaration page during the covered period, all correspondence relating to any reservation of rights or denial of coverage by the insurance carrier, and any complaint seeking a declaratory judgment with respect to any such policy.

The respondents would be protected from any adverse inference that may arise from the disclosure of insurance coverage by the requirement that evidence of insurance may not be presented to the arbitration panel without express authorization. I see no reason to provide further sanctions for a breach of this requirement than are available under FINRA Rule 12212.

February 17, 2018  
Jennifer Piorko Mitchell  
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I cannot conceive of any material economic impact created by the proposed amendments.

Thank you for providing me with the opportunity to comment.

Very truly yours,

A handwritten signature in black ink, appearing to read "Glenn S. Gitomer". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Glenn S. Gitomer

GSG/mr