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Litigation

# Whose Privilege Is It, Anyway? Asserting the Attorney-Client Privilege in Insurance Coverage Disputes

*Litigation Journal*

Lane Powell Shareholder Peter Hawkes authored an article for the Oregon State Bar *Litigation Journal* Summer 2015 edition titled “Whose Privilege Is It, Anyway? Asserting the Attorney-Client Privilege in Insurance Coverage Disputes.” In the article, Hawkes discussed insurance coverage disputes represented in various court cases throughout the years and how attorney-client privilege has been applied and interpreted differently in each case.

Insurance coverage disputes can present difficult questions regarding the application of the attorney-client privilege. Whether an insurer owes a fiduciary duty to the insured in making its coverage determination, and the extent to which any such duty may vitiate the attorney-client privilege between the insurer and its coverage counsel, can vary significantly depending on what jurisdiction’s law applies. While it is highly likely that the privilege can be maintained at least in Oregon courts, other jurisdictions, such as our neighbors to the north in Washington, may apply a different analysis that is less favorable to insurers.