

## Insurer Claims Attorney-Client Privilege Of Third Parties Prohibits Disclosure To Its Own Attorneys

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At first, this case seems somewhat pedestrian – a lawyer sues her erstwhile law firm for employment discrimination. But then things get complicated. It turns out that the lawyer was employed by a law firm that was employed by an insurer to represent its insureds. When the lawyer served a request for production of documents the insurer objected on the basis of the attorney-client privilege. If you've been paying attention so far, you might have a few questions. For example, what basis does an insurance company have for invoking the attorney-client privilege? After all, the insurance company isn't a lawyer or even a client of the plaintiff (who is a lawyer)? You might be even more puzzled if I told you that the lawyer didn't challenge the insurer's right to claim the privilege. It seems that everyone assumed that the insurer had the right.

As a result, the Court of Appeal decided to tackle a different and arguably narrow question: whether allegedly privileged or confidential material may be disclosed by the parties to their respective attorneys. You might want to read that sentence again. The question is whether the privilege prevents parties from disclosing privileged information to *their own attorneys*. In *Chubb & Son v. Superior Court*, 2014 Cal. App. LEXIS 728 (Cal. Ct. App. 2014), the Fifth District Court of Appeal said no, stating:

The disclosure of the confidences to the parties' attorneys equips them to protect those confidences and to present any dispute to the court. And indeed, it can fairly be said that nonparty clients have less to worry about than clients who are actually parties to the litigation, since there is no apparent likelihood that the confidences will be used against them in the litigation. Based on the record before us, there is no reason to preclude disclosure to the parties' attorneys merely because the confidences belong to nonparties.

Footnote omitted.

Overlooking the fact that the insurer is not a lawyer, I'm troubled by the result. I'm sure that these clients would be troubled and surprised to learn that confidential communications with their legal counsel is being disclosed to other lawyers who do not represent them and have no direct ethical or

statutory obligations to them.

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