

Texas Supreme Court Ruling on Attorney-Client Privilege Can Benefit Insurers

The Supreme Court of Texas recently ruled in favor of the Texas Windstorm Insurance Association (TWIA) regarding attorney-client privilege in a decision that can benefit insurance companies involved in litigation, reports **Androvett Legal Media & Marketing**.

The justices determined that attorney-client privilege extended to communications between a TWIA employee and counsel when the employee was serving as an expert witness for the company. The case involved a dispute between the city of Dickinson and TWIA.

Dallas insurance litigator **Meloney Perry** of **Perry Law P.C.** says the ruling is significant to Texas because it aligns the state with the federal rules on expert disclosure and production. She notes it also may be of particular benefit to insurance companies.

“This ruling means that underwriters, auto damage personnel and claims handlers may serve as experts without exposing attorney-client communications, even though they are employed by an insurance company involved in litigation,” said Perry. “One side benefit is this could cut costs from having to hire an outside expert.”

Perry says an insurance carrier employee designated with expert knowledge or who signs an affidavit attesting to certain expertise will not have to produce communications with counsel when Texas law applies. However, certain work product documents may not be protected.

“Work product is still subject to being produced, so parties

will need to make the determination on a document-by-document basis. If the witness is provided an investigative report which is work product that may not be protected, but the email between the witness and counsel will be.”

Perry adds that if a federal question is being litigated in federal court, the attorney-client privilege is a question of federal common law. In state court and diversity cases filed in federal court, the attorney-client privilege is controlled by that forum’s state law.