



COURT OF CHANCERY
OF THE
STATE OF DELAWARE

JESSIE R. BENAVIDES
MAGISTRATE IN CHANCERY

COURT OF CHANCERY COURTHOUSE
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February 4, 2026

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RE: *William Anthony Danel, Sr. v Joy A Reinhardt*
C.A. No. 2024-0247-JRB

Dear Counsel:

Through this letter, I: (1) grant Petitioner's Motion to Compel discovery responses (the "Motion to Compel"), filed April 28, 2025;¹ and (2) grant the Motion for Entry of Order for the Production and Exchange of Confidential Information ("Motion for Protective Order"), filed April 28, 2025.² My reasoning for each follows a brief recitation of the posture on which these requests come before me.

I. INTRODUCTION

On March 12, 2024, Petitioner, William Anthony Danel ("Petitioner"), filed a verified complaint in the Court of Chancery against Respondent, Joy Reinhardt

¹ Pet'r Mot. Compel Disc., Docket Item ("D.I.") 38.

² Pet'r Mot. Prot. Order, D.I. 39.

(“Respondent”), concerning the use of a cross easement.³ Through his petition, Petitioner seeks declaratory judgment for recognition of the cross easement and injunctive relief to compel Respondent to remove the fence that she constructed along the property line.⁴ On or about April 28, 2025, Petitioner filed the instant Motion to Compel and Motion for Production and Exchange of Confidential Information (“Motion for Protective Order”).⁵ Through the Motion to Compel, Petitioner seeks “to obtain discovery of any and all documents or information withheld by Respondent and S&R in response to Petitioner’s Requests and the Subpoena on the grounds of privilege, work product, or confidentiality (subject to a confidentiality order).”⁶ Through the Motion for Protective Order, Petitioner seeks entry of a protective order, “so that items which have been withheld in discovery, based solely on grounds of confidentiality, will be produced.”⁷

II. BACKGROUND

A. Facts

This case arises from a dispute between two neighbors regarding the construction of a fence on a shared cross-easement. By deed dated July 6, 2018,

³ Pet’r Compl., D.I. 1.

⁴ *Id.*

⁵ Pet’r Mot. Compel Disc., D.I. 38; Pet’r Mot. Protective Order D.I. 39.

⁶ Pet’r Mot. Compel Disc., D.I. 38 at ¶ 37.

⁷ Pet’r Mot. Protective Order D.I. 39 at ¶ 2.

Matthew H. Jones conveyed a parcel of land located at 1143 Vernon Road, Harrington, Delaware 19952 (“Petitioner’s Parcel”), to Patricia Ann Dillworth and Petitioner (“Petitioner’s 2018 Deed”).⁸ By deed dated February 12, 2021 (“Petitioner’s 2021 Deed”), Patricia Ann Dilworth conveyed her interest in Petitioner’s Parcel to Petitioner.⁹

Since at least 2006, Respondent has resided at the neighboring property (“Respondent’s Parcel”).¹⁰ By deed dated March 10, 2006, Robert L. Evers and Virginia Evers conveyed Respondent’s Parcel to Respondent and Alan Edward Hillenbrand (“Respondent’s 2006 Deed”).¹¹ By quitclaim deed executed in February 2022, Alan Edward Hillenbrand and Respondent conveyed the Respondent’s Parcel to Respondent (“Respondent’s 2023 Deed”).¹²

Both parcels were created by a 2005 subdivision of the lands of Robert L. Evers and Virginia K. Evers.¹³ The Record Plan depicts a twenty-foot-wide cross

⁸ Pet’r Compl., D.I. 1 at ¶ 5.

⁹ *Id.* at ¶ 6.

¹⁰ *Id.*

¹¹ Resp’t Answ., D.I. 10 at 8.

¹² Pet’r Compl., D.I. 1 at ¶ 9.

¹³ *Id.*

access easement (the “Cross Easement”).¹⁴ The Cross Easement is referenced in the four deeds.¹⁵

Petitioner has operated a commercial chicken farm on his property since 2018.¹⁶ Petitioner’s guests and invitees, including delivery drivers for the chicken farm, used the Cross Easement as a means of access.¹⁷ On or about February 26, 2024, a contractor hired by Respondent installed a fence along the centerline of the Cross Easement.¹⁸ This fence allegedly limited Petitioner’s ability to receive deliveries for the chicken farm and caused him a financial injury for the incomplete deliveries.¹⁹ Petitioner alleges the fence erected by Respondent obstructs with “Petitioner’s enjoyment, use and right to the use, of the Cross Easement as a means of access.”²⁰ Respondent refutes Petitioner’s claims regarding the Cross Easement.²¹

B. Procedural History

On or about March 12, 2024, Petitioner initiated this case in the Court of Chancery.²² Petitioner seeks declaratory judgment recognizing the validity of the

¹⁴ Pet’r Compl., D.I. 1 at ¶ 12.

¹⁵ This includes Respondent’s 2006 deed and Respondent’s 2023 Deed. Pet’r Compl. D.I. 1 at ¶ 13. Respondent’s 2006 Deed provides that the “lands and premises are subject to covenants, conditions and restrictions of record.” *Id.* at ¶ 17–18

¹⁶ Pet’r Compl., D.I. 1 at ¶ 24–26.

¹⁷ *Id.* at ¶ 29.

¹⁸ *Id.* at ¶ 38.

¹⁹ *Id.* at ¶ 41–45.

²⁰ *Id.* at ¶ 41.

²¹ *See* Resp’t Answ., D.I. 10, and Resp’t Am. Answ., D.I. 13.

²² Pet’r Compl., D.I. 1 at ¶ 1.

cross-easement, as well as claims for nuisance, trespass, and tortious interference with business relationship, and a mandatory permanent injunction to prohibit the Respondent from installing and maintaining a fence along the Cross Easement.²³ On or about April 19, 2024, Respondent filed an Answer, Affirmative Defenses, and Counterclaim to Petitioner's Complaint, denying the allegations and raising a counterclaim of private nuisance.²⁴ Respondent filed an Amended Answer, Affirmative Defenses, and Counterclaim to Petitioner's Complaint on April 24, 2024 adding counterclaims of declaratory judgment, trespass, and destruction of property.²⁵

On or about April 22, 2024, Petitioner served Notice of Intent to Serve Subpoena on Schmittinger & Rodriguez, P.A. ("S&R"), seeking documents concerning Respondent's 2006 purchase of Respondent's Parcel.²⁶ On or about April 24, 2024, Respondent objected to Petitioner's Subpoena to S&R "to the extent any documents or information requested is subject to attorney-client privilege."²⁷

The parties entered a Stipulated Order to Stay Proceedings that the Court granted on August 21, 2024.²⁸ The parties' efforts to resolve the case proved

²³ Pet'r Compl., D.I. 1 at ¶ 51–98.

²⁴ Resp't Ans., D.I. 10.

²⁵ Resp't Am. Ans., D.I. 13.

²⁶ Pet'r Notice of Intent to Serve Subp., D.I. 12.

²⁷ Resp't Obj. to Notice to Serve Subp., D.I. 14.

²⁸ Resp't Letter Proposed Stipulated Order, D.I. 16. The parties agreed to stay proceedings and stay discovery through October 15, 2024. *Id.*

unsuccessful. On or about November 14, 2024, Respondent filed a Motion to Dismiss the Complaint.²⁹ The Court held a hearing on the Motion to Dismiss on May 5, 2025 and the Court denied Respondent's Motion.³⁰

On or about January 9, 2025, Petitioner served Respondent with his first set of interrogatories and first request for production of documents.³¹ On April 28, 2025, Petitioner filed the instant Motion to Compel discovery responses, seeking to compel the production of documents from Respondent that Respondent refused to produce on the basis of attorney-client privilege, work product, and confidentiality.³² In his Motion, Petitioner argues that Respondent failed to adequately assert the attorney-client privilege and work product doctrine in responding to Petitioner's document requests and interrogatories, by failing to assert the privileges with specificity and supporting factual information and failing to provide a privilege log. Petitioner also argues that Respondent waived the attorney-client privilege and work product doctrine with her 2006 real estate counsel and 2006 real estate transaction by placing the content of their communications regarding that transaction at issue in this litigation.³³ As such, Petitioner asserts Respondent should provide any

²⁹ Resp't Mot. to Dismiss, D.I. 19. The parties entered a briefing schedule relating to the Motion to Dismiss. *See* Resp't Letter Mot. to Dismiss, D.I. 20. That briefing schedule was then amended, and the parties submitted their briefs consistent with the amended schedule. *See* D.I. 30-D.I. 37.

³⁰ *See* Jud. Action Form, D.I. 41.

³¹ Notice of Serv. D.I. 23.

³² Pet'r Mot. to Compel Disc., D.I. 38.

³³ *Id.*

documents relating to the 2006 real estate transaction, including attorney-client communications, and all other documents responsive to Petitioner's discovery requests and subpoena because Respondent waived attorney-client privilege and work product doctrine.³⁴

On or about June 10, 2025, the Court granted a stipulated order under which the parties agreed to attempt to mediate the remaining disputes and stay litigation through August 5, 2025.³⁵ Mediation proved unsuccessful as the it did not occur.

On November 10, 2025, the Court held a teleconference where the parties met to discuss next steps with regards to Petitioner's Motion to Compel and Motion for Protective Order.³⁶ The Court ordered Respondent to file a Response Brief to Petitioner's Motion to Compel on or before December 12, 2025, and for Petitioner to file a Reply Brief to Respondent's Response on or before January 5, 2026.³⁷

On December 12, 2025, Respondent filed her Response in Opposition to Petitioner's Motion to Compel discovery responses and production of documents.³⁸ Respondent argues that she did not waive the attorney client privilege or work product doctrine, as she appropriately raised that objection and a general objection

³⁴ Pet'r Mot. to Compel Disc., D.I. 38. at ¶ 15–19.

³⁵ Minute Order, D.I. 40.

³⁶ Minute Order, D.I. 50.

³⁷ Minute Order, D.I. 51.

³⁸ Resp't Resp. to Mot. to Compel Disc., D.I. 54.

is a sufficient and adequate response.³⁹ Respondent further argued that she did not make communication with her 2006 real estate counsel “at issue” as she “merely acknowledged” the communication rather than injected to support a claim or defense.⁴⁰

On January 5, 2026, Petitioner filed his Reply in Support of his Motion to Compel. He argues that the Court should grant his Motion as Respondent fails to observe discovery rules and has prejudiced Petitioner and the administration of justice⁴¹ The Court held oral argument on the Motions on January 15, 2025 and the decision is as follows:

III. ANALYSIS

A. Petitioner’s Motion to Compel is GRANTED.

The issue before the Court is whether to grant Petitioner’s Motion to Compel discovery responses. “[B]oilerplate, generalized objections’ are ‘inadequate and tantamount to not making any objection at all.’”⁴² The burden of establishing documents as privileged rests on the party asserting the privilege⁴³ and it is

³⁹ Resp’t Resp. to Mot. to Compel Disc., D.I. 54 ¶ 1.

⁴⁰ *Id.* at ¶ 2.

⁴¹ Pet’r Resp. to Mot. to Compel Disc., D.I. 56.

⁴² *Wright v. SLWM, LLC*, 341 A.3d 551, 560 (Del. Ch. 2025) (citing *In re Oxbow Carbon LLC Unitholder Litig.*, 2017 WL 959396, at *2 (Del. Ch. Mar. 13, 2017)); *See also In re ExamWorks Grp., Inc. S’holder Appraisal Litig.*, 2018 WL 1008439, at *12 (Del. Ch. Feb. 21, 2018). An improperly asserted claim of privilege is no claim of privilege at all. *Id.*

⁴³ *Mechel Bluestone, Inc. v. James C. Just. Companies, Inc.*, 2014 WL 7011195, at *3–4 (Del. Ch. Dec. 12, 2014).

insufficient to make a general assertion of privilege or work product.⁴⁴ Respondent must have “endeavored in good faith to provide an adequate description of the privileged information in the first instance.”⁴⁵ To meet the burden of asserting a claim of privilege, a party ordinarily produces a privilege log.⁴⁶ Within a privilege log, a party must provide “sufficient facts as to bring the identified and described document within the narrow confines of the privilege.”⁴⁷ The purpose of a privilege log is to “provide sufficient information to enable the adversary to assess the privilege claim and decide whether to mount a challenge.”⁴⁸ In the present matter, Respondent has failed to adequately assert the attorney-client privilege and work product exception by only making a general, boilerplate objection and failing to produce a privilege log asserting, with specificity⁴⁹, what documents are privileged and the basis for the privilege. Respondent’s actions have resulted in a waiver of the attorney-client privilege and work product doctrine. Additionally, Respondent has made communications with her 2006 real estate counsel “at issue” in this matter and

⁴⁴ *Wright*, 341 A.3d 551, 560 (Del. Ch. 2025) (citing *Oxbow*, 2017 WL 959396, at *2).

⁴⁵ *Principal Growth Strategies, LLC v. AGH Parent LLC*, 2025 WL 3438298, at *13–15 (Del. Ch. Nov. 28, 2025); *accord*. *Bruckel v. TAUC Holdings, LLC*, 2023 WL 4583575, at *10 (Del. Ch. July 17, 2023).

⁴⁶ *Mechel Bluestone*, 2014 WL 7011195, at *4. *See also* *Wright*, 341 A.3d 551, 567-8.

⁴⁷ *Mechel Bluestone*, 2014 WL 7011195, at *3–4 (citing *Int'l Paper Co. v. Fibreboard Corp.*, 63 F.R.D. 88, 94 (D.Del.1974) (emphasis in original)); *accord* *Reese v. Klair*, 1985 WL 21127, at *5 (Del. Ch. Feb. 20, 1985).

⁴⁸ *In re ExamWorks*, 2018 WL 1008439, at *12.

⁴⁹ *Wright*, 341 A.3d 551, 559–60; *Mechel Bluestone*, 2014 WL 7011195, at *3–4.

thus also waived attorney-client privilege and work product doctrine under that exception. The Motion to Compel is GRANTED.

**1. Respondent waived the Attorney-Client Privilege by
Effective At-Issue Waiver.**

“Discovery is subject to the exercise of this Court’s sound discretion.”⁵⁰ The discovery process should involve the judge as little as possible.⁵¹ Pretrial discovery rules are to “be afforded broad and liberal treatment.”⁵² Under Court of Chancery Rule 34(b), there is an obligation to meet and confer with opposing counsel before filing a discovery related motion.⁵³ Delaware lawyers have an obligation to avoid unnecessary cost and delay, including a duty to meet and confer in good faith, to resolve differences.⁵⁴ “Boilerplate objections are unfair to the requesting party, because they fail to inform the requesting party why its request is specifically

⁵⁰ *Dann v. Chrysler Corp.*, 166 A.2d 431, 439 (Del. Ch. 1960).

⁵¹ *Re: Amirsaleh v. Bd. of Trade of New York*, 2008 WL 241616 at *1 (Del. Ch. Jan. 17, 2008).

⁵² *Mechel Bluestone*, 2014 WL 7011195, at *4 (quoting *Levy v. Stern*, 687 A.2d 573 (Del. 1996)(TABLE)).

⁵³ *An v. Archblock, Inc.*, 2025 WL 1024661, at *1 n.19 (Del. Ch. Apr. 4, 2025); see Del. Ch. Ct. R. 34(b).

⁵⁴ See Lawyers' Rules of Prof'l Conduct R. 3.2.; see also *Danenburg v. Fittracks, Inc.*, 58 A.3d 991, 1002-1003 (Del. Ch. 2012); *Tafeen v. Homestore, Inc.*, 2004 WL 1367005 *1 (Del. Ch. June 15, 2004); *Wright v. SLWM, LLC*, 341 A.3d 551, 566-67; *In re ExamWorks Grp., Inc.*, 2018 WL 1008439, at *6 (“Attorneys shirk their obligations to the court and make matters worse when they fail to communicate with the other side, allow problems to escalate, and miss critical deadlines.”).

objectionable.”⁵⁵ This may render it impossible for parties to meet confer to resolve discovery issues before seeking relief from the Court.

Objections to discovery are generally not sustained unless there have been clear abuses in the discovery process.⁵⁶ If “a party fails to answer an interrogatory... or... fails to produce documents... the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection or production in accordance with the request.”⁵⁷

The party asserting the attorney-client privilege and work product doctrine bears the burden of establishing that otherwise discoverable information is protected by privilege.⁵⁸ A subject communication is protected by the privilege if made for the purpose of further obtaining legal representation.⁵⁹ A client needs to be able to speak freely for his attorney to adequately represent his interests.⁶⁰ The court must weigh the discovery concerns against the valid policy considerations of encouraging “full and frank communication between attorneys and their clients.”⁶¹ For a communication to be protected by the attorney-client privilege, it must be asserted

⁵⁵ *Wright*, 341 A.3d 551, 560.

⁵⁶ *In re: Oxbow Carbon*, 2017 WL 959396, at *2.

⁵⁷ Del. Ch. Ct. R. 37(a)(2).

⁵⁸ *Mechel Bluestone*, 2014 WL 7011195, at *4. *See also Wright*, 341 A.3d 551, 561; *In re Oracle Corp. Derivative Litig.*, 2020 WL 3867407, at n. 60 (Del. Ch. July 9, 2020).

⁵⁹ D.R.E. 502(a)(2).

⁶⁰ *Riggs Nat. Bank of Washington, D.C. v. Zimmer*, 355 A.2d 709, 713 (Del. Ch. 1976).

⁶¹ *Balin v. Amerimar Realty Co.*, 1995 WL 170421, at *7 (Del. Ch. Apr. 10, 1995)(citing *Upjohn Co. v. United States*, 449 U.S. 3823, 389 (1981)).

by the client, the communication was with an attorney, and the communication occurred in confidence, between the client and counsel, for the purpose of obtaining legal services.⁶²

Work product is divided into two categories: factual work product and opinion work product.⁶³ Opinion work product substantively contains materials such as an attorney's mental impressions, legal theories, and conclusions.⁶⁴ As such, in contrast to attorney-client privilege, the privilege of the work product doctrine rests with the attorney, providing only qualified immunity from disclosure.⁶⁵ To assert the privilege of work product, the materials must be written specifically in preparation of anticipated litigation, as "documents prepared only in the ordinary course of business are not within the purview of Rule 26(b)(3)."⁶⁶ Furthermore, "a party cannot merely recite 'in anticipation of litigation' as a formulaic set of magic words... [but they] must identify the specific litigation that forms the basis of the work product claim."⁶⁷ For example, where there is a privilege log it must identify the litigation for which the work product is being contemplated.⁶⁸ Otherwise, the protection does not apply.⁶⁹

⁶² *Texaco, Inc. v. Phoenix Steel Corp.*, 264 A.2d 523, 524 (Del. Ch. 1970).

⁶³ *Clausen v. Nat'l Grange Mut. Ins. Co.*, 730 A.2d 133, 140 (Del. Super. Ct. 1997)

⁶⁴ *Id.*

⁶⁵ *Id.* at 138-40.

⁶⁶ *Id.* at 140.

⁶⁷ *Principal Growth Strategies, LLC*, 2025 WL 3438298, at *25 (Del. Ch. Nov. 28, 2025).

⁶⁸ *Id.*

⁶⁹ *Id.*

Under Court of Chancery Rule 26(b)(3), non-opinion work product is discoverable where there is a “substantial need of the materials in the preparation of the party’s case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means.”⁷⁰

When asserting a privilege in response to a discovery request, the party asserting the privilege is to collect documents and then make a judgment call as to whether the documents are protected under privilege.⁷¹ Best practice in Delaware includes a well-informed and careful compilation of documents that are to be determined privileged through a privilege log.⁷² Counsel is required to provide “precise and certain reasons for maintaining the privilege of the requested documents.”⁷³ Inaccurate or insufficient descriptions can be considered privilege waivers, thus requiring the document to be produced.⁷⁴ Likewise, documents that contain a mixture of business and legal advice are to be produced with the legal advice redacted.⁷⁵

So long as the party seeking the privilege makes an effort, the Court will not impose a blanket waiver of privilege.⁷⁶ The party seeking the privilege must list the

⁷⁰ *Principal Growth Strategies, LLC*, 2025 WL 3438298, at *26.

⁷¹ *Mechel Bluestone*, 2014 WL 7011195, at *7.

⁷² *Id.*

⁷³ *Id.* at *9.

⁷⁴ *Id.* at *10.

⁷⁵ *Id.* at *6.

⁷⁶ *Id.* at *8.

names of the documents, the names of all parties to each document, and a brief description of why the information is privileged.⁷⁷

Redactions are a valuable tool that enables a party to produce a document that contains privileged information while still allowing discovery to continue.⁷⁸

Redactions of a document serve as a necessary means of balancing competing and important interests.⁷⁹ Redaction logs often accompany privilege logs, unless the parties mutually agree to a less burdensome arrangement.⁸⁰ A party that falls substantially short of the well-established requirements for asserting a privilege are considered to have waived the privilege.⁸¹

The attorney-client privilege can be waived either voluntarily or implicitly.⁸² At-issue exception to the attorney-client privilege is a specific waiver where a party either injects the communications themselves into litigation, or if the party injects an issue into litigation, where a resolution cannot be reached without examining the communications.⁸³ This prevents the party asserting the attorney-client privilege from using it both offensively as a sword, and defensively as a shield.⁸⁴ In Delaware,

⁷⁷ *Mechel Bluestone*, 2014 WL 7011195, at *4.

⁷⁸ *Id.* at *8.

⁷⁹ *Tenneco Auto. Inc. v. El Paso Corp.*, 2001 WL 1456487, at *5 (Del. Ch. Nov. 7, 2001).

⁸⁰ *TCV VI, L.P. v. TradingScreen, Inc.*, 2015 WL 5674874, at *8 (Del. Ch. Sept. 25, 2015).

⁸¹ *Mechel Bluestone*, 2014 WL 7011195, at *6.

⁸² *TCV VI, L.P.*, 2015 WL 5674874, at *2.

⁸³ *Re: Amirsaleh*, 2008 WL 241616, at *3.

⁸⁴ *Id.* (citing *Ashmore v. Metrica Corp.*, 2007 WL 1464541, at *1 (Del. Ch. May 11, 2007)).

“a party cannot take a position in litigation and then erect the attorney-client privilege in order to shield itself from discovery by an adverse party who challenges that position.”⁸⁵

The Court has discretion to order the disclosure of those communications in the interest of fairness.⁸⁶ The Court will not allow the party asserting the privilege to use it as both a shield from discovery, and as a sword in litigation.⁸⁷ The fairness standard is fluid and provides the Court discretion to expand and contract the scope of the waiver as needed.⁸⁸

Furthermore, the more relevant communication is to a present litigation matter, the greater the likelihood that the communication will be discoverable. Communication considered to be within the scope of legal representation in one case might not apply similarly in another matter.⁸⁹

In this matter, the parties were unable to meet and confer to discuss discovery deficiencies because Respondent not only made general, boilerplate objections but also failed to produce a privilege log which would enable Petitioner to ascertain why the requested documents or responses are specifically objectionable. At oral

⁸⁵ *Grunstein v. Silva*, 2012 WL 5868896, at *1 (Del. Ch. Nov. 20, 2012).

⁸⁶ *TCV VI, L.P.*, 2015 WL 5674874, at *2.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Grunstein*, 2012 WL 5868896, at *1.

argument, Respondent indicated that she had still not produced a privilege log and expressed reluctance at the possibility of producing a privilege log if so ordered by the Court. Yet, Respondent offered no alternative to cure any possible waiver other than to suggest the Court should receive the documents and review them *in camera* to determine which documents should be produced. Both the boilerplate objection causing the impossibility of a meet-and-confer the alternative solution creates a drain on judicial resources, which could have been avoided had Respondent complied with general discovery requirements and obligations, specifically by producing a privilege log.⁹⁰

Here, Respondent asserts attorney-client privilege and work product doctrine over documents and communications concerning the 2006 real estate purchase of her parcel.⁹¹ The question before the Court is whether there is a valid attorney-client privilege and work product protection for documents created for and communications relating to the real estate transaction, and if so, whether Respondent

⁹⁰ “And they waste judicial resources, because courts end up having to rule on the boilerplate objections themselves or attempt to assess the validity of responses laden with objections. *Wright v. SLMW, LLC*, 341 A.3d 551 (citing *Weatherspoon v. 739 Iberville, LLC*, 2022 WL 824618, at *5-6 (E.D. La. Mar. 18, 2022) (“A judge should not have to wade through a sea of boilerplate objections only to discover that the objections did not represent the party's actual position but were merely used to make the discovery process more difficult.”).

⁹¹ Resp't Obj. to Notice to Serve Subp., D.I. 14; Resp't Resp. in Opp. to Mot. to Compel, D.I. 54, ¶12-17; Pet'r Mot. to Compel Disc., D.I. 38 ¶3-8.

waived that privilege via an at-issue waiver. The Court finds there exists an at-issue waiver of the attorney-client privilege and work product doctrine.

In response to the subpoena Petitioner served S&R, Respondent's real estate counsel in 2006, S&R objected to producing the title search, on the grounds of the work product doctrine, any correspondence with the lender and the purchase and sale agreement, on the grounds of privilege due to containing 'confidential financial information', and any correspondence between or among the parties or their counsel, on the grounds of attorney-client privilege.⁹² In response to Petitioner's First Set of Interrogatories and First Set of Requests for the Production of Documents ("Petitioner's Request for Documents"), Respondent claimed to have "no responsive, non-privileged materials at this time, other than the deeds and record plan" which relate or refer to the conveyance of any interest in Respondent's property.⁹³ Respondent did not reference the documents described in S&R's response.

Prior to the stay of the action on June 10, 2025 and after settlement efforts proved unsuccessful, Respondent had ample opportunity to create a privilege log for the communications and documents for the 2006 real estate transaction to which she and S&R had raised objections. Yet, no such privilege log was created. At oral

⁹² Pet'r Mot. to Compel Disc., D.I. 38 ¶3-5.

⁹³ *Id.* at ¶6-8.

argument, Respondent claimed the Court should not order the documents produced because the requested documents are not relevant. However, Petitioner cannot challenge the relevance of documents if Respondent is unwilling to provide a privilege log that allows. Respondent also blamed the stays in litigation and Respondent's ongoing health concerns for the lack of a privilege log, none of which amount to an appropriate justification for the delay and failure to provide one. While a privilege log can be a cumbersome task, providing a privilege log late, let alone not providing one at all, can amount to a waiver.⁹⁴ By not providing Petitioner with a privilege log regarding the 2006 real estate transaction documents (in addition to the other documents objected to on grounds of privilege), Respondent has failed to comply with her discovery obligations.

Additionally, Respondent had the ability to obtain the objected to documents from S&R in order to prepare her privilege log. In fact, Respondent admitted at oral argument that such documents were already in her possession. But no valid reason was supplied for why there was no privilege log produced.

In addition to Respondent's failure to producing a privilege log amounting, Respondent made the 2006 real estate transaction "at issue" in this matter, thereby making any documents relating thereto discoverable. Respondent raised the real

⁹⁴ *In re ExamWorks*, 2018 WL 10008439, at *11 ("Privilege logs are a part of discovery. Producing a timely log is part of a party's obligation when asserting privilege.").

estate transaction as an issue in various pleadings, including her Amended Answer and Counterclaim,⁹⁵ and in the opening and reply briefs to her Motion to Dismiss.⁹⁶ It was further made “at issue” through Respondent’s presentation at oral argument on the Petitioner’s Motion to Compel. Respondent’s claim that she was merely acknowledging the existence of the cross-easement in 2006 and was not making it “at issue” is unconvincing and unconvincing. As such, it is clear these documents are now a central component of this litigation and are essential to move this case towards trial in a timely manner. Respondent cannot be allowed to assert the privilege over the documents while the Respondent has made the transaction an issue in this litigation. The 2006 real estate documents and related communications have become at-issue in this matter and thus must be produced.

While the Court is sympathetic to Respondent’s confidentiality concerns, the attorney-client privilege over these documents in general has been deemed waived as the 2006 real estate transaction documents and communications are now “at issue.” Respondent must produce the 2006 real estate documents but may redact any sensitive financial information. An accompanying redaction log must also be

⁹⁵ Resp’t Am. Answ., D.I. 13, ¶ 32.

⁹⁶ Resp’t Op. Br. on Resp’t Mot. to Dismiss, D.I. 27, ¶ 18; Resp’t Reply Br. on Resp’t Mot. to Dismiss, D.I. 35, ¶ 6.

provided. The Court will grant Respondent until March 6, 2026 to provide all documents relating to the 2006 real estate transaction as requested by Petitioner.

2. The Court will apply a full waiver for documents claimed as privileged by Respondent.

“Where counsel makes some effort, the Court will not impose a blanket waiver and instead only waive privilege as to the deficient entries.”⁹⁷ Where there is “no good faith attempt to describe documents sufficiently to allow an examination of the basis for the claim of privilege,” they must disclose those documents.⁹⁸ On April 22, 2024, Petitioner served S&R with a subpoena, requesting documents relating to Respondent’s 2006 purchase of Respondent’s property.⁹⁹ Respondent objected to the subpoena “to the extent any documents or information is subject to attorney-client privilege.”¹⁰⁰ Petitioner claims that while S&R provided a limited response, they did not produce the title search, any correspondence with the lender, any correspondence between or among the parties or counsel, and the purchase and sale agreement.¹⁰¹ These documents were not produced on the grounds of work product and privilege due to containing “confidential financial information”.¹⁰² On

⁹⁷ *Bruckel v. TAUC Holdings, LLC*, 2023 WL 4583575, at *10 (Del. Ch. July 17, 2023).

⁹⁸ *Klig v. Deloitte LLP*, 2010 WL 3489735, at *10 (Del. Ch. Sept. 7, 2010).

⁹⁹ Pet’r Mot. to Compel Disc., D.I. 38.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

January 9, 2025, Petitioner requested Respondent produce: “(a) all Documents (including closing documents) relating to or referring to the conveyance of any interest in Respondent’s Property; and (b) the date when Respondent first became aware of the Cross Easement.”¹⁰³

Through the Motion to Compel, Petitioner requests the Court order Respondent produce all documents of “subject matter” relation, documents actually withheld, documents within the same scope, and documents responsive to the requests for “all Documents (including closing documents) relating to or referring to the conveyance of any interest in Respondent’s property; and the date when Respondent first became aware of the cross easement.”¹⁰⁴ Respondent replied, “[t]o the best of Respondent’s knowledge . . . Respondent is aware of no responsive, non-privileged materials at this time, other than the deeds and record plan. . . . Respondent became aware of the cross easement . . . after consulting with her counsel in this case.”¹⁰⁵ Respondent did not speak to the documents referenced by S&R.

The statement that the documents are considered work product and privileged due to containing “financial information” does not meet the standard to assert a claim of privilege, particularly given the lack of a privilege log further supplementing why

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

and how the documents are to be considered work product and privileged. Boilerplate objections of a broad and generalized nature which make “no effort to explain how the request is objectionable and do not state how the responding party interprets the request” are not sufficient.¹⁰⁶

Where a party has seemingly made a conscious effort not to describe documents and meet the requirements of a privilege log, the Court has previously found waiver of privilege and required the production of all documents.¹⁰⁷ Fairness mandates that Petitioner should have had the opportunity to evaluate Respondent’s assertions of privilege by way of a privilege log, make timely challenges, and incorporate the resulting documents in discovery.¹⁰⁸ Blanket waiver of the attorney-client privilege and work product doctrine is an extreme remedy.¹⁰⁹ However, as Respondent did not produce a privilege log at all, it is difficult to determine the extent to which Respondent made a conscious effort not to provide any descriptions and assertions of privileged documents or would have submitted substantively similar deficient entries¹¹⁰ had a privilege log been submitted. At no point since the Petitioner filed his Motion to Compel has Respondent attempted to provide a

¹⁰⁶ *Wright v. SLWM, LLC*, 341 A.3d 551, 559–60 (Del. Ch. 2025).

¹⁰⁷ *Twitter, Inc. v. Musk*, 2022 WL 4397186, at *1–2 (Del. Ch. Sept. 23, 2022) (referring to *Klig v. Deloitte LLP*, 2010 WL 3489735 (Del. Ch. Sept. 7, 2010)).

¹⁰⁸ *In re ExamWorks*, 2018 WL 1008439, at *12.

¹⁰⁹ *Twitter, Inc. v. Musk*, 2022 WL 4397186, at *1–2.

¹¹⁰ *Principal Growth Strategies, LLC*, 2025 WL 3438298, at *15 (Del. Ch. Nov. 28, 2025).

privilege log, causing the Court concern that the non-disclosure and assertion of privilege and work product is misplaced and is an intentional effort to withhold discoverable information

The Court looks towards the doctrine of “fairness and discouraging use of the attorney-client privilege as a litigation weapon.”¹¹¹ As such, the Court grants Petitioner’s request for a general waiver of the attorney-client privilege and work product doctrine as it relates to the first set of interrogatories, request for production of documents, and subpoena sent to S&R. Respondent is required to produce documents responsive in relation or reference to the conveyance of any interest in Respondent’s property and the date when Respondent first became aware of the cross easement; and documents of subject matter relation on or before March 6, 2026. Respondent is also to obtain any documents and communications from S&R that were objected to on the grounds of attorney-client privilege, work product, and confidentiality and provide those to Petitioner on or before March 6, 2026. The Motion to Compel is granted.

B. Petitioner’s Motion for Protective Order is GRANTED.

The second issue before the Court is whether to grant Petitioner’s Motion for Protective Order. At oral argument on January 16, 2026, Respondent’s counsel

¹¹¹ *Citadel Holding Corp. v. Roven*, 603 A.2d 818, 825 (Del. 1992).

indicated his client had not signed a stipulation for protective order as they were awaiting an outcome on Petitioner's Motion to Compel. Respondent did not present an argument as to why the Court should not grant Petitioner's Motion for Protective Order. There exists no basis which would support the Court denying that Motion. The Motion for Protective Order is GRANTED. The Court will sign the proposed order for Petitioner's Motion for a Protective Order.

IV. CONCLUSION

For the reasons explained above, I grant the Petitioner's Motion to Compel and grant the Petitioner's Motion for a Protective Order. Respondent has waived the attorney-client privilege and work product doctrine and is required to produce all responsive documents, including documents which would ordinarily not be produced under those privileges.

Respondent shall provide Petitioner with all documents requested in his first set of interrogatories and request for production of documents on or before March 6, 2026. Respondent shall also provide all documents responsive to the subpoena issued by Petitioner to S&R on or before March 6, 2026. If Respondent is unable to obtain all responsive documents from S&R, Respondent is to direct S&R to produce those documents, including, but not limited to, all communications relating to the 2006 real estate transaction, directly to Petitioner on or before March 6, 2026. Should Respondent believe certain financial information must be redacted from the

documents to be produced, Respondent may redact those documents and provide a redaction log in addition to the supplemented discovery within on or before March 6, 2026.

This is a report pursuant to Court of Chancery Rule 144. All exceptions to interim reports are stayed pending a final report adjudicating the case on the merits absent leave of the magistrate.

IT IS SO ORDERED.

Respectfully,
/s/ Jessie R. Benavides
Magistrate in Chancery