

Pierre Grosdidier in Texas Bar Journal: File Sharing

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A district judge sustained key objections to a magistrate judge's order that held that an insurer, Harleysville Insurance Company, waived the attorney-client privilege and the work-product doctrine's protection when opposing counsel for Holding Funeral Home, Inc., gained access to Harleysville's claims and investigation file concerning a coverage dispute. A third-party, the National Insurance Crime Bureau, or NICB, unwittingly granted Holding's counsel access to Harleysville's file by producing a live Box hyperlink to the file in an unredacted email through discovery. A Harleysville agent had sent the "sharing" hyperlink to the NICB to provide access to an unprivileged video. Later, the agent used the same hyperlink to send Harleysville's file to its counsel. Holding found the hyperlink in the NICB's production and accessed and read the file.

Harleysville sought to disqualify Holding's counsel for improperly accessing and reviewing privileged information in the file, for concealing this access, and for refusing to delete the file when asked. The magistrate judge denied the motion, holding that Harleysville waived any existing privilege when it "uploaded the files to a publically accessible, nonpassword-protected website."

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