

Petition for Writ of Mandamus Denied and Memorandum Opinion filed August 25, 2011.



In The

**Fourteenth Court of Appeals**

---

NO. 14-11-00579-CV

NO. 14-11-00580-CV

---

IN RE CYPRESS TEXAS LLOYDS and CRAWFORD & COMPANY, Relators

---

---

ORIGINAL PROCEEDING

WRIT OF MANDAMUS

268th District Court

Fort Bend County, Texas

Trial Court Cause Nos. 10-DCV-177586 & 10-DCV-176764

---

---

**MEMORANDUM OPINION**

On July 5, 2011, relators, Cypress Texas Lloyds and Crawford & Company, filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code § 22.221; *see also* Tex. R. App. P. 52. Relators complain that respondent, the Honorable Brady G. Elliott, presiding judge of the 268th District Court of Fort Bend County, has abused its discretion in denying relator Cypress Texas Lloyds's motion for protection and ordering both relators to produce "information and documents pertaining to attorney's fees" in the underlying litigation. Relators also filed a motion for emergency stay, which this court granted on

July 5, 2011. *See* Tex. R. App. P. 52.10. We also requested that the real parties in interest respond to the petition, and they have now done so.

This petition arises out of two suits alleging breach of contract and Insurance Code violations in the handling of Hurricane Ike claims. At issue in this proceeding is relators' objection to producing "documents and information pertaining to attorneys' fees." In this proceeding, relators' sole argument is that the trial court abused its discretion because the information sought is not relevant to the claims in the underlying litigation and production would be burdensome.

On June 24, 2011, the trial court held a hearing on Cypress Texas Lloyds's motion for protection from discovery. At the hearing, the real parties' counsel asserted, "We're not asking for the attorney-client charges. We're just asking for how much they charge." The trial court stated, "Give it to him." The court also instructed, "You will redact out any part of it that describes what you've been doing at the hourly rate and so forth." There was no further discussion specifying what was to be produced. The court did not state that the motion for protection was denied. The trial court concluded the hearing by instructing counsel to submit written orders reflecting its rulings. According to the real parties, no orders were submitted or signed. No signed order is included in our mandamus record. *See* Tex. R. App. P. 52.3(k)(1). Relators have provided a record from the hearing. *See* Tex. R. App. P. 52.7(a)(2).

Mandamus is an extraordinary remedy that will issue only if (1) the trial court clearly abused its discretion and (2) the party requesting mandamus relief has no adequate remedy by appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004). A trial court abuses its discretion if it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law, or if it clearly fails to analyze or apply the law correctly. *In re Cerberus Capital Mgmt., L.P.*, 164 S.W.3d 379, 382 (Tex. 2005). In determining whether appeal is an adequate remedy, we consider whether the benefits of

mandamus review outweigh the detriments. *In re BP Prods. N. Am., Inc.*, 244 S.W.3d 840, 845 (Tex.2008) (orig. proceeding).

Mandamus may be appropriate when “a discovery order compels the production of patently irrelevant or duplicative documents, such that it clearly constitutes harassment or imposes a burden on the producing party for out of proportion to any benefit to the requesting party.” *Walker v. Packer*, 827 S.W.2d 833, 843-44 (Tex. 1992) (concluding that realtor had adequate remedy by appeal to challenge a discovery order). The heavy burden of establishing an abuse of discretion and an inadequate appellate remedy is on the party resisting discovery. *In re CSX Corp.*, 124 S.W.3d 149, 151 (Tex.2003).

In this proceeding, the respondent has not signed a written order. Mandamus relief may be based on oral ruling only if the ruling is a “clear, specific, and enforceable order that is adequately shown by the record.” *In re Baldridge*, No. 14-06-00647-CV, 2006 WL 2167239, \* 1 (Tex. App.—Houston [14th Dist.] 2006, orig. proceeding) (quoting *In re Bledsoe*, 41 S.W.3d 807, 811 (Tex. App.—Fort Worth 2001, orig. proceeding)). The oral ruling in this case lacks specificity.

Relators have not met the heavy burden to establish their entitlement to relief. Accordingly, we deny relators’ petition for writ of mandamus. This court’s stay order issued July 5, 2011, is vacated.

PER CURIAM

Panel consists of Chief Justice Hedges and Justices Seymore and Boyce.