Guest Blog: United Policyholders Amicus Project Scores Victory For Texas Homeowners and Businesses

The availability of insurance coverage for loss or damage can hinge on the smallest details. Did your insurer record that it received your notice letter? Did your insurer's investigator take note of those small but critical facts you pointed out during the investigation? Did you meet that obscure condition of coverage buried in the fine print of your policy?

For policyholders seeking coverage for weather-related damage to their home or business, this information can make the difference between survival and financial ruin. For this reason, insurance claims and coverage disputes may turn on information that is not always apparent from the face of a printed document or PDF file. The data that completes your claim may be hidden in the metadata of an electronically-stored document or may be visible only when a document is viewed electronically in its "native" or near-native form, that is the form that would include, for example, hand-written notes and other commentaries.

In a recent case before the Supreme Court of Texas, property insurer State Farm Lloyds asked a Texas trial judge to categorically deny policyholders' requests for this type of electronically-stored information ("ESI"). The United Policyholders Amicus Project submitted a brief in support of the policyholders in this case – a group of homeowners who sustained hail damage and alleged that State Farm Lloyds failed to properly investigate their claims for coverage and hid evidence of its bad faith in their ESI. The Court denied the insurer's request and established a multi-factor balancing test for the production of ESI in Texas that provides policyholders with a clear roadmap for obtaining native and near-native form ESI in the future.

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https://uphelp.org/guest-blog-united-policyholders-amicus-project-scores-victory-for-texas-homeowners-and-businesses/ Date: August 7, 2022

In re State Farm Lloyds

These cases arose out of property insurance claims submitted to State Farm Lloyds by individuals whose homes were damaged by severe hailstorms in Hidalgo County, Texas in 2012. The policyholders' core allegations were that State Farm Lloyds improperly investigated their claims and built an internal claims process designed to unfairly deny the claims. Pursuant to Texas Rule of Civil Procedure 196.4, the policyholders sought production of ESI in its "native" or near-native form. State Farm Lloyds proposed instead that it would produce information in a "reasonably usable form," consisting primarily of PDF files from its Enterprise Claim System ("ECS") database.

In response, the homeowners sought to compel the production of the insurer's ESI in its native or near-native form, justified in part on evidence that the native and near-native documents would provide evidence of the State Farm Lloyd's improper conduct such as handwritten notes or other commentaries not visible in the static images or PDF documents. After the trial court ordered State Farm Lloyds to make native or near-native productions, State Farm Lloyds filed a petition with the Supreme Court seeking to overturn the trial court's orders.

The Supreme Court of Texas refused State Farm Lloyds' request. It instead ordered that the trial court must reconsider whether to order the production of ESI in a native or near-native format in light of new guidance provided by the Court. The Court's analysis emphasizes reasonableness and proportionality as overarching principles that the trial court must consider in evaluating whether to order the production of ESI in the native or near-native form, particularly where a "reasonably usable" alternative to the requested form of ESI is available.

Under this framework, if a party in a lawsuit contends that the requested data format "cannot be retrieved in the form requested through 'reasonable efforts'" and that such data is "readily 'obtainable from some other source that is more convenient, less burdensome, or less expensive,'" the trial court must balance the requested form against a "reasonably usable alternative" form. If there is evidence that a "reasonably usable alternative" is available, the trial court must weigh whether the requested form creates an increased burden or expense on the party providing the data. This increased burden or expense must be "proportional" to the needs of the case to be allowable. Whether the increased burden or expense is "proportional" bears on:

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1. the likely benefit of the requested discovery;
2. the needs of the case;
3. the amount in controversy;
4. the parties' resources;
5. importance of the issues at stake in the litigation;
6. the importance of the proposed discovery in resolving the litigation; and
7. any other articulable factor bearing on proportionality.

Even if the burden or expense on the party responding to the data request is not proportional under these considerations, the trial court may still order the production of ESI in the requested form if the requesting party shows a "particularized need" for the data and pays "reasonable expenses" of "any extraordinary steps required to retrieve and produce the information."
The Supreme Court of Texas's detailed explanation of this framework and emphasis on balancing ensures that insurers cannot categorically refuse to produce native or near-native ESI without a thoughtful, quantifiable justification behind the refusal. While this decision could lead to increased litigation cost in the form of policyholders and insurers being forced to litigate the factors enunciated by the Court, it nonetheless provides policyholders with a roadmap to secure documents with the necessary level of specificity to properly pursue their coverage claims. Such documents, when viewed in native or near-native form, may provide the critical, minute details that make the difference between coverage and denial.

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