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Texas Supreme Court case limits attorney-client privilege

A ruling by the Texas Supreme Court jeopardizes the attorney-client privilege regarding insured workers' compensation cases. In *re XL Specialty Ins. Co. and Cambridge Integrated Serv. Group, Inc., No. 10-0960*, the court held that XL, rather than the insured, was the party of interest; therefore communications from the defense attorney that are shared with the insured are not privileged. In the case, XL's counsel shared correspondence and communications regarding legal strategy and case status with the administrator and the insured. The employee filed a subsequent lawsuit requesting access to the entire claim file. The court found that the insured was not represented by XL's attorney and was not a party to the litigation. Ultimately, the Texas Supreme Court required that the entire contents of the claim be shared.

Note that self-insured client programs in Texas are not currently affected by this ruling.

What's at risk?

In light of this decision, sharing legal strategy and case status directly with the insured could result in a waiver of the attorney-client privilege, which would lead to file contents being shared directly with the plaintiff. This may negatively impact Sedgwick's ability to effectively defend claims.

At Sedgwick, we are committed to providing best-in-class litigation management. Compliance with this Supreme Court case is essential in ensuring preservation of legal strategy that will facilitate the best possible case outcomes.

To ensure our compliance with this ruling and the protection of attorney-client privilege in the administration of insured Texas claims, Sedgwick will be implementing the following measures:

- 1) Client access to the legal (LG) note type on insured Texas claims in our viaOne® system will be blocked in the very near future;
- 2) Defense counsel will be instructed to no longer share legal correspondence directly with any insured client in Texas;
- 3) Details regarding legal strategy and status will no longer be shared during reviews of insured Texas claims.

We will continue to work closely with our clients and carrier partners on possible solutions that may allow some legal information to be shared.

If you have any questions about these jurisdictional requirements, please contact your Sedgwick client services representative.

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