FILED
17-0020
10/2/2018 6:00 PM
tex-27991163
SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

No. 17-0020

In the Supreme Court of Texas

IN RE CITY OF DICKINSON,

Relator

BRIEF OF AMICI CURIAE THE ASSOCIATION OF CORPORATE COUNSEL AND THE INTERNATIONAL ASSOCIATION OF DEFENSE COUNSEL IN SUPPORT OF REAL PARTY IN INTEREST, TEXAS WINDSTORM INSURANCE ASSOCIATION

E. Todd Presnell (*pro hac vice* pending)
Jessica Jernigan-Johnson (*pro hac vice* pending)
BRADLEY ARANT BOULT CUMMINGS LLP
1600 Division Street, Suite 700
Nashville, Tennessee 37203
Telephone: (615) 252-2355
tpresnell@bradley.com

James A. Collura, Jr.
BRADLEY ARANT BOULT CUMMINGS LLP
JPMorgan Chase Tower
600 Travis Street, Suite 4800
Houston, Texas 77002
Telephone: (713) 576-0300
jcollura@bradley.com

ATTORNEYS FOR AMICI CURIAE INTERNATIONAL ASSOCIATION OF DEFENSE COUNSEL AND ASSOCIATION OF CORPORATE COUNSEL

STATEMENT OF INTEREST AND FEE DISCLOSURE

The International Association of Defense Counsel (the "IADC"), established in 1920, is an association of approximately 2,500 corporate and insurance attorneys, including in-house counsel, from the United States and around the globe whose practice is concentrated on the defense of civil lawsuits. The IADC is dedicated to the just and efficient administration of civil justice and continual improvement of the civil justice system. The IADC has a particular interest in this case as its attorneys often work and communicate with corporate employees serving as expert witnesses. The attorney–client privilege is important for the effective representation of their clients, and any erosion of the privilege for communications with employee–experts would have a detrimental effect on that endeavor.

The Association of Corporate Counsel ("ACC") is a global bar association for in-house counsel, with more than 44,000 members who practice in the legal departments of corporations, associations, and other organizations in the United States and abroad. ACC has more than 2,600 members in its Dallas-Ft. Worth, Houston and Austin chapters, and thousands of other members representing clients who do business in Texas. For over thirty-five years, ACC has worked to make sure that courts, legislatures, regulators, and other policy-making bodies understand the role and concerns of in-house counsel and the legal departments where they work. ACC takes a particular interest in questions relating to the attorney–client privilege

in the corporate context. To ensure that attorney–client confidentiality is accorded appropriate respect, ACC regularly files *amicus* briefs on issues relating to the scope and application of the privilege. ACC has a particular interest in this case as in-house counsel are often the attorneys tasked with making the decision regarding the use of employee–expert witnesses. Clarity regarding the effect of that decision on the attorney–client privilege is important for in-house counsel to manage litigation and effectively represent their corporate clients.

TABLE OF CONTENTS

Page

INDEX OF AUTHORITIES

Page

Cases

Other Authorities

STATEMENT OF THE CASE AND ISSUES PRESENTED

In this insurance-coverage dispute, Texas Windstorm Insurance Association ("TWIA" decided to use one of its employees as a testifying expert. TWIA's attorney and its employee–expert communicated regarding the employee–expert's affidavit. The City now wants to compel those privileged communications under Texas Rules of Civil Procedure 192.3 and 194.2. Texas Rule of Evidence 503 applies the attorney–client privilege to communications between a corporate entity's employees and its lawyer, and contains no such employee–expert exception.

The question before this Court is whether Texas should adopt a common-law, employee–expert exception to the attorney–client privilege. The amici urge this Court to decline the invitation to create this new exception because it is unwarranted, untenable, and would undermine the long-recognized and well-reasoned public policies supporting the attorney–client privilege.

The amici otherwise adopt the Statement of the Case and Issues Presented in the Brief filed by Texas Windstorm Insurance Association.

STATEMENT OF FACTS

The amici adopt the Statement of Facts in the Brief filed by Texas Windstorm Insurance Association.

SUMMARY OF THE ARGUMENT

Evidentiary privileges are rules of substantive law that safeguard certain relationships, such as a husband and wife or a psychotherapist and patient, that society deems a greater value than an unrestricted dispute-resolution process. Stated differently, courts recognize and evidence rules embrace privileges because they promote important, valued social relationships. Indeed, "[p]rivilege law is arguably the *most important* doctrinal area in the law of evidence." Edward J. Imwinkelried, *Protecting the Attorney-Client Privilege in Business Negotiations: Would the Application of the Subject-Matter Waiver Doctrine Really Drive Attorneys from the Bargaining Table*, 51 Duq. L. Rev. 167, 168 (2013) (emphasis added).

The attorney–client privilege is the oldest and most sacrosanct evidentiary privilege. It incentivizes clients, including corporate entities, to communicate completely and candidly with their legal counsel so that counsel may provide optimal, unhindered legal advice. Once established, the attorney–client privilege is absolute, meaning that it will not easily give way upon some showing of need or countervailing public policy. While Texas also recognizes the work-product doctrine, this procedural doctrine protecting strategies and opinions is substantively distinct from the attorney–client privilege, and any exception to the confidentiality

of an attorney's work product, such as in Texas Rule of Civil Procedure 192.5(c)(1), has no effect on the attorney's *communications* with his or her client representatives.

Texas Rule of Evidence 503(d) recognizes four limited exceptions to the attorney–client privilege. This Court should uphold the sanctity and purposes of the attorney–client privilege by rejecting the City's call for a new exception. The City's basis for seeking a new exception—for materials received or reviewed by an employee-expert—does not outweigh the strong, immutable policy rationale supporting Texas's attorney–client privilege.

ARGUMENT

I. This Court Must Promote the Policies Underlying the Attorney–Client Privilege.

a. The attorney–client privilege is essential to the observance of law and administration of justice.

The attorney–client privilege "has been a cornerstone of our legal system for nearly 500 years," grounded in the notion that clients must feel they can speak freely with their attorneys in order to provide adequate legal representation. *Paxton v. City of Dallas*, 509 S.W.3d 247, 261 (Tex. 2017) (citing 8 John H. Wigmore, Evidence § 2290 (McNaughton rev. 1961)). Recognized as the "oldest of the privileges for confidential communications known to the common law[,]" the privilege's main purpose is to encourage "full and frank" communication between attorneys and clients. *See Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981) (*citing* 8 John H.

Wigmore, Evidence § 2290 (McNaughten rev. 1961)). Such open communication is necessary to serve "broader public interests in the observance of law and administration of justice." *Id.* In particular, a lawyer cannot provide sound legal advice or advocacy if the client is deterred from fully informing the lawyer of the matter. *Id.*

The need for full and frank communication is a primary element of the attorney–client relationship, and the desire to promote the free flow of communication between attorney and client has endured throughout the centuries. *See Hunt v. Blackburn*, 128 U.S. 464, 470 (1888) (stating that the privilege "is founded upon the necessity, in the interest and administration of justice, of the aid of persons having knowledge of the law and skilled in its practice, which assistance can only be safely and readily availed of when free from the consequences or the apprehension of disclosure"); *Fisher v. United States*, 425 U.S. 391, 403 (1976) (recognizing that the privilege "encourage[s] clients to make full disclosure to their attorneys"); *Trammel v. United States*, 445 U.S. 40, 51 (1980) (noting that the privilege "rests on the need for the advocate and counselor to know all that relates to the client's reasons for seeking representation if the professional mission is to be carried out").

The Supreme Court of Texas has long recognized and reinforced the importance of the attorney–client privilege. *Paxton*, 509 S.W.3d at 259. In *Paxton*,

this Court recognized that the attorney–client privilege is "the most sacred of all legally recognized privileges" and "its preservation is essential to the just and orderly operation of our legal system." *Id.* (quoting *United States v. Bauer*, 132 F.3d 504, 510 (9th Cir. 1997)). This Court stated the interests protected by the promise of confidentiality are "quintessentially imperative," and safeguarding the privilege is necessary because once information is disclosed, "[t]he bell cannot be unrung." *Id*. at 261.

The attorney–client privilege applies with equal strength to corporate clients. *See Upjohn*, 449 U.S. at 394–95. The privilege creates a reciprocal exchange of communication in which clients are able to give the attorney information, and in return, the attorney gives the client professional advice. *Id*. at 390. With corporate clients, the information given to the attorney can come from a variety of different sources. *Id.* at 391–92. In *Upjohn*, the Court rejected a test which held that the attorney–client privilege only applied if the employee making the communication could effectuate action in relation to the advice given. *Id*. at 392–93. The Supreme Court held that the proposed test overlooked the fact that the privilege "exists to protect not only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him to give sound and informed advice." *Id*. at 390. The Supreme Court found that the lower court's test "frustrates

the very purpose of the privilege" by discouraging communication between corporate employees and the attorney. *Id*. at 392.

Texas courts also recognize the importance of the attorney–client privilege for corporate clients. "The Corporation is a separate entity and should not lose its valuable legal rights because it can only act through its employees." *In re Mktg. Inv'rs Corp.*, 80 S.W.3d 44, 50 (Tex. App.–Dallas 1998) (orig. proceeding). Corporate clients are not excluded from the attorney–client privilege based solely on their status as a corporation; instead, the overarching goal of obtaining full and frank communication applies equally to corporate and individual clients.

In addition to the common law attorney–client privilege, Texas has codified the privilege through its rules of evidence. Tex. R. Evid. 503. "The common law and now our rules of evidence acknowledge the benefit provided by the attorney–client privilege." *Republic Ins. Co. v. Davis*, 856 S.W.2d 158, 163 (Tex. 1993); *see also West v. Solito*, 563 S.W.2d 240, 245–46 (Tex. 1978). Rule 503 explicitly acknowledges that a "client" is "a person, public officer, or corporation, association, or other organization or entity . . . ." Tex. R. Evid. 503(a)(1). Under Texas law, corporate clients are afforded the protection of the attorney–client privilege.

b. The Attorney–Privilege and the Work-Product Doctrine are Separate and Distinct.

While overlapping in some respects, there are important distinctions between the attorney–client privilege and the work-product doctrine. An evidentiary privilege

such as the attorney–client privilege is a substantive rule of law that safeguards the sanctity of certain relationships that society wants to protect and encourage, such as frank, candid, and confidential discussions between a lawyer and her client, a husband and his wife, a priest and his penitent, and a psychotherapist and her patient. *See Developments in the Law—Privileged Communications*, 98 Harv. L. Rev. 1450, 1473 (1985). Once established and absent waiver, these privileges are absolute subject to highly specific and limited exceptions such as the crime-fraud exception or a child-abuse exception.

The work-product doctrine, on the other hand, is a procedural doctrine that broadly protects a party or lawyer's opinions, legal strategies, and the like. *United States v. Nobles*, 422 U.S. 225, 237–38 (1975). It is a qualified doctrine that an adversary may overcome upon a proper showing of need. *Upjohn*, 449 U.S. at 400. While lawyers and courts sometimes conflate these legal maxims and label the work-product doctrine as a "privilege," *Pope v. State*, 207 S.W.3d 352, 357 (Tex. Crim. App. 2006) (stating that the "scope of the attorney work-product doctrine is sometimes confused with that of the attorney–client privilege"),[1] it is inaccurate to

[1] Texas Rule of Civil Procedure 192.5(d), titled "Work Product," provides that "an assertion that material or information is work product is an assertion of privilege." The "privilege" moniker, however, is limited to the "purposes of these rules" and does not alter the substantive distinction between an evidentiary privilege and the work-product doctrine. *See Pope*, 207 S.W.3d at 357 (stating that the work-product doctrine is "not a true evidentiary privilege"); *see also Hickman v. Taylor*, 329 U.S.

do so and leads to confusing and unintended consequences. In short, there is no "false distinction" between the work-product doctrine and the attorney–client privilege because they promote different public-policy goals.

c. The Texas Rules Only Require Production of Work Product Shared With Expert Witnesses.

The Texas Rules of Civil Procedure only require disclosure of an attorney's work product if provided to a testifying expert, but do not create an exception for material protected by the attorney–client privilege. Specifically, Rule 192.5 protects as work product "material prepared or mental impressions developed in anticipation of litigation or for trial" as well as communications "made in anticipation of litigation or for trial between a party and the party's representatives . . . including the party's attorneys . . . ." Tex. R. Civ. P. 192.5(1)–(2). However, Rule 192.5 also creates an exception from this work product doctrine for "information discoverable under Rule 192.3." Tex. R. Civ. P. 192.5(c)(1). Such information includes documents, reports, or other documentary items reviewed or prepared by an expert in preparation for the expert's testimony at trial as well as "the expert's mental impressions and opinions" made in connection with the case. Tex. R. Civ. P. 192.3(e). Notably, this exception is limited to work-product materials only. It does

---

495, 508 (1947) (delineating clear distinction between the attorney–client privilege and the work product doctrine).

not include materials protected by the attorney–client privilege, including communications between a party's attorney and its expert witnesses.

Texas's Rules of Evidence, as interpreted by its courts, control the scope of and exceptions to the attorney–client privilege. *See* Tex. R. Evid. 503(b)(1), 503(d). Texas's civil-procedure rules do not abrogate or override evidence rules in general or the attorney–client privilege in particular. Rule 192.3(a) establishes the general scope of discovery, and expressly permits the discovery of any matter "that is *not privileged* and is relevant to the subject matter of the pending action[.]" Tex. R. Civ. P. 192.3(a) (emphasis added). Rule 192.3(e) establishes the scope of information discoverable about testifying experts, but must be read in conjunction with 192.3(a) which protects privileged material from disclosure. Rule 192.3(e) does not create a stand-alone exception to the attorney–client privilege.

Rule 194.5 provides an exception to work-product protection, but does not provide an exception to the attorney–client privilege. Comment 1 specifically provides that a party "may assert any applicable privileges other than work product . . . ." Tex. R. Civ. P. 194, cmt. 1. These rules establish the scope of expert discovery and create an exception for work product, but neither creates an exception to the attorney–client privilege. Texas's evidence rules contain the only privilege exceptions, *see* Rule of Evidence 503(d), and this Court should not adopt an

additional exception by implication through a strained reading of these civil-procedure rules.

II. Exceptions to the Attorney–Client Privilege are not Created Lightly, and no Exception is Warranted Here.

a. Texas rejects blanket waiver of the attorney–client privilege.

While the City frames its quest for privileged communications as one of waiver, it actually seeks a blanket *exception* to the privilege. Texas Rule of Evidence 511 recognizes that a party can expressly waive the attorney–client privilege by voluntarily disclosing or consenting to the disclosure of a significant part of the privileged matter. Tex. R. Evid. 511(a). A party may also waive the attorney–client privilege by putting the privileged material at issue. *Republic Ins. Co.*, 856 S.W.2d at 163.

The Texas Supreme Court has adopted a narrow three-part test to determine when a party waives the privilege by using it offensively. The party asserting the privilege must be seeking affirmative relief and disclosure of the confidential communication must be the only way the opposing party can obtain the evidence. *Id*. Finally, "[t]he confidential communication must go to the very heart of the affirmative relief sought." *Id.* Relevance is not sufficient—the privileged communication must be "outcome determinative." *Id.* Even when a party puts privileged communications at issue, Texas has not adopted a blanket waiver doctrine for the attorney–client privilege. The party seeking disclosure must satisfy the three-

factor test. Texas has already rejected the argument that the attorney–client privilege is always waived when a party seeks to use privileged information proactively. *Id.* ("Privileges, however, represent society's desire to protect certain relationships, and an offensive use of waiver of a privilege should not be found lightly.") The City's blanket waiver argument should be rejected.

b. Exceptions to the attorney–client privilege are not created lightly.

Exceptions to the attorney–client privilege are not created lightly. Although courts recognize the importance the attorney–client privilege plays in ensuring full and fair communication between attorney and client, courts also recognize that all privileges necessarily conflict with the principle that the public has a right to hear all of the evidence presented by both parties. *Trammel v. United States*, 445 U.S. 40, 50 (1980). Courts have wrestled with these two competing doctrines and restrictively recognized privilege exceptions when the reason for that protection— "the centrality of open client and attorney communication to the proper functioning of our adversary system of justice"—ceases to exist. *United States v. Zolin*, 491 U.S. 554, 562–63 (1989); *see Trammel*, 445 U.S. at 50 (noting that privileges should apply when a "public good transcend[s] the normally predominant principle of utilizing all rational means for ascertaining truth") (quoting *Elkins v. United States*, 364 U.S. 206, 234 (1960) (Frankfurter, J., dissenting)); *Fisher v. U.S.*, 425 U.S. 391, 403 (1976) ("[S]ince the privilege has the effect of withholding relevant information

from the fact-finder, it applies only where necessary to achieve its purpose."). The City's argument of "full disclosure" for employee–experts is simply insufficient to create such a broad, sweeping exception to the attorney–client privilege.

A review of recognized exceptions, most notably the crime–fraud exception, reinforces this conclusion. The exception applies if a client communicates with his or her attorney with the intention of committing or covering up a crime or fraud—obviously an important public-policy goal. *Clark v. U.S.*, 289 U.S. 1, 15 (1933). But even the crime–fraud exception has its limits, highlighting courts' hesitancy to deconstruct the attorney–client privilege. For example, the exception applies only when the client seeks advice for future wrongdoing, not advice concerning past bad acts. *See Zolin*, 491 U.S. at 562–63 (citing 8 John H. Wigmore, Evidence § 2298 (McNaughton rev. 1961)).

Courts limit the crime–fraud exception through a balancing of competing rationales, much as they do when determining the scope of the attorney–client privilege. The purpose of the crime–fraud exception is to prevent a client from using the attorney's skill and expertise for the commission of a crime. *Id.* at 536 (quoting *O'Rourke v. Darbishire*, [1920] AC 581, 604 (PC)). The adversarial system of justice does not benefit from keeping criminal or fraudulent communications secret, and as such, the attorney–client privilege gives way to a disclosure of the communication. On the other hand, the notion that clients must feel free to openly

discuss *past* wrongdoing with their attorneys fits squarely within the rationale of the attorney–client privilege. If the client knew that the government or adverse parties could obtain his admission from the attorney, "the client would be reluctant to confide in his lawyer and it would be difficult to obtain fully informed legal advice." *Fisher*, 425 U.S. at 403. Thus, the exception extends only as far as it must, careful not to encroach upon communications that courts must protect to achieve the privilege's purpose.

In balancing these competing interests, courts have routinely rejected parties' attempts to create additional exceptions to the attorney–client privilege. In *Swidler & Berlin v. United States*, 524 U.S. 399 (1998), an attorney took notes while meeting with a client, who later committed suicide. *Id.* at 401–02. The government sought production of the notes in conjunction with a criminal investigation, which the attorney refused, asserting the attorney–client privilege. *Id.* The Court of Appeals held that the privilege did not protect the attorney's notes under a "posthumous exception," reasoning that "the risk of posthumous revelation, when confined to the criminal context, would have little to no chilling effect on client communication." *Id.* at 402.

The United States Supreme Court reversed, holding that the policy supporting the attorney–client privilege outweighs any need for a posthumous exception, rejecting several of the government's arguments in support of the creation of an

exception. *Id.* at 405–411. The lower appellate court based its posthumous exception on the need for settling estates and furthering the client's intent. *Id.* at 406. But the Supreme Court held that the policy rationale behind the attorney–client privilege was simply too strong to support the creation of a posthumous exception. *Id.* at 407.

The Court also refused to distinguish the application of the proposed exception in civil versus criminal contexts, noting that clients may not know the civil or criminal implications of their disclosures. *Id.* at 408–09. Allowing an exception to exist only in criminal cases under certain circumstances would require an *ex post* balancing of interests, placing the privilege's application on uncertain grounds. *Id.* at 409. The Court also explicitly rejected the argument that there was no harm in "one more exception," stating that such a "rationale could contribute to the general erosion of the privilege, without reference to common-law principles or 'reason and experience.'" *Id.* at 409–10. Ultimately, the Court held that narrowing the centuries-old privilege was inconsistent with the weight of prior case law, and rejected the government's attempt to create a new exception to the attorney–client privilege. *Id.*

Here, as in *Swidler*, the policy rationales supporting discovery of materials received or reviewed by employee–experts do not outweigh, and certainly do not support, derogation of the attorney–client privilege. The City argues not for the full disclosure of facts and information, but for "*specific* documents that TWIA has admitted exist . . . ." City Reply Brief at 7. The City's alleged need for "full

disclosure" of admittedly privileged communications between a lawyer and his employee–expert succumbs to the underlying principle of the attorney–client privilege.

A similar argument was made for the disclosure of documents in *Upjohn*, and the proponent cited comparable fears that a failure to disclose would create a "zone of silence." *Upjohn*, 449 U.S. at 395; *cf* City Reply Brief at 7 (stating that the jury is not given "everything it needs in order to critically evaluate the expert's testimony. More fulsome disclosure is needed."). The Supreme Court dismissed this reasoning, holding that when employees of a corporation talk to corporate counsel in order to secure legal advice, application of the attorney–client privilege to such communications puts the adverse party in no worse position than if the communications had never taken place. *Upjohn*, 449 U.S. at 395.

Although the facts from *Upjohn* are distinguishable from the present case, the rationale applies: There can be no fear of a "zone of silence" regarding the facts upon which an expert relies, because as the *Upjohn* Court stated, "the protection of the privilege extends only to *communications* and not to facts." *Id.* at 395 (quoting *Philadelphia v. Westinghouse Elec. Corp.*, 205 F. Supp. 830, 831 (E.D. Penn. 1962)). The Court noted that discovery was not intended as a tool of convenience, and even so, "such considerations of convenience do not overcome the policies served by the attorney–client privilege." *Id.* at 396. Similarly, the City's argument

that transparency, convenience, and need warrant an exception cannot overcome the fundamental protections afforded by the attorney–client privilege.

c. A new exception to the attorney–client privilege would produce unintended adverse consequences for both corporations and courts.

Other policy considerations weigh in favor of rejecting the City's proposed exception. The creation of a new exception to the attorney–client privilege would have significant consequences for both corporations and courts. Creating an "employee–expert exception" would force corporate entities to choose between retaining outside experts at a greater expense and relying on internal employee–experts who may be the most knowledgeable on the subject matter at issue.

For example, in a products-liability action, the internal company engineer who designed the product would likely be the most knowledgeable person regarding the product's design and the most appropriate expert witness for the corporation. If an employee–expert exception applied, however, privileged communications between the entity's lawyer and the internal employee–expert would become a source of discoverable evidence. Consider also the problem faced by a corporation sued for a defective product designed many years ago where there are no remaining employees from the time of the design. The most practical and cost-effective solution is likely to have a current employee become an expert on the product design, but this

exception would require disclosure of any information, including lawyers' communications, reviewed by that employee during her investigation.

This Catch–22 would force corporate entities to choose between retaining an outside consulting expert (and incurring additional litigation expense) and relying on internal employee–experts with a concomitant loss of their sacrosanct privilege. The City's proposed exception would especially disadvantage small businesses, which often lack extensive resources to retain outside consulting experts. In almost all litigation, businesses would be forced to choose between relying on knowledgeable and cost-effective employee–experts or the loss of the privilege.

This proposed exception also creates the risk of inconsistent application across jurisdictions to corporate entities' detriment. In situations where there is serial litigation across different jurisdictions, such as in the products-liability context, the privilege would cover a lawyer's communications with an employee–expert in other jurisdictions, but not in Texas. If, for example, a corporate entity discloses privileged communications in a Texas case under an "employee–expert exception," then another state court could deem the Texas disclosures as privilege waiver and force the entity to disclose the otherwise privileged communications in that state's litigation. This ripple-effect erodes the privilege even more.

The risk of uncertainty and unpredictability undermines the essential function of the attorney–client privilege. "We have said that for the attorney–client privilege

to be effective, it must be predictable." *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 183 (2011). Maintaining the attorney–client privilege for employees of corporations, regardless of their role as expert witnesses, preserves consistency in the application and scope of the attorney–client privilege and promotes the efficient and fair administration of justice. After all, "[a]n uncertain privilege, or one which purports to be certain but results in widely varying applications by the courts, is little better than no privilege at all." *Upjohn*, 449 U.S. at 393.

PRAYER

The attorney–client privilege fulfills society's goal of obtaining optimal and unrestricted legal advice by promising clients complete confidentiality of their words. Full and frank communication is necessary for attorneys to adequately promote the observance of law and administration of justice. As courts recognize, the privilege is sacred and has a rich history in the legal system of the United States and applies with full force to corporate clients. Exceptions to the privilege are not created lightly and one is not warranted here. Maintaining the attorney–client privilege preserves the consistency and predictability that businesses and clients rely on and promotes the fair administration of justice.

The Amici urge this court to deny the City's petition for mandamus.

Respectfully submitted,

/s/ James A. Collura, Jr.
Counsel for Amici Curiae

OF COUNSEL

E. Todd Presnell
Jessica Jernigan-Johnson
BRADLEY ARANT BOULT CUMMINGS LLP
1600 Division Street, Suite 700
Nashville, Tennessee 37203
Telephone: (615) 252-2355
tpresnell@bradley.com

James A. Collura
BRADLEY ARANT BOULT CUMMINGS LLP
JPMorgan Chase Tower
600 Travis Street
Suite 4800
Houston, Texas 77002
Telephone: (713) 576-0300
jcollura@bradley.com

CERTIFICATE OF SERVICE

On October 2, 2018, I served the parties in the manner addressed per below:

J.B. "Trey" Henderson III *Via E-Service*
James E. Doye
Zachary B. DesAutels
DOYLE RESTREPO HARVIN & ROBBINS, L.L.P.
440 Louisiana Str., Suite 2300
Houston, TX 77002
thenderson@drhrlaw.com
jdoyle@drhrlaw.com
zdesautels@drhrlaw.com

Anthony G. Buzbee *Via E-Service*
Christopher J. Leavitt
THE BUZBEE LAW FIRM
600 Travis Str., Suite 7300
Houston, TX 77002
tbubee@txattorneys.com
cleavitt@txattorneys.com

Shaun W. Hodge *Via E-Service*
THE HODGE LAW FIRM, PLLC
2211 The Strand Str., Suite 302
Galveston, TX 77550
shodge@hodgefirm.com

Fourteenth Court of Appeals
301 Fannin, Rm. 245
Houston, TX 77002

James R. Old, Jr. *Via E-Service*
HICKS THOMAS LLP
2615 Calder, Suite 720
Beaumont, TX 77706
jold@hicks-thomas.com

Andrew T. McKinney IV *Via E-Service*
Tory F. Taylor
Kim A. Cooper
LITCHFIELD CAVO, L.L.P.
One Riverway, Suite 1000
Houston, TX 77056
mckinney@litchfieldcavo.com
taylor@litchfieldcavo.com
cooper@litchfieldcavo.com

David Salyer *Via E-Service*
MCLEON, ALEXANDER, POWEL & APFFEL, P.C.
802 Rosenberg
PO Box 629
Galveston, TX 77553
dpsalyer@mapalaw.com

/s/ James A. Collura, Jr.
James A. Collura, Jr.

CERTIFICATE OF COMPLIANCE

I, counsel for Amici the International Association of Defense Counsel and the Association of Corporate Counsel certify, pursuant to Texas Rules of Appellate Procedure 9.4(i)(2) and 9.4(i)(3), that the attached Brief of Amici Curiae the International Association of Defense Counsel and the Association of Corporate Counsel is proportionally spaced, has a typeface of 14 points or more, and contains 4074 words, excluding the parts of the brief exempted by Tex. R. App. P. 9.4(i)(1)

/s/ James A. Collura, Jr.
James A. Collura, Jr.