

Policyholder Playbook Episode 48: Consider Seeking in Discovery Internal Insurer Communications

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A recent decision out of the Southern District of New York underscores that policyholders should always consider seeking through discovery internal insurer communications regarding the interpretation of the insurance policy.

And think about it—how great would it be to have an internal insurer email that says, “well, I can see that provision being interpreted this way, or that way.” In that case, I’m arguing ambiguity.

In *Mandarin Oriental v. HDI Global Insurance*, the insured sought to compel the production of such files, and the court held that the magistrate judge presiding over the discovery dispute was correct in declining to extend the insurer’s assertions of privilege to internal insurer communications “interpreting Plaintiff’s insurance policy.”

And that’s in line with law from across the country. For example, in *National Union v. Stauffer Chemical*, a Delaware court ordered the insurer produce internal “interpretive materials,” such as claims manuals, because the court found such might be “relevant to the determination of ambiguity.”

Likewise, in *Travelers v. Premier Organics*, a federal court in California held that the insured may seek discovery “of Travelers’ internal communications related to the interpretation of the terms “bodily injury” and “occurrence””, both of which were at issue in that case.

The bottom line? There is now added support for the proposition that policyholders should consider seeking through discovery internal insurer communications regarding the interpretation of the insurance policy.