

Eighth Circuit Rejects "Fiduciary Exception" to Privilege Arguments

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One recurring issue in Missouri litigation is whether Missouri recognizes a fiduciary exception to the attorney-client privilege, and if so how broad that exception is.

A common setting for analyzing such issues -- and one where federal courts have generally recognized an exception -- is ERISA plan administration. It is in this setting that the Eighth Circuit recently considered whether a trial court erred in refusing to require production of emails relating to a plan's denial of severance benefits.

In ***Carr v. Anheuser-Busch Companies, Inc.*** Case No. 12-1224, 2012 WL 6685323 (8th Cir. Dec. 21, 2012), Carr challenged A-B's denial of severance benefits under an ERISA plan. During the litigation, the U.S. District Court for the Eastern District of Missouri ordered A-B to produce an October 2009 email with counsel that related to "procedural duties" owed to a plan beneficiary, but refused to require production of three December 2009 emails on the grounds these emails "relate[d] to the substantive merits of plaintiff's individual claim and the content of the final decision letter denying his severance benefits."

Carr appealed, in part challenging the District Courts' refusal to mandate production of the December 2009 emails.

Unfortunately for Carr, the Eighth Circuit affirmed the District Court's rejection of Carr's claims. The Eighth Circuit also rejected arguments the trial court erred in refusing to order A-B to produce the emails because the Circuit Court found no abuse of discretion in concluding the December 2009 emails were privileged. Two bases supported this conclusion: (1) the District Court's conclusion that the emails did not relate to plan administration, and thus fell outside the exception; and (b) Carr's claim for benefits had been fully denied and Carr's interests had become sufficiently adverse to A-B by December 2009 that the trial court could properly conclude they should be privileged.

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