

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**September 19, 2002**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 02-0463**

**Cir. Ct. No. 00-CV-339**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**CANDACE I. SEDGWICK AND ROBERT SEDGWICK,**

**PLAINTIFFS-APPELLANTS,**

**ALLIANCE HEALTH INSURANCE AND LAND'S END INC.  
HEALTH CARE,**

**INVOLUNTARY-PLAINTIFFS,**

**v.**

**DAWN L. VOLENEC N/K/A DAWN HAASE AND AMERICAN  
STANDARD INSURANCE COMPANY OF WISCONSIN,**

**DEFENDANTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Grant County:  
ROBERT P. VAN DE HEY, Judge. *Affirmed.*

Before Dykman, Roggensack and Deininger, JJ.

¶1 PER CURIAM. This is an interlocutory appeal by plaintiffs Candace Sedgwick and Robert Sedgwick from a discovery order compelling Candace to turn over to the defendants a diary she kept of her medical conditions. The dispositive issue is whether her attorney-client privilege was waived by her attorney's use of portions of the diary during settlement negotiations. We conclude that this use of the diary waived any privilege, and therefore affirm.

¶2 This is a personal injury case. Defendants moved to compel production of the diary during discovery. The motion was accompanied by an affidavit of defendants' counsel. He averred that plaintiffs' counsel had sent a "demand letter" to the defendant insurance company's claim examiner. The letter included several pages of what the letter described as "Excerpts from Candace Sedgwick's Notes Regarding Injury." Each of these excerpts consisted of a date and then an account of various medical sufferings or other aspects of Candace's life. The plaintiffs opposed the discovery motion on the ground of attorney-client privilege. However, the court ruled that the diary was not privileged, and that any privilege had been waived by the disclosure during settlement negotiations.

¶3 On appeal, the parties discuss both of these issues, but we conclude that we need not decide whether the diary was privileged, because we agree that any privilege was waived. We have held that the attorney-client privilege is waived when the privilege holder attempts to prove a claim or defense by disclosing or describing an attorney-client communication. *State v. Hydrite Chem. Co.*, 220 Wis. 2d 51, 68, 582 N.W.2d 411 (Ct. App. 1998). We said that a more expansive view of waiver would be "incongruent with § 905.03, STATS., which states that attorney-client communications remain confidential until the privilege holder intends to disclose the communication to third persons." *Id.* at 69.

¶4 Assuming, without deciding, that the Sedgwicks established the existence of the attorney-client privilege, it was then the movant's burden to challenge their intent to keep the privileged documents confidential. *Id.* at 70. In this case, in contrast with *Hydrite*, the movant established that the person holding the privilege intended "to disclose privileged communication in proving [her] claim." *Id.* The defendants' affidavit established that Candace's attorney disclosed her privileged communication to the insurance claims examiner to prove her claim.

*By the Court.*—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

