



## THE INSURER'S COMPUTERIZED INVESTIGATION FILE IS PROTECTED BY LITIGATION PRIVILEGE

By Me Catherine Pilote-Coulombe

On November 6, 2017, the Superior Court rendered a judgment on the question of litigation privilege as it relates to the insurer's computerized investigation file in *Fiset-Trudeau v. Compagnie mutuelle d'assurances Wawanesa*, 2017 QCCS 5071. The case involved an insured who was suing his insurer to compel it to indemnify him after a fire severely damaged part of his building. In this connection, the insured was seeking communication of the insurer's entire computerized file, including the computerized notes.

In *Union canadienne (L'), compagnie d'assurances v. St-Pierre*, 2012 QCCA 433, the Court of Appeal had previously determined that the claims adjuster's investigation reports are protected by litigation privilege, unless it is waived.

The judge concluded that the main purpose of the insurer's investigation file is to prepare for potential litigation and accordingly, regardless of its form or medium, the file is protected by litigation privilege and it is impossible to compel its communication.

The judge also concluded that although the insurer may choose to have the person in charge of the file testify, and that person's knowledge of the claim is limited to what he read in the computerized file, it does not equate to a waiver of litigation privilege. The Superior Court judge specified that the waiver must be voluntary, clear, and obvious. Thus, simply raising the existence of a report during an examination on discovery does not equate to a waiver.



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Finally, the court recognized the right of an insured to obtain information concerning the facts of the case which may be found in the investigation file, which principle is recognized in the case law. However, in this case, the judge refused to accept this argument to justify communication of the notes of all communications between the insured and the insurer's representative. The judge concluded that what the insured was trying to obtain was instead related to the various stages of the investigation. The court thus recommended to the insured that he target the information he was seeking rather than demand disclosure of all communications between the insurer and the insured.