

Third District Applies Attorney-Client Privilege Protections to Insurance Claims File Materials
By Anne P. Keeton

Schrolucke v. Auglaize Farmers Cooperative, Inc., 3rd Dist. No. 2-05-26, 2-05-27, 2006-Ohio-604.

Plaintiff sought discovery of log notes and photos prepared by the local claims adjuster who was originally assigned to both property loss and liability claims, but who later handled only the property loss claims, with a separate adjuster assigned to the liability claims. In ordering discovery of the claims adjuster log notes and photographs, the trial court based its decision on the idea that the property loss adjuster's log notes were not protected by attorney client privilege and were not prepared in anticipation of litigation, as the property loss and liability claims were treated separately.

On interlocutory appeal pursuant to Ohio Revised Code Section 2505.02, the Third District Court of Appeals reversed, finding that the trial court erred in ordering discovery of the claims file materials. The Third District noted that insurance claims file materials ordinarily are not discoverable absent an insured's claim of bad faith against the insurer or a claim for prejudgment interest. Neither instance applied to this case. Citing the Ohio Supreme Court case of *In re Kleemann* (1936), 132 Ohio St. 187, 193 (holding that a report from an insured to its insurer, which is then transmitted to defense counsel, is protected by the attorney-client privilege), *Hunter v. Wal-Mart Stores, Inc.*, 12th Dist. No. CA2001-10-035, 2002-Ohio-2604 (statements taken by an insurer in preparation of a defense to a lawsuit are protected by the attorney-client privilege under Ohio law), and Civ. R. 26(B)(3), the Third District held that the contents of the claims file were not subject to discovery absent a showing of good cause. The plaintiffs argued good cause by claiming that summaries of witness statements in the claims material may go to the witness' credibility. However, the Third District found no good cause because witness statements could be obtained from other sources, including police reports and the witnesses themselves.