

TEXAS COURT OF APPEALS, FOURTH DISTRICT, SAN ANTONIO

In re EOG Resources, Inc.

No. 04-25-00574-CV · No. 04-25-00574-CV · Decided April 15, 2026

SUMMARY

The Fourth Court of Appeals of Texas conditionally granted EOG Resources, Inc.’s petition for writ of mandamus challenging a discovery order requiring production of documents withheld under the attorney-client privilege. The court held that EOG did not waive the privilege through voluntary disclosure or offensive use and that the trial court abused its discretion by ordering production. Because disclosure of privileged communications could not be remedied on appeal, the court directed the trial court to vacate its order concerning items 3, 4, 5, 10, and 15 of EOG’s privilege log.

CASE DETAILS

COURT	Texas Court of Appeals, Fourth District, San Antonio
WRITING FOR THE COURT	Irene Rios; Rebeca C. Martinez, Chief Justice; Irene Rios, Justice; Lori I. Valenzuela, Justice
JURISDICTION	Texas Court of Appeals, Fourth District, San Antonio
DECIDED	April 15, 2026
DOCKET	04-25-00574-CV
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original mandamus proceeding challenging a trial court discovery order requiring production of documents claimed to be protected by the attorney-client privilege.
STANDARD OF REVIEW	Mandamus requires the relator to establish that the trial court abused its discretion and that the relator lacks an adequate remedy by appeal. A trial court abuses its discretion when it fails to correctly analyze or apply the law. Discovery orders requiring disclosure of privileged information are reviewed under this standard.
PRECEDENTIAL VALUE	Published memorandum opinion; precedential status is identified as published in the supplied metadata.
PARTIES	EOG Resources, Inc. v. Broadway National Bank, Trustee of the Mary Frances Evers Trust

TOPICS

attorney client privilege

discovery dispute

writ of certiorari

appellate procedure

probate procedure

PRACTICE AREAS

civil procedure

evidence

appellate procedure

probate

mineral rights

QUESTIONS PRESENTED

1. Whether EOG waived the attorney-client privilege over items 3, 4, 5, 10, and 15 by voluntarily disclosing a redacted legal memorandum and related internal email.
2. Whether EOG waived the attorney-client privilege through offensive use of privileged information.
3. Whether EOG had an adequate remedy by appeal from the order requiring disclosure of allegedly privileged communications.

HOLDINGS

1. EOG established a prima facie claim of attorney-client privilege by producing a detailed privilege log, supporting affidavits, and the disputed documents for in camera review, shifting the burden to Broadway to establish waiver.
2. EOG did not waive attorney-client privilege over items 3, 4, 5, 10, and 15 by producing the redacted 2013 memorandum and the October 2013 email because those disclosures did not reveal a significant part of the withheld privileged communications.
3. EOG did not waive attorney-client privilege through offensive use because it was defending against Broadway's claims and was not seeking affirmative relief.
4. Mandamus relief was appropriate because disclosure of privileged communications destroys confidentiality and cannot be cured on appeal.

KEY QUOTATIONS

“We hold EOG did not waive its attorney-client privilege as to any of the withheld items (items 3, 4, 5, 10, and 15) because the 2013 Memorandum and the October 2013 email do not constitute disclosure of a “significant part” of these privileged communications.” (-4)

“A party’s defensive posture does not constitute a request for affirmative relief for purposes of offensive-use waiver.” (-5)

“The record does not support the trial court’s determination that EOG waived the attorney-client privilege as to items 3, 4, 5, 10, or 15.” (-6)

FACTUAL BACKGROUND

The underlying dispute concerns title to mineral interests and related royalty rights, including whether EOG acquired certain interests as a bona fide purchaser. Broadway sought documents from EOG relating to the mineral interests, and EOG withheld some responsive materials as attorney-client privileged. EOG produced a detailed privilege log and affidavits and submitted the documents for in camera review. The trial court concluded

that EOG waived privilege by producing a redacted legal memorandum and an internal email referring to legal advice, and ordered production of five withheld items.

PROCEDURAL HISTORY

In underlying litigation concerning title to mineral interests and related royalty rights, Broadway National Bank sought discovery from EOG. EOG withheld documents, produced a privilege log and supporting affidavits, and submitted the disputed materials for in camera review. The Probate Court No. 3 of Bexar County found that EOG waived its attorney-client privilege and ordered production of items 3, 4, 5, 10, and 15. EOG petitioned for mandamus relief, and the court of appeals conditionally granted the petition and directed the trial court to vacate its production order.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The trial court must vacate its order requiring production of items 3, 4, 5, 10, and 15 from EOG's Second Amended Privilege Log. The writ will issue only if the trial court fails to comply.

CASES CITED

- Yates Energy Corp. v. Broadway Nat'l Bank, Tr. of Mary Frances Evers Tr., 609 S.W.3d 140 (Tex. App.—San Antonio 2018), rev'd and remanded, 631 S.W.3d 16 (Tex. 2021)
- Yates Energy Corp. v. Broadway Nat'l Bank, Tr. of Mary Frances Evers Tr., No. 04-17-00310-CV, 2022 WL 3047107, at *12 (Tex. App.—San Antonio Aug. 3, 2022, pet. denied) (mem. op.)
- In re Prudential Ins. Co. of Am., 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding)
- Walker v. Packer, 827 S.W.2d 833, 840, 843 (Tex. 1992) (orig. proceeding)
- In re Texas Dep't of Transp., 639 S.W.3d 289, 293 (Tex. App.—San Antonio 2021, orig. proceeding)
- In re XL Specialty Ins. Co., 373 S.W.3d 46, 49–50 (Tex. 2012) (orig. proceeding)
- In re Christus Santa Rosa Health Sys., 492 S.W.3d 276, 279 (Tex. 2016) (orig. proceeding)
- Jordan v. Court of Appeals, 701 S.W.2d 644, 648–49 (Tex. 1985) (orig. proceeding)
- In re Richardson Motorsports, Ltd., 690 S.W.3d 42, 58 (Tex. 2024) (orig. proceeding)
- Univ. of Tex. Sys. v. Franklin Ctr. for Gov't & Pub. Integrity, 675 S.W.3d 273, 288 (Tex. 2023)
- In re Patricia A. Mansell, No. 04-99-00556-CV, 1999 WL 792690, at *3 (Tex. App.—San Antonio Oct. 6, 1999, orig. proceeding) (not designated for publication)
- Republic Ins. Co. v. Davis, 856 S.W.2d 158, 163 (Tex. 1993) (orig. proceeding)
- General Land Office v. Oxy U.S.A., Inc., 789 S.W.2d 569, 570 (Tex. 1990)
- Toyo Seat Co., Ltd. v. Garcia, No. 04-07-00427-CV, 2008 WL 182505, at *2 (Tex. App.—San Antonio Jan. 23, 2008, no pet.)
- BHP Petroleum Co. Inc. v. Millard, 800 S.W.2d 838, 841 (Tex. 1990) (orig. proceeding)

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