

THOUGHT LEADERSHIP

News

INSURED NOT ENTITLED TO EXPERT REPORTS ON OTHER CLAIMS

Newsbrief

22 JAN 2016

The Houston First Court of Appeals recently granted mandamus relief to an insurer after the trial court ordered production of expert reports prepared on other unrelated claims. In *In re Interinsurance Exchange of the Automobile Club*, 2016 WL 144784 (Tex.App. – Houston [1st Dist.] January 12, 2016), the insured sought recovery for damages resulting from foundation movement allegedly caused by a plumbing leak. The claim was denied in part based on an expert's report that the foundation movement was not caused by the plumbing leak. The insurer's expert testified in deposition that he had performed more than fifty evaluations for the insurer and that 70 to 80% of the time he determined the foundation movement was the result of settlement and not plumbing leaks. The insured then sought production of all reports prepared by the expert for any other carrier and the trial court ordered all reports from 2000 to 2012 to be produced. The insurer then filed this mandamus action.

The insured argued they needed to see the expert reports to evaluate the methodology applied to evaluate the other claims and to prove expert bias. The court noted that the Texas Supreme Court rejected this argument in "a strikingly similar case" *In re National Lloyds Insurance Company*, 449 S.W.3d 486 (Tex. 2014), wherein the Court found that an effort to scour other claim files in hopes of finding evidence to prove breach of contract by underpayment in their claim was an "impermissible fishing expedition." And, the Court felt the expert's deposition testimony is the most probative evidence regarding potential bias because it would come from the expert himself. Following the Texas Supreme Court's ruling in *In re Ford Motor Company*, 427 S.W.3d 396 (Tex. 2014), holding that "discovery into the extent of an expert's bias is not without limits" the court here held the expert reports were not discoverable to show bias. Accordingly, mandamus relief was conditionally granted.