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Commentary

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One of the most rapidly developing issues in Florida and in courts around the country is whether the attorney-client privilege can be relied on by an insurer in a third-party bad faith action. The attorney-client privilege is one of the oldest confidential communication privileges in Florida. In common law, it is known as, "the most sacred of all legally recognized privileges, and its preservation is essential to the just and orderly operation of our system."[1] The purpose of the attorney-client privilege is "to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and the administration of justice."[2] Despite the sacredness of this privilege, there is an emerging line of cases holding that the attorney-client privilege should not apply to third-party bad faith claims. This article will analyze some of the leading cases in this area of the law and discuss why the principle behind the attorney-client privilege outweighs the arguments in favor of waiving the privilege in third-party bad faith cases.

The Fifth District Court of Appeal in Florida recently analyzed this issue in the context of a petition for writ of certiorari in *Boozer v. Stalley*.[3] In an en banc opinion that receded from its previous holding in *Dunn v. National Security Fire & Casualty Company*,[4] the Fifth District held that, in third-party bad faith actions, the attorney-client privilege prevented the discovery of confidential communications between the insured and counsel retained by the insurer to represent the insured.[5] To understand the court's decision, it is important to examine the facts underlying the decision.

This case originated when Benjamin Hintz was injured in a motor vehicle accident involving Emily Lynn Boozer.[6] Ms. Boozer had two insurance policies which provided her a total of $1.1 million in coverage for the accident.[7] The guardian of the property for Mr. Hintz, Douglas Stalley, filed a suit against Ms. Boozer, and her insurance companies retained Virgil Wright, III to defend her in the lawsuit.[8] After failing to reach a settlement, the case went to trial and a jury awarded Mr. Stalley in excess of $11 million in damages for the accident; Ms. Boozer chose not to appeal.[9] The insurance entities paid their policy limits of $1.1 million, which left Mr. Stalley to attempt to collect the remainder of the judgment from Ms. Boozer.[10] Unsurprisingly, Mr. Stalley filed a third-party bad faith action against the insurance entities and Mr. Wright, who continued to represent Ms. Boozer in the bad faith action.[11]

During the third-party bad faith action, Mr. Stalley sought to depose Mr. Wright and subpoenaed Mr. Wright's files from the underlying automobile accident lawsuit.[12] Mr. Wright and Ms. Boozer filed a motion for a protective order, arguing that that trial court should limit the scope of the deposition and the

production of documents pursuant to the attorney-client privilege.[13] Mr. Wright argued that Ms. Boozer did not assign her rights to Mr. Stalley; thus, Ms. Boozer's interests and Mr. Stalley's interests were not the same in the bad faith litigation.[14] The trial court disagreed with Mr. Wright's and Ms. Boozer's position and ordered Mr. Wright to appear at a deposition.[15] At the deposition, Mr. Wright refused to answer any questions or produce any documents related to his representation of Ms. Boozer in the automobile accident case and the deposition was stopped.[16] Ms. Boozer and Mr. Wright filed a petition for writ of certiorari regarding the trial court's denial of their motions for a protective order.[17] Mr. Stalley argued that Florida case law held that, in third-party bad faith actions, he stood in the shoes of Ms. Boozer and he was entitled to any materials available to her, including materials which would normally be protected by attorney-client privilege.[18]

In reaching its conclusion that the attorney-client privilege was applicable to third-party bad faith claims, the Fifth District Court of Appeal acknowledged that its own prior precedent held that a defense attorney who was retained to represent an insured may be deposed and must turn over his or her litigation files in a third-party bad faith action even if the insured did not assign his or her rights to the party bringing the action.[19] However, several recent decisions by the Florida Supreme Court caused the Fifth District to question the validity of its precedent. The Fifth District examined the Supreme Court's holdings in *Allstate Indemnity Company v. Ruiz* and *Genovese v. Provident Life & Accident Insurance Company*.

In *Ruiz*, the Florida Supreme Court held that work product materials were discoverable by an insured in a first-party bad faith action.[20] The court further explained that there was no distinction between first-party and third-party bad faith claims and claims file material was discoverable in both types of action.[21] Recently, in *Genovese*, the Florida Supreme Court analyzed whether its holding in *Ruiz* allowed an insured to obtain attorney-client communications in a first-party bad faith case.[22] The court reasoned that there were differences between the work product doctrine and the attorney-client privilege and attorney-client communications were not discoverable in a first-party bad faith case.[23] The court explained that the holding in *Ruiz* did not extend to attorney-client privileged communications:

> This significant goal of the privilege would be severely hampered if an insurer were aware that its communications with its attorney, which were not intended to be disclosed, could be revealed upon request by the insured. Moreover, we note that there is no exception provided under section 90.502 that allows the discovery of attorney-client privileged communication where the requesting party has demonstrated need and undue hardship.
>
> Therefore, although we held in *Ruiz* that attorney work product in first-party bad faith actions was discoverable, this holding does not extend to attorney-client privilege communications. Consequently, when an insured party brings a bad faith claim against its insurer, the insured may not discover those privileged communications that occurred between the insurer and its counsel in the underlying action.[24]

The court further explained that there were unique considerations that arose when an insurer hired an attorney to both investigate a claim and provide legal advice to the insurer.[25] In such a case, the supreme court instructed trial courts to perform in-camera reviews of the material. If the material was prepared by the attorney during the investigation of the claim and did not involve legal advice, the material would be discoverable.[26] However, the supreme court qualified its opinion by stating that if the insurer raised the advice of counsel as a defense to the bad faith action, discovery of the communications between the insurer and its counsel would be permitted.[27]

The *Boozer* court further analyzed the Second District Court of Appeal's decision in *Progressive Express Insurance Company v. Scoma*. Laraine Scoma, the personal representative of the estate Jessica Barnett, a person killed in a car accident involving Shannon Courtney, filed a third-party bad faith action against Progressive for failing to settle the estate's claim.[28] Ms. Scoma sought discovery of all documents in Progressive's possession related to the claim and argued the attorney-client privilege did not apply to protect the

communications between Mr. Courtney, Progressive, and their counsel.[29] The trial court found the parties could not rely on the attorney-client privilege to bar discovery of communications made by Progressive and Mr. Courtney during the underlying tort suit.[30] The Second District Court of Appeal disagreed, explaining:

> We conclude that any communications between Progressive and its personal counsel are clearly protected by the attorney-client privilege. Moreover, we conclude that although Ms. Scoma may 'stand in the shoes' of Mr. Courtney for the purposes of standing to bring a bad faith action, that position does not permit her access to otherwise privileged communications between Mr. Courtney and his counsel in the wrongful death action, at least in the absence of a waiver of the privilege by Mr. Courtney or his written assignment of the bad faith claim.[31]

The *Boozer* court adopted the reasoning in *Scoma* and held that even though Mr. Stalley may stand in the shoes of Ms. Boozer in this bad faith action, Ms. Boozer did not forfeit her statutory right to the attorney-client privilege.[32] However, the *Boozer* court recognized that a question remained regarding whether discovery requests in third-party bad faith actions for materials which were potentially protected by the attorney-client privilege were discoverable and certified the question to the Florida Supreme Court.[33] In an attempt to answer the certified question posed by the Fifth District Court of Appeal in *Boozer*, this article analyzes how other states have addressed this issue.

Washington

The seminal case in Washington addressing the application of the attorney-client privilege to bad faith actions is *Cedell v. Farmers Insurance Company of Washington*.[34] Mr. Cedell's home was destroyed by a fire and he submitted a claim to his insurance company, Farmers.[35] Due to inconsistent statements regarding the cause of the fire, Farmers delayed its determination of whether Mr. Cedell had coverage for the fire.[36] Mr. Cedell stated that Farmers ignored his repeated telephone calls, he was forced to file a claim with the insurance commissioner, and he was compelled to hire an attorney to force action by Farmers.[37] Farmers hired an attorney, Ryan Hall, to help determine if Mr. Cedell had coverage for the fire.[38] Following taking Mr. Cedell's examination under oath and sending him a reservation of rights letter, Mr. Hall extended a one-time offer which was only open for a limited time to settle Mr. Cedell's claim.[39] Mr. Cedell attempted to contact Farmers regarding the settlement offer, but no one returned his call; ultimately, he sued Farmers for bad faith in handling his claim.[40]

In response to Mr. Cedell's discovery requests, Farmers produced a redacted claims file citing privilege and relevancy.[41] Farmers also refused to answer Mr. Cedell's interrogatories due to attorney-client privilege which prompted Mr. Cedell to file a motion to compel.[42] The trial court found that Mr. Cedell was not required to show civil fraud prior to obtaining the claims file; he only had to show that there was some foundation in fact to support his good faith belief that there was wrongful conduct by the insurer which could invoke the fraud exception.[43] The trial court found that there were adequate facts to support a good faith belief by a reasonable person that the insurer acted with wrongful conduct which triggered the fraud exception. After the court performed an in-camera review of the material, it ordered Farmers to provide Mr. Cedell with all of the documents it withheld due to attorney-client privilege.[44] The appellate court reversed, holding that a factual showing of bad faith was not enough to trigger an in-camera review of the claims file and a showing that the insurer used its attorney to further a bad faith denial was insufficient to destroy the attorney-client privilege.[45]

The decision was appealed to the Supreme Court of Washington. The supreme court explained, "To permit a blanket privilege in insurance bad faith claims because of the participation of lawyers hired or employed by insurers would unreasonably obstruct discovery of meritorious claims and conceal unwarranted practices."[46] However, the court recognized that the attorney-client privilege promoted open communications between the client and his or her attorney regarding all facts without fear that the communications would be disclosed.[47] In an attempt to balance these competing interests, the supreme court split the baby in first-party bad faith cases, other than uninsured/underinsured motorist claims. The court created a presumption that there was no attorney-client privilege between the insured

and insurer regarding the claims adjusting process.[48] However, the insurer may overcome this presumption by demonstrating that its attorney was not engaged in the quasi-fiduciary tasks of investigating and processing a claim and the attorney was providing only legal advice to the insurer regarding the insurer's liability and coverage.[49] On rebuttal of the presumption, the insurance company was entitled to an in-camera review of the claims file by the court after the file was redacted to remove any mental impressions of the attorney to the insurer that were not directly at issue or constituted quasi-fiduciary duties of the insurer.[50]

In addition, when the civil fraud exception was claimed, the trial court would be required to perform an in-camera review of the potentially privileged material and the attorney-client privilege would be waived when there were facts to permit a claim for bad faith.[51] In *Cedell*, the supreme court found that Farmers hired Mr. Hall to provide legal opinions regarding coverage, but it also hired him to perform an investigation of the claim.[52] Based on the court's holdings, Mr. Hall's legal opinions and conclusions would be protected under the attorney-client privilege, but his conclusions and the documents surrounding his investigation of the claim would likely not be protected under the privilege. The court remanded the case back to the trial court for further proceedings consistent with its opinion.[53]

Even though *Cedell* addressed a first-party bad faith claim, a federal court in Washington extended the holding in *Cedell* to attorney-client privilege claims in third-party bad faith cases.[54] As of yet, the Supreme Court of Washington has not analyzed whether *Cedell* applies to third-party bad faith cases as found by the federal court, and it will be interesting to observe how the supreme court will rule if and when this issue comes before it.

Montana

The seminal case in Montana analyzing the issue of whether the attorney-client privilege applies in a third-party bad faith actions is *State ex rel. United States Fidelity and Guaranty Company v. Montana Second Judicial Court*. In *Fidelity*, a truck owned by Gray Rock Trucking ran off of the road, drove down an embankment, and struck a home owned by John and Sharlene Montoya.[55] The insurance company retained a law firm to represent its insured, Gray Rock Trucking.[56] During the claims process, there were disputes between the homeowners and the insurer over the inspection and appraisal of the home; the homeowners' lawsuit against the trucking company settled.[57] Subsequently, the homeowners filed an action under the Unfair Trade Practices Act against the insurer for failing to act reasonably and promptly with regard to their claim and failing to adopt reasonable standards for the prompt investigation of their claim.[58] The homeowners requested the insurer to produce its entire claims file, including communications with the trucking company and its attorney. The insurer filed a motion for a protective order, offering to produce the disputed communications for an in-camera review by the court.[59] After the trial court denied the insurer's motion, the insurer petitioned the Supreme Court of Montana for a writ of supervisory control arguing that some of the communications were protected.[60]

The supreme court observed that the disputed communications clearly implicated the attorney-client privilege and noted that whether they were discoverable was an issue of first impression in Montana.[61] The homeowners argued that privilege should not apply in a bad faith case because the requested letters were necessary to prove their claim; if the attorney-client privilege was allowed to shield the production of documents, it would render the Unfair Trade Practices Act illusory.[62] The court disagreed and explained that the importance of the privilege outweighed the homeowner's argument:

> The attorney-client privilege, like all other evidentiary privileges, may obstruct a party's access to the truth. Although it may be inequitable that information contained in privileged materials is available to only one side in a dispute, a determination that communications or materials are privileged is simply a choice to protect the communication and relationship against claims of competing interests. Any inequity in terms of access to information is the price the system pays to maintain the integrity of the privilege.[63]

The court explained that upholding the attorney-client privilege between the insured, the insurer, and their attorney in a third party bad-faith action helped a claimant because it allowed for the free flow of information which normally resulted in the settlement of most

insurance claims.[64] The supreme court vacated the trial court's denial of the insurer's motion for a protective order and remanded for further proceedings.[65]

West Virginia

Several courts in West Virginia analyzed whether the attorney-client privilege survives in a third-party bad faith action. In *Allstate Insurance Company v. Gaughan*, Carol Thoburn was a passenger in a car which was struck by a vehicle driven by Timothy Mirandy, an insured of Allstate.[66] Ms. Thoburn filed a personal injury lawsuit against Mr. Mirandy, and Allstate offered to settle the case against its insured. [67] Ms. Thoburn rejected the offer and made a counter-demand, which was rejected by Allstate.[68] Subsequently, a jury awarded a verdict in favor of Ms. Thoburn for well over Mr. Mirandy's policy limits. [69] This verdict prompted Ms. Thoburn to bring a bad faith action against Allstate for refusing to settle the personal injury case within Mr. Mirandy's policy limits.[70] During discovery in the bad faith action, Ms. Thoburn served a request to produce on Allstate which sought the complete investigative claims file regarding the underlying personal injury action.[71] When Allstate failed to produce all of the documents, Ms. Thoburn filed a motion to compel.[72] The trial court entered an order granting Ms. Thoburn's motion to compel, and Allstate filed a petition for writ of prohibition.[73]

The supreme court stated that whether an insurer could assert the attorney-client privilege and the work product doctrine in a third-party bad faith case to prevent a plaintiff from obtaining the claims file was an issue of first impression.[74] Unlike most bad faith actions, Ms. Thoburn obtained a release from Mr. Mirandy which allowed her access to his claims file.[75] The court found that an insurer should not have all of the protections of the attorney-client privilege in a third-party bad faith case because it "seriously impedes a third-party's ability to prove a bad faith claim . . . [and] does not strike the necessary balance between a client's need to speak freely with his or her attorney and the importance of obtaining full disclosure of the facts in a third-party bad faith action."[76] However, the court recognized the importance of the attorney-client privilege and found that an insurer may raise a quasi attorney-client privilege, which belonged to the insurer and not the insured, when the insured signed a release of his or her claims file to a third-party litigant.[77] Pursuant to this quasi attorney-client privilege, all communications in an insured's claims file generated prior to the filing date of the underlying complaint against the insured were not protected by this quasi privilege, but those communications produced after the third-party litigant filed the lawsuit against the insured were protected.[78]

Taking it a step further, the *Gaughan* court explained that a third-party may obtain discovery of documents found to be protected by the quasi attorney-client privilege if the third-party demonstrated a compelling need for the document.[79] A third-party litigant could show this compelling need by demonstrating the document could not be obtained elsewhere and the document could reasonably prove an element of bad faith or the document could reasonably be used to lead to the discovery of another document which could prove an element of bad faith.[80] But again, the court limited its holding to situations where an insured signed a release giving access to his or her claim file to a third-party litigant.

The West Virginia Supreme Court of Appeals revisited this issue in *State ex rel. Medical Assurance of West Virginia, Inc. v. Recht*, which involved a claim of medical malpractice.[81] Following a positive jury verdict, the injured party brought an action under the unfair claims settlement practices act against the physician's malpractice carrier, alleging a failure to perform an adequate investigation and a failure to settle when liability was clear.[82] The injured party sought a complete copy of the claims file as well as other communications between the carrier and any other individuals regarding the underlying medical malpractice claim, and the carrier sought protection under the attorney-client privilege, work product doctrine, and quasi attorney-client privilege.[83] After the trial court ordered the carrier to produce the documents, the carrier sought a writ of prohibition.[84] The supreme court reiterated that the holding in *Gaughan* regarding the quasi attorney-client privilege only applied to instances where the insured waived his or her attorney-client privilege.[85] Further, the court explained that the quasi attorney-client privilege was not necessary or applicable in all cases:

> Under the unique set of facts [in *Gaughan*], it became necessary to provide the insurer with some protection against disclosure of privileged information in the claim file, because the insured had waived the attorney-client

> privilege by authorizing a third party to have access to the claim file. In providing the insurer some protection, we created a quasi privilege which could be penetrated upon a showing of compelling need. In the instant case, the insured has not authorized release of his claim file to Respondent. Consequently, there has been no waiver of the attorney-client privilege by the insured. Since there has been no waiver in the case, the attorney-client privilege is fully in effect. As we indicate in the body of this opinion, this Court will not break with centuries of precedent, to create an exception to the common-law attorney-client privilege, by applying *Gaughan's* fact specific balancing test.[86]

Thus, the court applied this test and principles set forth in prior case law and the rules of civil procedure to determine whether the communication was protected by attorney-client privilege and granted the writ of prohibition.[87]

Should Attorney-Client Privilege Shield Privileged Communications From Discovery in Third-Party Bad Faith Cases?

As discussed earlier, the Fifth District Court of Appeal in *Boozer* certified a question of whether the attorney-client privilege should shield privileged communications from discovery in third-party bad faith litigation. On December 15, 2014, the Supreme Court of Florida accepted jurisdiction of this case. However, counsel for Ms. Stalley and Mr. Boozer filed notices of voluntary dismissal with the court because the underlying bad faith claim was removed to a federal court. In a slip opinion published April 17, 2015, the Florida Supreme Court granted the motions to dismiss and discharged review.[88] Justice Pariente dissented from the dismissal explaining that by a vote of five to two, the Florida Supreme Court accepted jurisdiction of the case on the basis that the certified question was one of great public importance.[89] Justice Pariente argued that the court should retain jurisdiction to decide the issue to provide guidance to the federal courts regarding whether attorney-client privilege applies in a bad faith action under Florida law.[90]

Justice Lewis also dissented and echoed Justice Pariente's opinion that the certified question posed by the Fifth District was one of great public importance.[91] However, Justice Lewis specifically commented that there was a long line of precedent that held that in third-party bad faith actions, insurance companies, and their attorneys should not be able to use attorney-client privilege to conceal their actions.[92] Justice Lewis further stated:

> In overruling *Dunn*, the Fifth District relied upon and misapplied decisions of this Court, *Ruiz* and *Genovese*, which addressed only *first-party* bad faith claims, and did not in any way approve or sanction the issue involved in the third party claim context that is at issue here.[93]

It is clear from Justice Lewis's opinion that he does not agree with the Fifth District's decision in *Boozer* and that he thought that the Fifth District's holding in *Dunn* should apply in a third-party bad faith context. Even though the court passed up this opportunity to clarify the issue, it is clear that this issue will likely reappear before the court. At that time, the supreme court should uphold the application of the attorney-client privilege to shield all privileged communications in a third-party bad faith case.

It is true that the attorney-client privilege, like other evidentiary privileges, may be used to obstruct a party's ability to access the truth. Moreover, there is a valid argument that the attorney-client privilege should not apply in the context of third-party bad faith actions because it may prevent the injured third-party from determining whether the insurance company operated in good faith its handling of the underlying case or claim. If, as described in *Boozer*, the injured third-party is unable to depose the insured's attorney regarding why certain decisions were made by the insurer and the insured's attorney, this impediment may thwart the public policy behind bad faith actions. How can an injured third-party show bad faith if the party cannot depose an attorney who provided legal advice in the underlying litigation? Even though it may limit a party's ability to bring a third-party bad faith action, the attorney-client privilege should still be binding in these situations.

The courts in Washington, West Virginia, and Montana analyzed whether the attorney-client privilege applies to shield access to an insurer's claims file in a

third-party bad faith context. In contrast, the Fifth District Court in *Boozer* analyzed whether the injured third-party can depose the attorney for the insured who handled the underlying action as well as the bad faith action regarding the attorney's discussions with the insured and the insurer. These issues are slightly different but the reasoning found by the courts in Montana and West Virginia can be applied to *Boozer*. As stated by the Supreme Court of Montana in *U.S. Fidelity*, even though it may be inequitable that information may only be available to one side of a case in litigation, a determination that a communication between an insurer and its attorney or between an insured and his or her attorney are privileged is a choice made against claims of competing interests. Any inequity found is the price the judicial system pays in order to uphold the integrity of the attorney-client privilege. Further, "the attorney-client privilege allows for an honest, careful prompt analysis by qualified persons," which allows an insurer to evaluate and potentially settle a claim quickly.[94] If the Supreme Court of Florida ultimately holds that the attorney-client privilege does not apply in the context of a third-party bad faith action and overturns *Boozer*, the Supreme Court would be destroying the principles on which the attorney-client privilege was founded.

In cases where the insured assigned his or her rights to a third-party, it would be difficult for Florida to follow the path of West Virginia and Washington by creating a quasi attorney-client privilege. First, section 90.502, Florida Statutes does not recognize a quasi attorney-client privilege, but only recognizes an absolute privilege. Second, the attorney-client privilege in Florida does not have an exception allowing the party to defeat the privilege on a showing of need or undue hardship. Moreover, the insurer or attorney hired by the insurer should still be allowed to invoke the privilege when the insured assigns his or her rights to a third-party or when the insured waives the attorney-client privilege. If the attorney-client privilege was abrogated in such situations, it would have a chilling effect regarding the information communicated between the attorney retained by the insurer and the insured regarding why certain actions were taken in the underlying lawsuit. Further, if an insurer was aware that its communications with its attorney or the attorney retained to represent the insured may be later disclosed in a third-party bad faith action, this would obstruct subsequent communications.

Florida law recognizes the triumvirate relationship between an insured, the insurer, and the attorney retained by the insurer to represent the insured in the underlying litigation. The Second District Court of Appeal in *Scoma* recognized that confidential communications between the insured, the insurer, and any counsel representing them on a matter of common interest should be protected by attorney-client privilege to third parties. To put it another way, an attorney hired by the insurer to represent the insured in underlying litigation is not only representing the insured, he or she is also representing the insurer. Accordingly, the insurer and the attorney retained by the insured should be able to invoke attorney-client privilege even if the insured assigns his or her right to the third-party or otherwise waives the privilege in a bad faith case.

Even though an injured party in a third-party bad faith case may not be allowed to depose the insured's attorney regarding confidential communications or obtain a copy of the attorney's litigation file, the third-party has other avenues to obtain the information needed to show bad faith. The third-party may interview and depose non-party witnesses or the insured (as long as the party does not ask about confidential communications) in the evidence-gathering process. The attorney-client privilege only protects disclosure of communications; it does not protect the disclosure of underlying facts communicated to the attorney. Moreover, the third-party may be entitled to obtain a copy of the claims file, which may show bad faith. Thus, there are other avenues of discovery an injured party may pursue in a third-party bad faith case other than deposing an attorney who represented an insured in the underlying action to prove his or her claim.

Conclusion

Even though the Supreme Court of Florida declined to address the issue of the attorney-client privilege in a third-party bad faith action as set forth by the certified question in *Boozer*, this issue will likely come before the court again. When this issue comes before the court, the court should find that an absolute attorney-client privilege exists in a third-party bad faith action for an insured, the insurer, and the attorney retained by the insurer to represent the insured. Even if the insured assigns his or her right to a third-party or otherwise waives the privilege, the court should find the privilege continues to exist. Not to do so would bring about a

chilling effect regarding communications between an insured, the attorney retained by the insured, and the insurer regarding why certain actions are taken in the underlying litigation. This would defy the spirit of the attorney-client privilege, the triumvirate relationship between the insured, attorney, and insurer, and the policy of open communication between a client and his or her counsel.

Endnotes

1. *U.S. v. Bauer*, 132 F.3d 504, 510 (9th Cir. 1997).
2. *Upjohn Co. v. U.S.*, 449 U.S. 383, 389 (1981).
3. 146 So. 3d 139 (Fla. 5th DCA 2014).
4. 631 So. 2d 1103 (Fla. 5th DCA 1993).
5. 146 So. 3d at 145.
6. *Id.* at 141.
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.; Cont'l Cas. Co. v. Aqua Jet Filter Sys., Inc.*, 620 So. 2d 1141 (Fla. 3d DCA 1993); *Stone v. Travelers Ins. Co.*, 326 So. 2d 241, 243 (Fla. 3d DCA 1976)(finding that a plaintiff in a third-party bad faith action against an insurer is entitled to discover the insured's counsel's entire litigation file from the beginning of the underlying lawsuit until the date when the judgment was entered in the underlying action); *Boston Old Colony Insurance Co. v. Gutierrez*, 325 So. 2d 416 (Fla. 3d DCA 1976).
20. 899 So. 2d 1121, 1122 (Fla. 2005).
21. *Id.* at 1128.
22. *Genovese v. Provident Life & Accident Ins. Co.*, 74 So. 3d 1064 (Fla. 2011).
23. *Id.* at 1068.
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. 975 So. 2d 461, 463 (Fla. 2d DCA 2007).
29. *Id.*
30. *Id.*
31. *Id.* at 465; *Maharaj v. Geico Cas. Co.*, 289 F.R.D. 666 (S.D. Fla. 2013).
32. *Boozer*, 146 So. 3d at 148.
33. *Id.*
34. 295 P.3d 239 (Wash. 2013).
35. *Id.* at 242.
36. *Id.*
37. *Id.*
38. *Id.*
39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.* at 243.

44. *Id.*

45. *Id.*

46. *Id.* at 245.

47. *Id.*

48. *Id.* at 246.

49. *Id.*

50. *Id.* at 246-47.

51. *Id.* at 247.

52. *Id.*

53. *Id.*

54. *Carolina Cas. Ins. Co. v. Omeros Corp.*, 2013 WL 1561963, *3 (W.D. Wash. 2013) (not reported); *Everest Indem. Ins. Co. v. QBE Ins. Corp.*, 980 F. Supp. 2d 1273, 1280 (W.D. Wash. 2013)(holding that Everest may take the deposition of QBE's coverage attorney in a bad faith action to determine if QBE acted correctly in denying tender, but QBE may object if it believes Everest is seeking privileged information and the parties can bring the objection before the court).

55. 783 P.2d 911, 912 (Mont. 1989).

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* at 912-913.

61. *Id.* at 913.

62. *Id.* at 915.

63. *Id.*

64. *Id.* at 916.

65. *Id.* at 917; *Dion v. Nationwide Mut. Ins. Co.*, 185 F.R.D. 288, 294 (D. Mont. 1998)(reiterating that the Montana Supreme Court found that the attorney-client privilege applies in third-party bad faith cases).

66. 508 S.E.2d 75, 80 (W.Va. 1998).

67. *Id.*

68. *Id.*

69. *Id.* at 80-81.

70. *Id.* at 81.

71. *Id.*

72. *Id.*

73. *Id.* at 81-82.

74. *Id.* at 85.

75. *Id.* at 85-86.

76. *Id.* at 89.

77. *Id.*

78. *Id.*

79. *Id.* at 91.

80. *Id.*; *Kidwiler v. Progressive Paloverde Ins. Co.*, 192 F.R.D. 536, 540 (N.D. W. Va. 2000)(finding that even though the insured did not sign a release to a third party litigant regarding her claim file in a bad faith action, the framework of the quasi attorney-client privilege still applies from *Gaughan* because the transcript seeking to be protected was produced prior to the filing of the underlying complaint, and thus, not protected under the quasi attorney-client privilege).

81. 583 S.E.2d 80 (W. Va. 2003).

82. *Id.* at 85-86.

83. *Id. at 86.*

84. *Id.* at 86-87.

85. *Id.* at 91, fn. 8.

86. *Id.*, fn. 9.

87. *Id.* at 95; *Smith v. Scottsdale Ins. Co.*, 40 F. Supp. 3d 704, 719 (N.D. W. Va. 2014)(reiterating that the underlying defendants did not release their claim file to the plaintiffs, and therefore, the attorney-client privilege was in effect).

88. *Stalley v. Boozer*, 2015 WL 1799917, *1 (Fla. April 17, 2015).

89. *Id.*

90. *Id.* at *2.

91. *Id.* at *3.

92. *Id.*

93. *Id.*

94. *U.S. Fidelity*, 783 P.2d at 915-16. ■

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