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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge
Case No.: 2022-CP-26-06296

Appellate Case No. 2024-000786

Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall .....Respondents

v.

William Bertram von Herrmann and The Von Herrmann Law Firm. ..... Appellants.

Appellants' Memorandum in Opposition to Respondents' Motion to Dismiss

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Introduction

This appeal involves a claim arising under the South Carolina Homeland Security Act (the Act) against an attorney for actions taken in the scope of the attorney's representation of a client in litigation, raising the novel issue of whether our common law attorney-immunity defense applies to shield an attorney against liability for claims under the Act for the disclosure or use of allegedly intercepted electronic communications. The defense does apply to claims under the Act. Appellants raised this novel issue to the circuit court via motion to dismiss, but the circuit court disagreed and denied that aspect of the motion. Yet the circuit court went further, ruling that Appellants "cannot assert the defense going forward." This additional ruling is why immediate appeal is required and why this Court must deny Respondents' Motion to Dismiss.

Background

Respondents Anna, Bryan, and Katherine Coggeshall filed suit against Attorney William Bertram von Herrmann and his law firm, The Von Herrmann Law Firm, asserting liability for the use and disclosure of Respondents' electronic communications that Mr. von Herrmann was provided by his client, Justin Fulmer. Respondents assert Appellants used the electronic communications to bring a lawsuit against the Respondents on Mr. Fulmer's behalf (Fulmer Action). Respondents allege Mr. Fulmer intercepted the electronic communications and Appellants, with knowledge the information was "unlawfully obtained", disseminated the material. This Court addressed the interception in the Fulmer Action. ***See* Resp. MTD, Ex. 3**. The Fulmer Action was tried to verdict in December 2023, and is being appealed.

In the present lawsuit, Appellants originally asserted claims for violation of the South Carolina Homeland Security Act (S.C. Code Ann. § 17-30-10, *et seq.*), the Computer Fraud and Abuse Act (18 U.S.C. § 1030), and Invasion of Privacy for publicizing private affairs and for wrongful intrusion and outrage. Respondents removed the case to federal court based on the federal claim and moved to dismiss based on the defense of attorney immunity. Appellants quickly voluntarily dismissed the federal claim to deprive the federal court of jurisdiction. As a result, the federal court remanded the case and did not rule on the motion to dismiss.

On remand, the circuit court granted in part and denied in part Appellants' motion to dismiss. **Ex. A**. The court ruled that attorney immunity barred Respondents' claims for Invasion of Privacy. The court noted that the Amended Complaint made clear Attorney von Herrmann's allegedly wrongful actions took place while he was representing Mr. Fulmer. Because the Amended Complaint did not allege Respondents breached an independent duty to Appellants, or

that Respondents acted in their own interest and outside the scope of representing Mr. Fulmer, Respondents were protected by the attorney-immunity defense. **Ex. A.**

However, the court found, as a matter of law on a novel issue, that the common law attorney-immunity defense did not apply to claims under the South Carolina Homeland Security Act. The court denied Respondents' motion to dismiss the Homeland Security Act claim, and found Respondents "cannot assert the defense going forward." Respondents timely moved for reconsideration, but the court denied that motion. ***See*** **Exs. B & C**.

Preventing Appellants from asserting and litigating the attorney immunity defense is precisely why an immediate appeal is necessary. In their notice of appeal, Appellants preemptively briefed the issue of appealability. Respondents moved to dismiss the appeal on June 3, 2024, arguing that the orders are not immediately appealable. Appellants submit this response to Respondents' motion to dismiss.

Argument

As a threshold matter, it is not apparent from Respondents' motion to dismiss whether they paid the $50 filing fee required under Rule 240(d) of the South Carolina Appellate Court Rules. If they did not, this Court could find Respondents have abandoned their motion. *See* Rule 240(g), SCACR ("Failure of the moving party to perform any act required by this Rule may be deemed an abandonment of the motion or petition."). If Respondents have paid, or this Court allows them to pay, this Court should deny the motion. For the Court's ease of reference, Appellants include below the arguments from the Notice of Appeal on appealability. Appellants then address the arguments in Respondents' motion.

I. The Circuit Court's orders are immediately appealable because they involve the merits and have the effect of striking Respondents' defense of attorney immunity.

The right to an appeal is governed by statute. Section 14-3-330(1) of the South Carolina Code permits appeal of "[a]ny intermediate judgment, order or decree in a law case involving the merits." Section 14-3-330(2)(c) also permits immediate appeal of an "[a]n order affecting a substantial right made in an action when such order . . . (c) strikes out an answer or any part thereof or any pleading in any action." An appeal can arise under either or both. *Link v. Sch. Dist. of Pickens Cnty.*, 302 S.C. 1, 6, 393 S.E.2d 176, 178 (1990).

"An order involves the merits under [section]14-3-330(1) when it finally determines some substantial matter forming the whole or part of a cause of action or defense." *Stone v. Thompson*, 426 S.C. 291, 294, 826 S.E.2d 868, 869-70 (2019) (finding that order determining couple were common-law married was immediately appealable despite the remaining claims for divorce and equitable distribution because the determination of marriage was a substantial part of the causes of action and defenses); *Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988).

"An order affects a substantial right by striking a pleading if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial." *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011). In determining whether an order "strikes" a material issue from the case, the court must examine "the effect of the order, not the label given to the motion or to the order granting it." *Id.* at 303, 705 S.E.2d at 479. "If the circuit court errs in striking out any material allegations of a good cause of action or good defense, *it is impossible to remedy it in the course of the trial*, because the evidence and the issues submitted to the jury cannot be extended beyond the issues made by the pleading, and on appeal

from the final judgment this court could not say there was error of law in confining the evidence and charge to the pleadings." *Id.* at 303-04, 705 S.E.2d at 479 (emphasis added) (quoting *Bowden v. Powell*, 194 S.C. 482, 484, 10 S.E.2d 8, 9 (1940)). Ultimately, appealability is determined on a case-by-case basis. *Stone*, 426 S.C. at 295, 826 S.E.2d at 870.

No court has decided the appealability of an order denying a motion to dismiss based on the attorney-immunity defense under *Gaar v. N. Myrtle Beach Realty Co*. In addition, no appellate court has addressed the common law attorney-immunity defense's application under the South Carolina Homeland Security Act. As a general matter, denials of motions to dismiss are usually not immediately appealable. And some courts have held that denials of motions to dismiss on other immunity claims are not immediately appealable. *Brown v. Cnty. of Berkeley*, 366 S.C. 354, 361, 622 S.E.2d 533, 537 (2005) (finding denial of individual county council members' motion to dismiss based on absolute immunity was not immediately appealable).

However, orders denying motions to dismiss based on immunity claims are usually not appealable because the order denying the motion to dismiss is not supposed to finally decide anything about a case and the litigants are free to raise the issues at a later point in the case. *Id.* ("Furthermore, the trial court's denial of the individual council members' motion to dismiss does not preclude the individual council members from raising the issues presented in their motion at a later point in the case."); *see Frazier v. Badger*, 361 S.C. 94, 101, 603 S.E.2d 587, 590 (2004) (noting immunity under the Tort Claims Act must be proven at trial because it is an affirmative defense). These decisions are based on the principle the "denial of a Rule 12(b)(6) motion does not establish the law of the case nor does it preclude a party from raising the issue at a later point or points in the case." *Bessinger v. Bi-Lo, Inc.*, 366 S.C. 426, 431, 622 S.E.2d 564, 567 (Ct. App. 2005).

Considering that appealability is determined on a case-by-case basis and the court must examine the effect of the order appealed from, this Court must examine the effect of the order denying attorney-immunity's application to claims under the Homeland Security Act to determine appealability.

Here, the order is immediately appealable because it involves the merits and has the effect of striking a good defense. The order explicitly states that Appellants "cannot assert the [attorney-immunity] defense going forward." Because it prevents Appellants from asserting the attorney-immunity defense during litigation, the order has "finally determined" a substantial matter forming the whole or part of a defense and, therefore, "involves the merits" and is immediately appealable under 14-3-330(1). *See Stone*, 426 S.C. at 294, 826 S.E.2d at 869-70. In addition, because the order has the effect of striking a defense and removing the material issue from the case, it affects a substantial right, prevents the issue from being litigated on the merits and, therefore, is appealable under 14-3-330(2)(c). As stated in *Thorton*, the court's ruling that Respondents cannot assert the defense going forward is impossible to remedy in the course of a trial in this case because the evidence and issues submitted to the jury cannot extend beyond the issues in the pleadings. *Thorton*, 391 S.C. at 303-04, 705 S.E.2d at 479. This deprives the appellate court from being able to evaluate on appeal after trial if there was an error of law confining the evidence and jury charges to the pleadings, which would not include attorney-immunity because the court explicitly stated Respondents cannot assert the defense moving forward. *Id.* Because Appellants cannot assert the defense, they are prevented from raising the issue at a later point in time in the case. Therefore, the reasoning in *Brown* is not applicable because the council members could continue to litigate the issue of their claimed immunity. Further, the circuit court's order purports to do exactly what denials of motions to dismiss are not supposed to do—it establishes the law of the case and

explicitly precludes Appellants from raising the issue at a later point in the case. The order expressly forecloses Appellants from continuing to litigate attorney immunity.

Moreover, this case presents novel issues on the interplay of attorney immunity and liability under the South Carolina Homeland Security Act. Respondents are attempting to impose liability on Appellants for quintessential attorney activities—bringing a lawsuit on behalf of a client and engaging in discovery. Because the claim relates to attorney activities, discovery and litigation will include getting into attorney-client privileged and work-product doctrine protected material generated in the underlying Fulmer Case—which is currently on appeal before this Court. The novelty of the issues and the dangers of discovery intruding upon privileges essential to the functioning of our justice system warrants finding the orders are immediately appealable and addressing the merits.

II. Respondents do not address the language in the order precluding Appellants from continuing to litigate attorney immunity and their motion demonstrates that this Court should address the substance of the Court's orders.

Respondents do not address the primary reason that the order is appealable: the language precludes Appellants from litigating attorney immunity. Instead, Respondents argue that the circuit court's ruling denying the motion to dismiss is not immediately appealable under section 14-3-330(1) because it "in no way represented or signaled the ultimate conclusion that Appellants did, in fact, violate" the Act. **Resp. MTD, 7**. This is not the standard for appeals under section 14-3-330(1). An order involves the merits under 14-3-330(1) when it finally determines some substantial matter forming the whole or part of a cause of action or defense. *See Stone*, 426 S.C. at 294, 826 S.E.2d at 869-70. The standard is not that the order must determine the entirety of the action, otherwise it would be a final order and not "interlocutory." Further, Respondents argue in their motion that the circuit court came to the correct conclusion that attorney immunity does not

apply to claims under the Act. Certainly, the circuit court determining that the attorney immunity defense does not apply is a final determination on a matter forming the whole or part of a defense and is immediately appealable.

Respondent also argues that the order did not affect a substantial right of appellants because it did not strike an answer and, therefore, is not appealable under 330(2)(c). Respondents add that Appellants did not have a substantial right to use the text messages. **Resp. MTD, 7**. This is not the standard for appealability under section 14-3-330(2)(c). An order affects a substantial right under section 14-3-330(2)(c) when it has the effect of striking any material allegations of a good defense, making it impossible to remedy in the course of trial. *See Thorton*, 391 S.C. at 303-04, 705 S.E.2d at 479. By finding attorney immunity does not apply under the Act and preventing Appellants from litigating the issue in the course of trial, the order has the effect of striking the defense and it cannot be corrected during trial. Therefore, the orders are immediate appealable under section 14-3-330(2)(c).

Respondents' arguments for appealability rely on a determination that attorney immunity does not apply and should be construed as a waiver of Respondents' appealability argument or, at the very least, demonstrates that this Court must hear the appeal immediately.

Beginning at page seven of their motion, Respondents argue that Appellants do not have a substantial right to use the allegedly intercepted messages. Respondents then refer to this Court's order in the Fulmer case finding the messages were intercepted, and how the Act applies to any "person," which would include Appellants. Respondents state that because Appellants did not have a substantial right to utilize the messages, the orders denying application of attorney immunity are not immediately appealable. Respondents then spend five pages addressing why the common law attorney-immunity defense does not apply under the Act, analogizing to the Federal

Wiretap Act and various federal court cases addressing the application of state common law attorney-immunity defenses to claims under the Federal Wiretap Act. Respondents conclude that because attorney immunity is inapplicable to claims under the Act, the circuit court's orders do not infringe a substantial right under section 14-3-330(2)(c). **Resp. MTD, 13**.

Respondents' arguments should be construed as a waiver of the appealability issue or at least demonstrate this Court must hear the appeal now. Respondents' argument is that the order that determined "common law attorney immunity does not apply to claims under the Act" is interlocutory and not appealable because the order did not determine a substantial right, there being no substantial right because "attorney immunity does not apply to claims under the Act." In other words, Respondents are asking this Court to find that the order is not immediately appealable because attorney immunity does not apply to the Act. By asking this Court to address the merits of the underlying order on appeal to reach a decision on appealability, Respondents have waived arguments that the issue is not immediately appealable—it is a position inconsistent with the effect of the relief requested in their motion.

Even if there is no waiver, Respondents' arguments demonstrate that the Court must hear the appeal. If this Court were to address Respondents' arguments that the orders are not appealable because they do not affect a substantial right, this Court would have to evaluate and determine whether the appeal involves an order affecting a substantial right. According to Respondents, the appeal does not involve a substantial right because common law attorney immunity does not apply to claims under the Homeland Security Act. Thus, to determine whether the appeal should be dismissed, this Court must determine whether the common law attorney immunity defense applies to claims under the Act such that it would or would not be a substantial right. Although

Respondents' arguments generally miss the mark, Appellants agree that this Court should just go ahead and address the application of attorney immunity to claims under the Act.

Conclusion

This Court should deny Respondents' motion to dismiss because the orders are immediately appealable. The orders "involve the merits" because they prevent Appellants from asserting the attorney-immunity defense during litigation, finally determining a substantial matter forming the whole or part of a defense under section 14-3-330(1). Further, the orders are immediately appealable under section 14-3-330(2)(c) because they remove the material issue of attorney immunity from the case, and prevent Appellants from litigating the issue on the merits and seeking to correct errors in the order during or after trial.

Respondents' arguments to the contrary are unconvincing and, because their appealability arguments rely on this Court itself determining whether attorney immunity applies under the Act, this Court should deny the motion to dismiss and allow the appeal to continue so it can address this novel issue.

COPELAND, STAIR, VALZ & LOVELL, LLP

June 13, 2024.

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STATE OF SOUTH CAROLINA COUNTY OF HORRY Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall, Plaintiffs, vs. William Bertram von Herrmann and The Von Herrmann Law Firm, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-26-06296 **ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS**

This matter comes before the Court on Defendants' Motion to Dismiss Plaintiffs' claims for (1) violation of the South Carolina Homeland Security Act, (2) invasion of privacy – publicizing private affairs, and (3) invasion of privacy – wrongful intrusion and outrage. For the reasons explained below, this Court GRANTS the motion in part and dismisses both invasion of privacy causes of action but DENIES the motion with respect to the alleged violation of the South Carolina Homeland Security Act.

Background

Plaintiffs Anna, Bryan, and Katherine Coggeshall brought this lawsuit against Attorney William Bertram von Herrmann and his law firm, The Von Herrmann Law Firm, asserting liability for the use and disclosure of Plaintiffs' electronic communications that Mr. von Herrmann was provided by his client, Justin Fulmer.

Plaintiffs allege Mr. Fulmer illegally acquired Plaintiff Anna's iWatch, and accessed her and Plaintiffs Bryan and Katherine's electronic communications. Plaintiffs assert Mr. Fulmer "or his agent" copied the electronic communications, and Defendants printed them. They assert Defendants used the electronic communications to bring a lawsuit against the Plaintiffs on Mr. Fulmer's behalf (Fulmer Action). Plaintiffs allege Mr. Fulmer intercepted the electronic

communications and Defendants, with knowledge the information was "unlawfully obtained" disseminated the material. The Fulmer Action is still ongoing.

As a result of Defendants' actions, Plaintiffs brought this lawsuit in the Horry County Court of Common Pleas. Defendants removed the case to federal court because Plaintiffs' original complaint asserted a federal claim. Plaintiffs amended their complaint in federal court to remove the federal claim. Defendants moved to dismiss the amended complaint in federal court, Plaintiffs responded, and Defendants replied. Plaintiff also moved to remand the case back to state court. The federal court remanded the case to the Horry County Court of Common Pleas without deciding the motion to dismiss. This Court heard Defendants' Motion to Dismiss on August 14th, 2023.

Procedural Standard

When ruling on a Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP, "[t]he circuit court may dismiss a claim when the defendant demonstrates the plaintiff's 'failure to state facts sufficient to constitute a cause of action' in the pleadings filed with the court." *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 121, 634 S.E.2d 5, 7 (Ct. App. 2006). If, in viewing the complaint in the light most favorable to the plaintiff, the court determines the facts in the complaint are insufficient to entitle the plaintiff to the relief it seeks, the court should grant the motion. *Baird v. Charleston Co.*, 333 S.C. 519, 527, 511 S.E.2d, 69, 73 (1999). Dismissal at the pleading stage is warranted when a complaint against an attorney by a non-client fails to state facts sufficient to remove the attorney from the ambit of general immunity. *Hager v. McCabe, Trotter & Beverly, P.C.*, 435 S.C. 740, 747, 869 S.E.2d 886, 889 (Ct. App. 2022); *see also Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995).

Legal Analysis

Defendants argue Plaintiffs' claims should be dismissed based on the attorney-immunity doctrine. After considering Defendants' arguments in their motion and reply, Plaintiffs' response, and the arguments at the hearing, this Court finds the attorney-immunity doctrine shields Defendants from the invasion of privacy claims, but the defense does not apply to the alleged violation of the South Carolina Homeland Security Act.

Attorney-Immunity and Invasions of Privacy

Attorneys are immune from liability to a third party arising from the performance of their professional activities on behalf of and with the knowledge of the client. *Hager*, 435 S.C. at 746, 869 S.E.2d at 889; *see also Stiles*, 318 S.C. at 298, 457 S.E.2d at 602; *Gaar v. North Myrtle Beach Realty Co.*, 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986). Attorneys normally conduct litigation solely in their professional capacity and have no personal interest in the lawsuit. *Garr*, 287 S.C. at 529, 339 S.E.2d at 889. Even if the client has no probable cause to bring a lawsuit, the attorney who brings the lawsuit is not liable to the party sued if the attorney acts primarily to aid the client in obtaining an adjudication of the client's claim. *Id.* (citing *Restatement (Second) of Torts*, § 674 cmt. d. (1975)). An attorney is not liable to a third-party in giving the client poor advice. *Hager*, 435 S.C. at 747, 869 S.E.2d at 889. "The purpose of the doctrine of attorney immunity is to encourage zealous representation of clients without fear of lawsuits by disgruntled opposing parties." *Hunt v. Mortgage Electronic Registration*, 522 F. Supp. 2d 749, 758 (D.S.C. 2007).

Immunity will not shield an attorney, however, if in addition to representing the client, the attorney (a) breaches an independent duty to a third party, or (b) "acts in his own personal interest[] outside the scope of his representation of the client." *Stiles*, 318 S.C. at 300, 457 S.E.2d at 602. A complaint that fails to allege the lawyer acted in his own personal interest and

outside the scope of his representation of the client should be dismissed. *Hager*, 435 S.C. at 747, 869 S.E.2d at 889; *see also Stiles* 318 S.C. at 300, 457 S.E.2d at 602. The doctrine has barred many different common law claims against attorneys, including those for fraud, conversion, civil conspiracy, and malicious prosecution. *See, e.g.*, *Hager*, 435 S.C. at 747, 869 S.E.2d at 889 (fraud and conversion); *Stiles*, 318 S.C. at 300; 457 S.E.2d at 603 (civil conspiracy); *Gaar*, 339 S.E.2d at 889 (malicious prosecution).

This Court finds that Plaintiffs' claims for Invasion of Privacy are barred by the attorney-immunity defense. Attorney-immunity is a common law defense that has prevented common-law claims, such as civil conspiracy and malicious prosecution, when the attorney was acting with the client's knowledge and within scope of the representation. Taking the allegations of the amended complaint as true at the motion to dismiss stage, the amended complaint makes clear that the invasions of privacy took place while Defendants were representing Mr. Fulmer—alleging that Defendants used the communications to bring a lawsuit against Plaintiffs on Mr. Fulmer's behalf. The amended complaint is devoid of any allegations Defendants breached some independent duty to the Plaintiffs or acted in their own interests and outside the scope of their representation of Mr. Fulmer. This is precisely the scenario for which attorney immunity exists and Courts have relied upon to dismiss common law claims previously. Accordingly, this Court agrees with Defendants and DISMISSES with prejudice Plaintiffs' causes of action for (1) invasion of privacy – publicizing private affairs, and (2) invasion of privacy – wrongful intrusion and outrage.

Attorney Immunity and South Carolina Homeland Security Act (Act)

Defendants argue attorney immunity applies to the Act because the legislature enacts against the backdrop of common law and, pursuant to statutory interpretation rules of plain meaning and strict construction, the Act does not clearly and unambiguously change the common

law in a way that abrogates the attorney-immunity defense. Plaintiffs, on the other hand, argue that attorney-immunity does not apply because the Act does not expressly exempt attorneys from its application. Although this is a novel question in South Carolina, this Court agrees with Plaintiffs and finds the attorney-immunity defense does not apply to the Act.

The Act makes it a felony for any "person" to intentionally disclose to another person, or use, the contents of any electronic communication, "knowing or having reason to know that the information was obtained through the interception" of an electronic communication. *See* S.C. Code Ann. § 17-30-20(3) & (4). The Act creates a civil cause of action, stating that "[a]ny person whose . . . electronic communication is intercepted, disclosed, or used in violation of this chapter has a civil cause of action against any person or entity who intercepts, discloses, or uses . . . the communications." S.C. Code Ann. § 17-30-135(A). The statute creating the civil cause of action lists one defense: "A good faith reliance on a court order, subpoena, or request of an agent of the South Carolina Law Enforcement Division under [s]ection 17-30-95 constitutes a complete defense to any civil . . . action, other than an action for preliminary or equitable or declaratory relief." S.C. Code Ann. § 17-20-135(B). The statute is otherwise silent on the application of any defenses. Further, the Act explains in what circumstances the interception of an electronic communication is legal, section 17-30-35, and exempts the employees of the Federal Communications Commission and employees of providers of communications services in certain scenarios. *See* §§ 17-30-25, 17-30-35.

This Court finds that attorneys fall within the common meaning of "any person" as used in the Act and, therefore, the Act applies to attorneys. This Court finds that if the South Carolina legislature had intended to exempt attorneys from liability under the Act, it could have expressly included that group as it did employees of certain entities. Because the Act applies to attorneys and the legislature did not expressly exempt attorneys, this Court finds the common law

attorney-immunity defense does not apply to claims arising under the Act. Therefore, Defendants' Motion to Dismiss the claim under the Act is DENIED and Defendants cannot assert the defense going forward.

Conclusion

After considering the arguments and authorities cited by Defendants in their Motion to dismiss and reply, by Plaintiffs in response to the Motion to Dismiss, and the arguments at the hearing, it is ORDERED:

1. Defendants' Motion to Dismiss Plaintiffs' Amended Complaint is GRANTED as to the Plaintiffs' claims for (1) invasion of privacy – publicizing private affairs, and (2) invasion of privacy – wrongful intrusion and outrage, and such claims are hereby dismissed with prejudice; and

2. Defendants' Motion to Dismiss Plaintiffs' Amended Complaint is DENIED as to Plaintiffs' claim for violation of the South Carolina Homeland Security Act and Defendants cannot assert the attorney-immunity defense going forward.

SO ORDERED!

The Honorable Kristi F. Curtis
Fifteenth Judicial Circuit

[Electronic Signature Page Follows]

Horry Common Pleas

Case Caption: Anna Coggeshall , plaintiff, et al VS William Bertram Von Herrmann , defendant, et al

Case Number: 2022CP2606296

Type: Order/Dismissal

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

STATE OF SOUTH CAROLINA COUNTY OF HORRY Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall, Plaintiffs, vs. William Bertram von Herrmann and The Von Herrmann Law Firm, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-26-06296 **DEFENDANTS' MOTION FOR RECONSIDERATION OF ORDER DENYING IN PART MOTION TO DISMISS**

Defendants William Bertram von Herrmann and The Von Herrmann Law Firm, by and through their undersigned counsel and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, move this Court to reconsider its order denying in part Defendants' Motion to Dismiss because it has overlooked or failed to consider issues of law that warrant granting the motion in full.

BACKGROUND

Plaintiffs Anna, Bryan, and Katherine Coggeshall brought this lawsuit against Attorney William Bertram von Herrmann and his law firm asserting liability under various statutes and common law causes of action for the interception and disclosure of Plaintiffs' electronic communications that Mr. von Herrmann was provided by his client, Justin Fulmer. On behalf of their client Mr. Fulmer, Defendants sued the Plaintiffs based, in part, on the information in the electronic communications. Fulmer's lawsuit against the Coggeshalls is still ongoing. It is currently scheduled for trial on November 27, 2023.

FACTUAL ALLEGATIONS

Plaintiffs allege Mr. Fulmer illegally acquired Plaintiff Anna's iWatch, and accessed her and Plaintiffs Bryan and Katherine's electronic communications. ***See* Ex. 1 at ¶¶ 5-6**.

Plaintiffs' assert Mr. Fulmer "or his agent" copied the electronic communications, and Defendants printed them. ***Id.*** They assert Defendants used the electronic communications to bring a lawsuit against the Plaintiffs on Mr. Fulmer's behalf. ***Id.* at ¶¶ 6-7**. Plaintiffs allege Mr. Fulmer intercepted the electronic communications and Defendants, with knowledge the information was "unlawfully obtained," disseminated the material. ***Id.* at ¶ 10**.

PROCEDURAL BACKGROUND

As a result of Defendants' actions, Plaintiffs brought a lawsuit in the Horry County Court of Common Pleas. Because the lawsuit originally included a federal claim, Defendants removed the lawsuit to Federal Court and moved to dismiss based on attorney-immunity. **Ex. 2 (Notice of Removal); Ex. 3 (Motion to Dismiss)**. Plaintiffs amended their complaint to drop the federal claim and deprive the Federal Court of jurisdiction, and moved to remand the case. **Ex. 1 (Amended Complaint)**. Plaintiffs also opposed the motion to dismiss. **Ex. 4 (Pltfs MIO MTD)**. Defendants opposed remand, and replied to Plaintiffs' opposition to the motion to dismiss. **Ex. 5 (Defs Reply to Pltfs MIO MTD)**. The Federal Court remanded the case without deciding the motion to dismiss. **Ex. 6 (Order on Remand)**. In conjunction with the remand, Plaintiffs filed all of the federal court filings with the Horry County Court of Common Pleas.

This Court heard Defendants' Motion to Dismiss on August 14, 2023, and took the matter under advisement. **Ex. 7 (Form 4 Order)**. On November 1, 2023, this Court entered an Order granting in part and denying in part the motion to dismiss, finding the attorney-immunity doctrine did not apply to the alleged violations of the South Carolina Homeland Security Act. **Ex. 8 (Order on MTD)**. Defendants file the present Motion to Reconsider, requesting this Court amend its order and grant Defendants' Motion to Dismiss in full.

STANDARD

A motion for reconsideration is appropriate when "the court has misunderstood, failed to fully consider, or . . . failed to rule on an argument or issue." *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). "A party is usually allowed to ask the court to reconsider its decision even if it means rehashing an argument previously presented." *Id.* at 21, 602 S.E.2d at 778-79. Motions for reconsideration are a vehicle to call the court's attention to a possible misapprehension of an argument, and "to revisit a previously raised argument." *Id.*, 602 S.E.2d at 779.

ARGUMENT

This Court's November 1 Order found that the attorney-immunity defense did not apply to claims under the Homeland Security Act because the Act applies to any "person," which would include attorneys, and the legislature did not expressly exempt attorneys as it did other individuals or groups under the Act. The Court further found that Defendants could not assert the attorney-immunity defense moving forward. Defendants request this Court reconsider and amend its Order.

I. This Court should amend its order and grant Defendants' Motion to Dismiss because the correct statutory interpretation standard begins with a presumption the common law prevails unless expressly and unambiguously abrogated by statute.

The attorney-immunity defense is a common law doctrine. *See Gaar v. North Myrtle Beach Realty Co.*, 287 S.C. 525, 528-29, 339 S.E.2d 887, 889 (Ct. App. 1986). Although originating in South Carolina through the Court of Appeals in *Gaar*, the defense has been repeatedly sanctioned by our supreme court. *See, e.g.*, *Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions*, 388 S.C. 394, 400, 697 S.E.2d 551, 554 (2010).

"[I]t is presumed that no change in common law is intended unless the Legislature explicitly indicates such an intention by language in the statute." *State v. Prince*, 316 S.C. 57,

66, 447 S.E.2d 177, 182 (1993) (citing *Nuckolls v. Great Atlantic & Pacific Tea Co.*, 192 S.C. 156, 5 S.E.2d 862 (1939)). Furthermore, statutes that limit the common law are strictly construed. *Eades v. Palmetto Cardiovascular and Thoracic, PA*, 422 S.C. 196, 201, 810 S.E.2d 848, 850 (2018). Such statutes "will 'not be extended beyond the clear intent of the legislature.'" *Id.* (quoting *Grier v. AMISUB of S.C., Inc.*, 397 S.C 532, 536, 725 S.E.2d 693, 695 (2012)). "The common law remains in full force and effect in South Carolina unless changed by clear and unambiguous legislative enactment." *Singleton v. State*, 313 S.C. 75, 83, 437 S.E.2d 53, 58 (1993).

These principles apply to statutes creating causes of action or rights where none existed at common law. *See, e.g.*, *Simpson v. Sanders*, 314 S.C. 413, 415, 445 S.E.2d 93, 94 (1994) (finding elective share statute was statute of creation in derogation of common law because common law previously permitted spouse to leave out surviving spouse from will and, therefore, the statute had to be strictly construed); *Crosby v. Glasscock Trucking Co.*, 340 S.C. 626, 628, 532 S.E.2d 856, 857 (2000) (strictly construing statute creating cause of action for wrongful death of a "person" as against common law principle that tort action dies with injured person and, therefore, the statute did not apply to death of nonviable, stillborn fetus); *Davenport v. Summer*, 273 S.C. 771, 772-73, 259 S.E.2d 815, 816 (1979) (finding statute permitting joinder of insurer to action did not change well-established common law that in motor vehicle collision cases the insurance carrier of defendant cannot be joined, recognizing statutes in derogation of common law rights are strictly construed and not be extended beyond clear legislative intent).

Our courts have found common-law defenses were not abrogated under similar statutory schemes. For example, the Payment of Wages Act requires unconditional payment to an employee of wages due, and is silent on whether the common law defense of breach of loyalty would permit an employer to withhold wages due under the Act. Our court of appeals found,

and our supreme court affirmed, that nothing in the Payment of Wages Act "directly or indirectly abrogate[d] the common law duty of loyalty owed to an employer by an employee." If the duty is breached, forfeiture of wages due under the Act is appropriate. *See Futch v. McAllister Towing of Georgetown, Inc.,* 328 S.C. 312, 318, 491 S.E.2d 577, 580 (S.C. Ct. App. 1997) ("Futch I"), *overruled on other grounds by* 335 S.C. 598, 518 S.E.2d 591 (1999) ("Futch II"); *Futch II*, 335 S.C. at 605, 518 S.E.2d at 594 (affirming court of appeals and finding "the Legislature did not intend to prevent employers from asserting valid defenses or counterclaims against employees"). *Futch I* and *Futch II* were applications of strict construction of statutes in derogation of common law.

Here, this Court should reconsider its ruling and grant the Motion to Dismiss because the ruling applied the incorrect standard. This Court interpreted the Act to apply to attorneys by referencing the any "person" language and found that, because the Act does not expressly exempt attorneys as a class but exempts other individuals and it lists one defense, the common-law attorney immunity defense does not apply. This ruling, however, is based on the presumption that the statute displaces common law—interpreting silence as to common-law defenses and classes of persons exempted from the Act to abrogate common law defenses. The logic of this interpretation works only if we begin with a presumption the common law does not apply unless expressly included within a statute. If this was true, then every single statute would have to expressly incorporate the common law because most apply to any "person."

South Carolina case law is clear, however, that the opposite presumption applies: we presume the common law is unchanged by a statute unless the language in the statute explicitly, clearly, or unambiguously indicates an intention to change the common law. *Prince*, 316 S.C. at 66, 447 S.E.2d at 182. The common law here is the defense of attorney-immunity. Thus, the Court must presume the attorney-immunity defense applies unless *explicitly*, *clearly*, or

unambiguously changed by the Act. Further, because the Act creates a cause of action where none existed, the Court must strictly construe the Act.

Presuming the attorney immunity applies and strictly construing the Act establishes there is no explicit rejection of the attorney immunity defense. The Act applying to any "person," and noting attorneys are people, is not an explicit legislative intent that the attorney-immunity defense does not apply. Simply because the Act expresses one defense to its violation—good faith reliance—is not an explicit legislative intent that the attorney-immunity defense does not apply, let alone that all other defenses are eviscerated. This reasoning is precisely why *Futch I* and *Futch II* found the language of Payment of Wages Act *unconditionally* requiring payment of wages due an employee did not abrogate an employer's common law "breach of loyalty" defense to paying those wages.

If attorney immunity applies to claims under the Act, then Plaintiffs' claim should be dismissed. The defense applies to third-party claims against an attorney for actions taken on behalf of the client with the client's knowledge, as long as there is no independent duty or allegations that the attorney acted in his own interest. *See Argoe*, 388 S.C. at 400, 697 S.E.2d at 554. Plaintiffs do not allege Defendants owed an independent duty to them, or that Defendants acted in their own interest outside the scope of their representation of Mr. Fulmer. In reality, Plaintiffs' claims are alleged to have arisen within the scope of Defendants' representation of Mr. Fulmer. Accordingly, the attorney-immunity defense would bar the claims.

Because the Court applied the incorrect standard for interpreting the Act, the application of the correct standard under South Carolina law establishes the attorney-immunity defense was unchanged by the Act, and the attorney-immunity defense would bar Plaintiffs' remaining claim, this Court should reconsider its order and grant Defendants' Motion to Dismiss Plaintiffs' claim under the Act.

II. This Court should adopt the reasoning in *Taylor v. Tolbert* because it applies legal principles similar to South Carolina and finds attorney immunity applies to a statute prohibiting interception of electronic communications.

Taylor is a recent case from the Supreme Court of Texas both Plaintiffs and Defendants referred to in their arguments on the motion to dismiss, which applied attorney-immunity to prevent claims for violations of Texas's wiretap statute. *See Taylor v. Tolbert*, 644 S.W.3d 637, 650-51 (Tx. 2022).

Like South Carolina, Texas's wiretap statute makes it a crime to intercept electronic communications, or to intentionally use or disclose those communications knowing or having reason to know the communications were intercepted. *Compare* Tex. Penal Code Ann. § 16.02 *with* S.C. Code Ann. § 17-30-20. In addition, the two states' laws create a civil remedy for the interception, or use or disclosure of intercepted communications. *Compare* Tex. Code Crim. Proc. Ann. art. 18A.502 *with* S.C. Code Ann. § 17-30-135(A). Also, Texas' attorney-immunity defense is nearly identical to South Carolina's, and applies to an attorney's work in the scope of representing a client. *Taylor*, 644 S.W.3d at 646; *Argoe*, 388 S.C. at 400, 697 S.E.2d at 554.

The *Taylor* Court found that Texas's common-law attorney immunity defense applied to claims under Texas's wiretap statute pursuant to legal principles similar to South Carolina, and in the process rejected the exact arguments Plaintiffs make here and this Court adopted.

The *Taylor* Court began by noting statutes purporting to abrogate common-law principles must do so expressly. 644 S.W.3d at 649. It also recognized the Texas wiretap statute created liability where none existed and, therefore, must be strictly construed and not extended beyond its plain meaning. *Id.* at 650. Thus, it presumed that the attorney immunity defense applied unless its wiretap statute expressly abrogated it. *Id.* It ultimately held "Texas's wiretap statute does not expressly repudiate the common law or the attorney-immunity defense." *Id.* at 649. Applying South Carolina's exact same presumption and rules for strict construction should result

in the same holding: South Carolina's Act does not expressly repudiate the common law or the attorney-immunity defense.

In reaching its holding, *Taylor* rejected the plaintiff's argument that the application of the wiretap statute to "any person" meant to include attorneys and abrogate the immunity defense. *Id*. at 651. The Court noted that, "[a]lthough 'any person' would inarguably include attorneys, we are not convinced the breadth of the statutory language—which is not at all uncommon—clearly shows legislative intent to abrogate common-law defenses generally or attorney immunity specifically." *Id.*

The *Taylor* Court also rejected the plaintiff's arguments that, by including specific defenses under the statute like the good-faith reliance defense, the Texas wiretap statute "fences out" all common law defenses not explicitly included in the statute. *Id.* at 650. The court noted that by plaintiff's line of reasoning, the legislature would have to "opt-in" to the common law in every statute, and that reasoning is contrary to the presumption the common law remains in effect. *Id.* at 650. The court also found that the Act did not make the listed defenses exclusive, and the language could not be read as clearly repudiating all civil-liability defenses otherwise available. *Id.*

The Texas Supreme Court's analysis in *Taylor* is highly persuasive considering Texas's parallels to South Carolina's legal principles regarding the attorney-immunity defense, statutory civil liability related to intercepted communications, and strictly construing statutes purportedly abrogating common law. But it rejected the exact reasoning advanced by Plaintiffs—the breadth of the any "person" language and inclusion of certain defenses—which this Court relied upon in ruling on Defendants' Motion to Dismiss. Because *Taylor* is persuasive and opposite this Court's ruling, this Court should reconsider its order, adopt *Taylor*'s reasoning similar to South Carolina's laws, and grant Defendants' Motion to Dismiss Plaintiffs' claim under the Act.

III. Applying attorney-immunity to claims under the Act does not have the effect of exempting all attorneys from the violating the Act.

This Court's ruling relies, in part, on reasoning that the attorney-immunity defense does not apply because, if the legislature wanted to exempt attorneys from the Act, it could have expressly done so like it did for other groups. This is based, however, on a misunderstanding of the attorney-immunity defense.

The attorney-immunity defense is not absolute immunity for attorneys as a class of people. The defense is qualified. It immunizes attorneys from claims (1) by third parties; (2) for actions in the scope of representing a client; (3) with the client's knowledge; (4) when there is no independent duty to the third-party. *See Argoe*, 388 S.C. at 400, 697 S.E.2d at 554; *see also Taylor*, 644 S.W.3d at 646 (noting similar limitations on the attorney-immunity defense and recognizing it does not protect from liability for all attorney conduct). Neither does the defense magically legalize illegal conduct because it is conduct of an attorney. Its purpose is to shield attorneys for actions that are illegal, i.e., would expose the attorney to civil liability.

Recognizing the attorney-immunity defense would not be akin to exempting attorneys from liability for violations of the Act, attorneys could still be liable if any of the four conditions to the application of attorney immunity are not met with respect to the Act. For example, attorney immunity would not shield an attorney against a *client's* claims that the attorney intercepted communications, or used or disclosed those communications, without the client's consent. Under the same scenario it would not shield the attorney against claims under the Act by the other party to the client's communications—client knowledge lacking. Because recognizing attorney-immunity under the Act would not amount to an exemption for attorneys from the Act, this Court should not have refused to recognize the defense on the basis it would amount to an exemption similar to other classes of persons listed under the Act. Accordingly,

this Court should reconsider its ruling and grant Defendants' Motion to Dismiss Plaintiffs' claims under the Act.

IV. This Court's finding that attorney-immunity does not apply under the Act undercuts the policy of encouraging zealous client representation and will lead to an erosion of the attorney-client privilege.

"The purpose of the doctrine of attorney immunity is to encourage zealous representation of clients without fear of lawsuits by disgruntled opposing parties." *Hunt v. Mortgage Electronic Registration*, 522 F. Supp. 2d 749, 758 (D.S.C. 2007). "Attorneys must be free to act and advise their clients without constant fear of harassment from lawsuits." *Garr*, 287 S.C. at 529, 339 S.E.2d at 889. Attorneys have ethical obligations to zealously assert a client's position. Rule 407, SCACR, Preamble ("As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system."). It would create a conflict of interest with an attorney's obligation to represent and support his or her client if attorneys become liable for, and must safeguard against, acting overzealously. *Garr*, 287 S.C. at 529-30, 339 S.E.2d at 889-90. In other words, with every exception recognized for attorney-immunity, it has a chilling effect on an attorney's faithful discharge of his or her ethical obligations. *Taylor*, 644 S.W.3d at 647.

Here, considering the breadth with which this Court interprets the Act—it applies to any "person" and attorney immunity does not apply—it would be nearly impossible to faithfully and zealously represent a client defending against claims for violations of the Act. An attorney representing his or her client would have to exercise even more caution when dealing with any electronic communications provided by a client. Considering attorney-immunity does not apply, Defendants' counsel could potentially be held responsible for "using" the messages to mount a defense to Plaintiffs' claims. Defendants' counsel would be prohibited from sharing any of the messages with an expert to prepare a defense. If Defendants are not entitled to immunity under the Act for advocating on behalf of their client with their client's direction, then the same could

be said for Defendants' counsel in this matter. Thus, not applying attorney-immunity to claims under the Act has a chilling effect in on an attorney's obligation to zealously represent his or her client.

For similar reasons, not recognizing attorney-immunity under the Act has a chilling effect on and erodes the attorney-client privilege. The attorney-client privilege is based on the wise policy that the "interests of society are best promoted by inviting the utmost confidence on the part of the client in disclosing his secrets to his professional advisor, under the pledge of the law that such confidence should not be abused by permitting disclosure of such communications." *S.C. State Highway Dep't v. Booker*, 260 S.C. 245, 254, 195 S.E.2d 615, 619-20 (1973). First, if attorneys are liable under the Act for advocating on behalf of their clients, attorneys will take precautions in communicating with clients to reduce the likelihood of a violation of the Act and, accordingly, will discourage clients from being truthful with their attorney. Moreover, pursuing a claim under the Act when an attorney is involved would require disclosure of attorney-client protected communications and work-product material in discovery. Case in point, Plaintiffs are directly requesting in discovery communications between Defendants and their client, Mr. Fulmer. **Ex. 9 (Plaintiffs' Discovery Requests).** Thus, refusing to recognize the attorney-immunity defense to claims under the Act would chill and intrude upon the attorney-client privilege. This cannot be what the legislature intended.

By finding the attorney-immunity defense does not apply to claims under the Act, it has a chilling effect on an attorney's ethical obligations to zealously represent his or her client and will inevitably lead to intrusion upon the attorney-client privilege. This Court should reconsider its ruling and grant the Motion to Dismiss claims under the Act based on attorney-immunity because it would foster ethical obligations to zealously represent clients and preserve the attorney-client privilege.

CONCLUSION

This Court should reconsider its ruling and grant Defendants' Motion to Dismiss because the ruling relies upon the incorrect statutory presumption, ignores persuasive authority from another state based on similar laws, misconstrues what the attorney-immunity defense is meant to protect from, results in a chilling effect on an attorney's obligation to zealously represent his or her client, and will lead to erosions of the attorney-client privilege.

This 10th day of November, 2023.

Respectfully submitted,

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	2022-CP-26-06296
Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall,	)	**ORDER DENYING THE MOTION TO RECONSIDER**
Plaintiff,	)	
vs.	)	
William Bertram von Herrmann and The Von Herrmann Law Firm,	)	
Defendant,	)	

PRESIDING JUDGE:	The Honorable Krisi F. Curtis
DATE OF HEARING:	December 19, 2023
ATTORNEY FOR PLAINTIFF:	Steve Abrams, *Esq.* and Richard Whiting, *Esq.*
ATTORNEY FOR DEFENDANT:	Skyler C. Wilson, *Esq.* and Douglas W. MacKelcan, *Esq.*

This matter comes before the court pursuant to the Defendants' Notice of Motion and Motion for Reconsideration of its Order filed November 10, 2023.

After further review of the Defendants' Motion for Reconsideration in this matter, the Defendants' Motion is respectfully denied. The court recognized that this is a Novel Issue, but is persuaded by the reasoning contained in Plaintiffs' original Reply to the Defendants' original Motion, filed May 7, 2023.

The controlling statute is extremely broad. This statute mirrors the Federal Wiretap Action in many respects in that it prohibits the interception of electronic communications as well as the disclosure of illegally intercepted communications. The South Carolina Homeland Security Act is the State's equivalent of the Federal Electronic Communication Privacy Act, which also expressly

prohibits any evidence derived from the illegally intercepted communication from being entered into evidence in any trial, hearing or other proceeding before any court. See South Carolina code §17-30-65. The only exception for court proceedings is that set forth in South Carolina code §17-30-75, which allows for disclosure while giving testimony under oath in criminal and grand jury proceedings. This statute also specifically allows disclosure by SLED to attorneys who are authorized by law to investigate and prosecute certain alleged crimes.

It is illogical for the legislation to specifically carve out this narrow exception while also intending to allow broad common law immunity for disclosure by attorneys in civil and family court narratives.

The court finds that it would be illogical for the legislation to prohibit a pro se individual from disclosing the contents of electronic communications (and to make any such disclosure actionable) while allowing that individual's attorney to take the exact same actions with absolute immunity. Accordingly, the Defendants' Motion for Reconsideration is denied.

AND IT IS SO ORDERED.

_____

The Honorable Kristi F. Curtis
Presiding Circuit Judge

_____, 2024.

Horry, South Carolina.

Horry Common Pleas

Case Caption: Anna Coggeshall , plaintiff, et al VS William Bertram Von Herrmann , defendant, et al

Case Number: 2022CP2606296

Type: Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge
Case No.: 2022-CP-26-06296

Appellate Case No. 2024-000786

Anna Coggeshall; Bryan Coggeshall; and Katherine Coggeshall .....Respondents

v.

William Bertram von Herrmann and The Von Herrmann Law Firm. ..... Appellants.

PROOF OF SERVICE

I certify that I have served ***Appellants' Memorandum in Opposition to Respondents' Motion to Dismiss***, upon the parties below by electronic mail, addressed as follows:

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This 13th day of June, 2024.

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Cc:	Britney Sawyer; Cindy Dassoulas; Mackelcan, Douglas W.; Moran, Rosie
Subject:	RE: Coggeshall v. von Herrmann, Appellate Case No.: 2024-000786 - Memorandum in Opposition to Motion to Dismiss
Date:	Thursday, June 13, 2024 3:14:11 PM
Attachments:	image001.png Appellants" Memorandum in Opposition to Motion to Dismiss with Exhibits.pdf

Gentlemen,

Attached is the same memo along with the exhibits. Apologies for the multiple emails.

Best regards,

Skyler

csvl-block

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Subject: Coggeshall v. von Herrmann, Appellate Case No.: 2024-000786 - Memorandum in Opposition to Motion to Dismiss

Gentlemen,

Please find attached for service upon you Appellants' Memorandum in Opposition to Respondents' Motion to Dismiss.

Best regards,

Skyler

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