

SUPREME COURT OF TEXAS

In re XL Specialty Insurance Co.

373 S.W.3d 46 (Tex. 2012) · Decided June 29, 2012

SUMMARY

The Texas Supreme Court considered whether the attorney-client privilege protected communications between a workers’ compensation insurer’s attorney and the insured employer during underlying administrative proceedings. The Court held that the communications were not protected under Texas Rule of Evidence 503 because the insurer and employer were not joint clients, and the allied-litigant doctrine did not apply. The Court denied mandamus relief.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Chief Justice Jefferson; Justice Hecht; Justice Wainwright; Justice Medina; Justice Green; Justice Johnson; Justice Guzman; Justice Lehrmann; Justice Willett
JURISDICTION	Texas
DECIDED	June 29, 2012
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Petition for writ of mandamus arising from a discovery order requiring production of communications between the insurer's lawyer and the employer during workers' compensation administrative proceedings.
STANDARD OF REVIEW	Mandamus relief is appropriate only when the trial court clearly abused its discretion and the relator lacks an adequate remedy by appeal; the trial court's privilege determination was reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Texas Supreme Court opinion; binding precedent in Texas.
PARTIES	XL Specialty Insurance Company, Cambridge Integrated Services Group, Inc. v. Jerome Wagner

TOPICS

- attorney client privilege
- insurance bad faith
- discovery dispute
- insurance
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the attorney-client privilege protects communications between a workers' compensation insurer's lawyer and the employer-insured during underlying administrative proceedings.
2. Whether the communications were protected under Texas Rule of Evidence 503(b)(1)(C)'s allied litigant doctrine.
3. Whether the communications were protected under the joint-client doctrine or another provision of Texas Rule of Evidence 503.

HOLDINGS

1. The allied litigant privilege under Texas Rule of Evidence 503(b)(1)(C) applies only to communications made to a lawyer or a lawyer's representative representing another party in a pending action concerning a matter of common interest. It did not protect communications directly between XL's lawyer and Cintas because Cintas was not represented by XL's lawyer or another lawyer and was not a party to a pending action.
2. The joint-client doctrine did not protect the communications because XL alone was the lawyer's client, and XL neither argued nor proved that the lawyer also represented Cintas.
3. The communications were not shown to be privileged under Rule 503(b)(1)(A), (B), (D), or (E). Cintas was not shown to be XL's client or representative, and the remaining provisions did not apply to communications between XL's lawyer and Cintas.

KEY QUOTATIONS

"We must decide whether, in a bad faith action brought by an injured employee against a workers' compensation insurer, the attorney-client privilege protects communications between the insurer's lawyer and the employer during the underlying administrative proceedings. We hold that the privilege does not apply." (49)

"Rule 503(b)(1)(C)'s privilege is more appropriately termed an "allied litigant" privilege." (52)

"The allied litigant doctrine protects communications made between a client, or the client's lawyer, to another party's lawyer, not to the other party itself." (53)

"Because the documents are not protected from discovery under the allied litigant doctrine or any other part of Rule 503, we deny relief." (56)

FACTUAL BACKGROUND

XL Specialty Insurance Company insured Cintas Corporation under a workers' compensation policy that required Cintas to cooperate in claim investigation, settlement, and defense and imposed a substantial deductible. After Cintas employee Jerome Wagner's workers' compensation claim was denied initially but later found compensable, XL's outside counsel communicated with Cambridge and Cintas about the status and evaluation of the administrative proceedings. In Wagner's subsequent bad-faith and statutory action against XL

and others, XL sought to withhold communications between its lawyer and Cintas, but the trial court ordered production of those documents after an in-camera inspection.

PROCEDURAL HISTORY

Jerome Wagner sued XL, Cambridge, and claims adjuster Melissa Martinez for bad faith and statutory violations after a workers' compensation claim was found compensable. During discovery, Wagner sought communications between XL's outside counsel and Cintas Corporation, XL's insured and Wagner's employer. After an in-camera inspection, the trial court held that the attorney-client privilege did not apply to the communications and ordered production. The court of appeals denied mandamus relief, and XL and Cambridge petitioned the Texas Supreme Court.

DISPOSITION

writ_denied

CASES CITED

- Huie v. DeShazo, 922 S.W.2d 920, 922 (Tex. 1996)
- United States v. Zolin, 491 U.S. 554, 562 (1989)
- Republic Ins. Co. v. Davis, 856 S.W.2d 158, 160 (Tex. 1993)
- West v. Solito, 563 S.W.2d 240, 244 n. 2 (Tex. 1978)
- In re JDN Real Estate—McKinney L.P., 211 S.W.3d 907, 922-23 (Tex. App.—Dallas 2006, pet. denied)
- In re Teleglobe Communications Corp., 493 F.3d 345, 363 n. 18, 364-65 (3d Cir. 2007)
- In re Dalco, 186 S.W.3d 660, 666-67 (Tex. App.—Beaumont 2006, orig. proceeding [mand. denied])
- United States v. Duke Energy Corp., 214 F.R.D. 383, 388 (M.D.N.C. 2003)
- Robert Bosch, LLC v. Pylon Manufacturing Corp., 263 F.R.D. 142, 146 (D. Del. 2009)
- In re Ford Motor Co., 988 S.W.2d 714, 719 (Tex. 1998)
- Unauthorized Practice of Law Comm. v. Am. Home Assurance Co., 261 S.W.3d 24, 42-43 (Tex. 2008)
- Upjohn Co. v. United States, 449 U.S. 383, 389 (1981)
- Hyman v. Grant, 102 Tex. 50, 112 S.W. 1042, 1044 (1908)

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