



Texas Appellate Court Rules on Discoverability of Settlement Agreements

In *In re GreCon, Inc.*, a Texas appellate court recently addressed when a party must produce settlement agreements. The plaintiff sued multiple defendants in tort after a fire, and settled with all except GreCon. After learning of the settlements, GreCon served requests for disclosure under Texas Rule of Civil Procedure 194.2, which, similar to some other jurisdictions, requires disclosure of the "existence and contents of any relevant portions of a settlement agreement." The plaintiff responded by stating there were "none at this time."

The court held the settlement agreements were discoverable on two bases. First, in an apparent matter of first impression, the court held that the plaintiff waived his objections by failing to timely file a motion for protection and, second, that the agreements were in fact relevant.

The court examined Rules 194.2(h) and 192.3(g), which aim to efficiently provide discovery of specific documents, including settlement agreements, and found that in "extremely rare cases" when settlement agreements should be withheld, the objecting party bears the burden to timely file a motion for protection. Because the plaintiff failed to do so before the disclosure deadline, he waived his objections.

A different majority found the agreements discoverable in order to determine settlement credits under Texas's proportionate responsibility statute and relevant to analyzing potential witness bias or prejudice.

The court's decision gives teeth to Texas's requirement that settlement agreements are discoverable and potentially relevant on multiple bases. This case's reasoning may prove persuasive in other jurisdictions and provides both arguments for discoverability and roadmaps for how to protect their terms.

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