Privilege and the Tripartite Insurer-Insured Counsel Relationship

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This article examines the tripartite insurer-insured-counsel relationship, and that although federal common law and many states do not recognize an insurer-insured privilege, the Illinois Supreme Court explicitly established this privilege in *People v. Ryan*. The article goes on to discuss the details of the *Ryan* case and how this case established the insurer-insured privilege as an offshoot of the attorney-client privilege, but only if "communication is made to the insurer for the dominant purpose of transmitting it to an attorney for the protection of the interests of the insured." This "dominant purpose" requirement was recently applied in *Holland v. Schwan's Home Service Inc.*, a case which exemplifies statements made to an insurer that were not covered under the insurer-insured privilege due to the fact that they were "not made for the purpose of seeking legal advice." The article concludes with the important lesson from the *Ryan* line of cases that the insured should not view all of the communications within a claim as protected by the insurer-insured privilege and that unless the dominant purpose of a communication is to obtain legal advice a court is likely to find that communication not protected.