COURT OF APPEALS FOR THE SEVENTH DISTRICT OF TEXAS AT AMARILLO

Property Casualty Insurers Association of America, American Insurance Association, and National Association of Mutual Insurance Companies v. Texas Department of Insurance and Greg Abbott, Attorney General of Texas

No. 07-07-0057-CV (Tex. App.—Amarillo Sept. 30, 2008) · No. No. 07-07-0057-CV · Decided September 30, 2008

SUMMARY

The Texas Court of Appeals for the Seventh District affirmed a trial court judgment concerning whether correspondence and attachments held by the Texas Department of Insurance were confidential under former Insurance Code article 21.49-2U and therefore exempt from disclosure under the Public Information Act. The court held that the statutory identity-protection requirement applied only to information presented in the required credit-scoring report, not to information obtained by the Department in preparing that report. The court also upheld the denial of declaratory relief and attorney’s fees to the insurer associations.

CASE DETAILS

COURT	Court of Appeals for the Seventh District of Texas at Amarillo
WRITING FOR THE COURT	James T. Campbell; Campbell; Hancock; Pirtle
JURISDICTION	Texas
DECIDED	September 30, 2008
DOCKET	No. 07-07-0057-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	The insurer associations appealed from a Travis County district court judgment interpreting a former Insurance Code confidentiality provision and the Texas Public Information Act, and denying declaratory relief and attorney's fees.
STANDARD OF REVIEW	De novo review of statutory construction and the trial court's legal conclusions.

PRECEDENTIAL VALUE	Published memorandum opinion; precedential status is identified as published in the provided metadata.
PARTIES	Property Casualty Insurers Association of America, American Insurance Association, National Association of Mutual Insurance Companies v. Texas Department of Insurance, Greg Abbott, Attorney General of Texas

TOPICS

statutory interpretation · administrative law · appellate procedure · insurance · declaratory relief insurance

PRACTICE AREAS

insurance law · administrative law · public information law · statutory interpretation · appellate procedure

QUESTIONS PRESENTED

1. Whether former Insurance Code article 21.49-2U section 15(b) made the Department of Insurance's correspondence and attachments confidential and exempt from disclosure under Texas Government Code section 552.101.
2. Whether the Uniform Declaratory Judgments Act provided a proper basis for reviewing the Attorney General's open-records ruling and authorized an award of attorney's fees.

HOLDINGS

1. The identity protection required by former article 21.49-2U section 15(b) extends only to information presented in the required credit-scoring report, not to information obtained or held by the Department of Insurance in preparing that report. Accordingly, the correspondence and attachments, with names and addresses redacted, were not exempt from disclosure under Texas Government Code section 552.101.
2. The associations were not entitled to relief under the Uniform Declaratory Judgments Act or to attorney's fees because the dispute was an ordinary challenge concerning whether information was excepted from disclosure under the Public Information Act, and the Attorney General acted within his statutory role in interpreting the Insurance Code provision.

KEY QUOTATIONS

> *"The plain language of the statute refers only to the report itself, not information obtained by TDI for its use in preparation of the report."* (at 5)

> *"We presume that the legislature's words accurately reflect its intentions, and conclude the identity protection required by § 15 extends only to information presented in the report."* (at 6)

FACTUAL BACKGROUND

In 2003, the Texas Legislature enacted former Insurance Code article 21.49-2U, which required the Texas Department of Insurance to prepare a report concerning insurers' use of credit information in underwriting and rating personal insurance. The Department requested insurer data and correspondence from individual insurers, but resisted a Public Information Act request for the correspondence and attachments on the ground that disclosure would reveal insurer identities protected by article 21.49-2U section 15(b). The trial court ordered disclosure of the correspondence and attachments after redaction of names, addresses, and other identifying information.

PROCEDURAL HISTORY

The associations sued the Texas Department of Insurance and the Attorney General after the Attorney General ruled that correspondence and attachments concerning an insurer credit-scoring report were subject to disclosure under the Public Information Act. On cross-motions for summary judgment, the trial court held insurer names and identifying information confidential but held the remaining correspondence and attachments, with identifying information redacted, subject to disclosure. Only the associations appealed.

DISPOSITION

affirmed

CASES CITED

- Thomas v. Cornyn, 71 S.W.3d 473, 481 (Tex. App.—Austin 2002, no pet.)
- Arlington Indep. Sch. Dist. v. Texas Attorney Gen., 37 S.W.3d 152, 157 (Tex. App.—Austin 2001, no pet.)
- Johnson v. City of Fort Worth, 774 S.W.2d 653, 656 (Tex. 1989)
- Fitzgerald v. Advanced Spine Fixation Sys., Inc., 996 S.W.2d 864, 865 (Tex. 1999)
- Tex. Dep't of Transp. v. City of Sunset Valley, 146 S.W.3d 637, 642 (Tex. 2004)
- Cornyn v. Universe Life Ins. Co., 988 S.W.2d 376, 379 (Tex. App.—Austin 1999, pet. denied)
- Texas Education Agency v. Leeper, 893 S.W.2d 432 (Tex. 1994)