

THOUGHT LEADERSHIP

News

## COURT EXAMINES ATTORNEY-CLIENT PRIVILEGE PROTECTION FOR INSURER'S CLAIM FILE – CONDITIONALLY GRANTS, IN-PART, INSURED'S REQUEST FOR CLAIM FILE DOCUMENTS

Newsbrief

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The Texarkana Court of Appeals recently examined attorney-client privilege assertions by an insurer seeking to protect certain claim file documents from production and found that certain documents were not protected. In *In re Goin*, 2017 WL 2961478 (Tex. App. Texarkana, July 12, 2017), Goin was driving a pickup truck owned by his employer and insured under a commercial insurance policy issued by Travelers Property Casualty Company of America. The vehicle was involved in a rollover accident and Goin's passenger was rendered a paraplegic. She filed suit against Goin and the employer. Travelers initially defended subject to a reservation of rights. The passenger nonsuited the first lawsuit and filed a second in another county. Travelers did not tender a defense for eighteen months in that lawsuit, by which time most pre-trial deadlines has passed. The matter proceeded to trial and the passenger secured a damage award in excess of \$10 million.

Goin then filed suit against Travelers alleging extra-contractual claims and sought discovery of the claim file. Travelers asserted the attorney-client privilege was applicable to internal communications on coverage between the adjuster and an in-house attorney employed by Travelers. The trial court ruled that the documents sought were protected by the attorney-client privilege. Goin then filed this mandamus proceeding seeking to compel production of the documents.

The Texarkana Court of Appeals examined Texas Rule of Evidence 503, which governs attorney-client privilege, and the evidence provided by Travelers in support. The court found that while the affidavit provided by Travelers did not meet the evidentiary standards, the trial court's in-camera review of the documents themselves could have supported their finding as to certain communications between in-house counsel and the adjuster. But there were certain pages of documents that listed documents transmitted, that "does not otherwise indicate that it is in any way privileged." Accordingly, the Texarkana court directed the trial court to order Traveler's to produce un-redacted versions of those pages.

**COURT EXAMINES ATTORNEY-CLIENT PRIVILEGE PROTECTION FOR INSURER'S CLAIM FILE – CONDITIONALLY GRANTS, IN-PART, INSURED'S REQUEST FOR CLAIM FILE DOCUMENTS**

The insured also asserted that Traveler's waived the attorney-client privilege by allowing the adjuster to review the claim file in preparation for his deposition. The court examined Texas Rule of Evidence 612 and a decision by a sister court that held the attorney-client and work-product privileges were waived when a witness was allowed to review documents to refresh recollection. In distinguishing that case, the court noted that the adjuster in the present case, reviewed the file in advance of the deposition, and not while testifying. So even if they were to adopt the sister court's ruling, waiver was not supported under the facts of the present case. Accordingly, mandamus was conditionally granted, in part, to require production of certain pages noted above, but otherwise the trial court's ruling was upheld.