

The Most Overlooked Exception to Attorney-Client Privilege

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In-house counsel often communicate with corporate management under the assumption that these communications are protected by the attorney-client privilege— absent some type of unusual and extraordinary circumstance, such as waiver of the privilege or the crime-fraud exception. A surprising number of both in-house and outside counsel, however, are unfamiliar with the longstanding “fiduciary exception” to the attorney-client privilege. Forty-five years ago, in *Garner v. Wolfinbarger*, the Fifth Circuit allowed the attorney-client privilege of a corporation to be pierced by the corporation’s shareholders upon a showing of “good cause.” While some courts have rejected this approach, a New York appellate court recently joined other courts, including the Delaware Supreme Court (see [Wal-mart Stores, Inc. v. Indiana Electrical Workers Pension Trust Fund](#)) in adopting it... [Continue Reading](#)