

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF DORCHESTER

CASE NO. 2013-CP-18-00013

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THE PROTESTANT EPISCOPAL CHURCH
4 IN THE DIOCESE OF SOUTH CAROLINA,
et al.,

Plaintiffs,

6

vs.

TRANSCRIPT OF RECORD

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THE EPISCOPAL CHURCH, et al.,
Defendants.

8

THE EPISCOPAL CHURCH,
9 Counterclaim Plaintiff,

10

vs.

11

THE PROTESTANT EPISCOPAL CHURCH
12 IN THE DIOCESE OF SOUTH CAROLINA,
et al.,

Counterclaim Defendants,

13

and

14

MARK J. LAWRENCE, et al.,
15 Additional Counterclaim
Defendants.

16

17

OCTOBER 11, 2013

18

ST. GEORGE, SC

19

20 B E F O R E:

21

HONORABLE DIANE SCHAFFER GOODSTEIN

22

23

RUTH L. MOTT, RPR, CRR

24

CIRCUIT COURT REPORTER

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1 or the SharePoint or whether or not it will be a week from
2 Monday because the web guru is going on vacation next week,
3 so I'm hoping she can do it today before she leaves along
4 with probably another jillion things that folks want her to
5 do before she goes away.

6 Now, all right, having said that then, I want to handle
7 the TRO last. Number one is going to be last. The first is
8 going to be last. So let's put that one aside. Okay. This
9 is the way I want to proceed: I want to talk about the
10 Defendant ECSC's motion to compel first, and let me tell you
11 what I have gleaned from my study both of the motion and of
12 this privilege log that I want to thank plaintiff for
13 preparing. So often it is a two-step process because you
14 get, it's attorney-client privilege, and you don't get a log,
15 so I want to thank plaintiff for preparing the log. And I
16 got the request. Mr. Tisdale, I'm aware of the request. The
17 request is what were the communications of any type, sort,
18 nature between Mark Lawrence and Mr. Runyan.

19 MR. TISDALE: Correct.

20 THE COURT: Obviously there's a claim for
21 attorney-client privilege and we have a privilege log.

22 MR. TISDALE: Right.

23 THE COURT: I know what your position is. You want the
24 information.

25 MR. TISDALE: Correct.

1 THE COURT: You claim -- you want the information.

2 MR. TISDALE: Well, do you want me to --

3 THE COURT: Well, I know that you anticipate that
4 there's an attorney -- that the attorney-client privilege is
5 going to be craved.

6 MR. TISDALE: The question is whose privilege is it
7 under the circumstances.

8 THE COURT: Okay. Let me hear from you about that
9 because -- let me say this: I'll hear from you on that
10 issue, but with regards to the privilege log, there's some
11 issues that arise, even assuming that there is an
12 attorney-client privilege, there may be issues that arise
13 within the privilege log itself, but you want to argue a
14 bigger issue that there can be no attorney-client privilege.

15 MR. TISDALE: We think we're entitled to any information
16 that Mr. Runyan shared with the unified diocese, the
17 organization he was representing, during the time before the
18 disaffiliation, and that's what we think -- all the
19 documents, and we think that the law supports that, and I'll
20 address that if you would like me to.

21 THE COURT: And share with me, as we begin, the time
22 period --

23 MR. TISDALE: Exactly.

24 THE COURT: -- prior to the disassociation.

25 MR. TISDALE: Your Honor, Mr. Runyan, according to the

1 privilege log, began his representation --

2 THE COURT: November of 2009.

3 MR. TISDALE: -- November 2009, and so far as the period
4 is concerned that we're dealing with today, I believe that,
5 so far as our issue is concerned, it would have ended on
6 November 17th, 2012, when Bishop Lawrence announced publicly
7 that he and his followers were disaffiliating from The
8 Episcopal Church. And so for those who did not follow Bishop
9 Lawrence, that would be the day our representation by Mr.
10 Runyan stopped, but up until that date we were a part of the
11 organization that he was representing.

12 THE COURT: And that organization was?

13 MR. TISDALE: It was The Episcopal Church in South
14 Carolina, it was the Diocese of South Carolina, it also goes
15 under the name of the Protestant Episcopal Diocese of South
16 Carolina, it's gone by several names, but it went under
17 whatever was the organization that was a part of The
18 Episcopal Church, that's what was disaffiliated from on
19 November 17th, 2012, so Mr. Runyan was the lawyer for that
20 organization, as you said, from November '09 until November
21 17th, 2012.

22 THE COURT: Got it.

23 MR. TISDALE: We, of course, believe that we're entitled
24 to the documents that indicate advice he gave us because we
25 were his clients for that period of time, and we've set out

1 in our brief a good bit of legal authority, including an
2 article written by who many consider, and I certainly do, the
3 leading -- we're not saying anything wrong about the conduct
4 of Mr. Runyan but simply that we're entitled to his work when
5 he was representing us, so Professor Freeman, who I think was
6 regarded by many as a leading authority on professional
7 conduct in South Carolina, wrote an article that's on point
8 on this very issue.

9 THE COURT: The only thing I know he would disagree with
10 you on would be the was.

11 MR. TISDALE: Would be what?

12 THE COURT: The was. You said he was. I think he would
13 probably take issue with the was.

14 MR. TISDALE: I'll amend that right now for the record.
15 He is. He is.

16 THE COURT: That he would probably agree.

17 MR. TISDALE: He has been and is, Your Honor, at least
18 in my opinion, and I think that's shared by many among the
19 bar and legal community in South Carolina. So, Your Honor,
20 we attached -- we quoted some things he said about it, and we
21 attached to our brief a copy of the article he wrote some
22 years ago on the very point, and Section 1.13 of the Code of
23 Professional Conduct is headed, Representing an Organization.
24 So Mr. Runyan clearly represented the organization, and any
25 of his work that -- it was advice to us as well as to all the

1 other members, and we're entitled to it to see if there is
2 evidence, that we suspect there is, of a breach of duty by
3 the leaders of the church, the diocese, who left. We're
4 entitled to that information to see what our lawyer was
5 telling the organization was happening during that period of
6 time.

7 THE COURT: I understand.

8 MR. TISDALE: So we think Professor Freeman's article
9 covers it entirely, we think the cases we cited cover it, and
10 we think we are entitled to the material. And I can go on
11 and cover other aspects of it to the extent you want me to,
12 but you had asked when it was and what happened during that
13 period of time.

14 THE COURT: Yes. Let me handle that issue, that's the
15 broader issue, and let me see where we are. Got it.

16 MR. TISDALE: Okay. Thank you, Your Honor.

17 THE COURT: Let me hear about that period and counsel's
18 response.

19 Yes, ma'am, Ms. Golding.

20 MS. GOLDING: Good morning, Judge. How are you doing?

21 THE COURT: Good morning.

22 MS. GOLDING: I'll have to apologize. I did not receive
23 the defendant's memorandum. I was in Greenville yesterday
24 evening. As I was traveling I saw it came in, so I would
25 have presented to you an opposing memorandum, and if there

1 are any questions after our discussion, I would like to have
2 the opportunity to present an opposing memorandum, but let me
3 first of all say this-

4 THE COURT: May I stop you for a moment?

5 MS. GOLDING: Certainly.

6 THE COURT: I don't want you disadvantaged.

7 MS. GOLDING: I am not disadvantaged.

8 THE COURT: I was going to make sure that you have had
9 a --

10 MS. GOLDING: I can promise you I'm not disadvantaged.

11 THE COURT: You've read it.

12 MS. GOLDING: I've read it.

13 THE COURT: You probably have written it before. You
14 know it. Truth is you might have been the shadow writer for
15 Professor Freeman on it.

16 MS. GOLDING: I just do not have my legal authorities at
17 my -- the citations at my fingertips, Your Honor, so I
18 apologize for that, but let me first point this out to the
19 Court is that, first of all, Mr. Tisdale is not saying to
20 this Court that any of the documents identified in the
21 privilege logs are not subject to attorney-client privilege.
22 He's not arguing that. He is arguing that he or his client
23 is the client.

24 THE COURT: Yes.

25 MR. TISDALE: Right.

1 MS. GOLDING: And that is incorrect. The
2 attorney-client privilege goes with a corporation, and the
3 diocese is a South Carolina nonprofit corporation. Mr.
4 Tisdale's client is saying, we are that nonprofit
5 corporation, and I think he refers in his memorandum as being
6 his client is the continuing diocese. But, Your Honor, at
7 the last hearing before you you asked that Mr. Tisdale advise
8 the Court who his client is in writing, and by his letter
9 dated September 27th, 2013, to you, Your Honor, he states the
10 following: As you requested at the hearing today, this
11 letter provides the South Carolina statute and juris prudence
12 that supports Defendant TECSC's standing as an unincorporated
13 association to assert its counterclaims in this case.

14 So at the last hearing on September 27th the defendant,
15 ECSC, was an unincorporated association. In this motion he's
16 saying, no, we are a South Carolina nonprofit corporation.
17 That is diametrically opposite. So then the issue turns down
18 who is the client, but that's not the issue. The issue in
19 this lawsuit is who controls the client. There is absolutely
20 no doubt in the pleadings that the diocese, the plaintiff, is
21 a South Carolina nonprofit corporation. That has been
22 admitted. It has been admitted, so that client has the
23 privilege, not the members. In Mr. Tisdale's statement to
24 you he said that Mr. Alan Runyan represented the client, and
25 that's true. He represented the client, the diocese. And

1 then Mr. Tisdale said, we were his clients. No, the members
2 were not his clients. It's the corporation that is his
3 clients.

4 There was a Supreme Court, US Supreme Court decision
5 with regard to a municipal corporation, and a council member
6 had an issue, and it's Wilson versus, I think it's Prescott,
7 and I don't have the cite with me, and the council member
8 says, I have the privilege, I'm entitled to this information.
9 And the US Supreme Court says, oh, no, managers, members, are
10 not the client. It's only the entity that's the client. So
11 Mr. Tisdale saying to you when he just said that we are
12 entitled to his work product because we were his clients,
13 that's not correct at all. His members that left that he now
14 contends is the continuing diocese, this unincorporated
15 association, they never were the client. The client is the
16 plaintiff. So that is the huge hurdle that they cannot
17 overcome. As this Court -- and I'm sure you have on previous
18 occasions, but Justice Toal, as she stated in the
19 Tobaccoville versus McMaster case, you know, the privilege is
20 a protection of the client, not of anyone else, not of its
21 members, not of its officers, not of its managers. It's the
22 attorney-client privilege that this Court must respect.

23 So I think the fundamental basis is, number one,
24 Mr. Tisdale has acknowledged Mr. Runyan was and is the
25 attorney for the diocese. There has been no affidavit

1 presented by Mr. Tisdale to contradict Mr. Runyan's affidavit
2 that he submitted to the Court on Monday as to his role. The
3 client, the diocese, the plaintiff, has not waived the
4 privilege; therefore, Mr. Tisdale is not entitled to that
5 information. Thank you, Your Honor.

6 THE COURT: I wanted to just note, I'm going to point to
7 a line in the first motion, which is the motion regarding the
8 temporary restraining -- the preliminary injunction and the
9 temporary injunction, I want to point to a part of that, and
10 then I have a question, and the first thing that I'm going to
11 do is find that language because it was important to me as I
12 was preparing, and what it says is -- here it is. It's on
13 page 8, and I'm just mindful of it as we go through these
14 matters, it says -- it's a statement. This is the
15 statement -- and I'll simply read it into the record. It's
16 on page 8. It says, the ecclesiastical organization that has
17 been reorganized as TECSC has held common law trademark
18 rights in the names and marks and issues for hundreds of
19 years, but I guess the phrase is, the ecclesiastical
20 organization that has been reorganized as TECSC, and that is
21 the unincorporated association that I gather occurred after
22 November of 2012.

23 MS. GOLDING: My understanding is that became an
24 organization in January 2013 when they held an organizational
25 meeting at the end of January.

1 THE COURT: That it became something other than an
2 unincorporated association?

3 MS. GOLDING: No. Its existence, the Defendant ECSC's
4 existence came about in January of 2013, at the end of that
5 month.

6 THE COURT: Okay. I've got that. Now, let me ask this
7 question: Obviously corporations, eleemosynary corporations
8 to be included, are run by human beings, and they are those
9 people who are allowed to direct and control and seek and
10 receive legal advice. I need to go through those because
11 that would be the place that there may be an inquiry. I'm
12 with you, an unincorporated association is different than --
13 an unincorporated association, this EC South Carolina, as an
14 unincorporated association, cannot breach the attorney-client
15 privilege. I agree with that. All right. Now, let's go
16 back though to November of '09. There were people, I gather,
17 because I know Mr. Tisdale would argue because I would argue
18 that there were people, individuals, who would have been
19 entitled to receive the attorney-client benefit and
20 information that can and now ought be able to access that
21 attorney-client information because of their position. I'm
22 anticipating that. Haven't heard that, but I'm anticipating
23 that. And your response I would think number one would be,
24 uh-huh, that's not where we are today. If we get there, then
25 we'll deal with that at that point, might be an argument that

1 you would make you would say is that, right, but today we're
2 dealing with an unincorporated association. We're not
3 dealing with anything other than that. Would you have any
4 other -- I don't know why I'm making your arguments because
5 goodness knows you don't need any help.

6 MS. GOLDING: The privilege, though, does not belong to
7 any of those individuals. It only belongs to the
8 corporation.

9 THE COURT: Yes.

10 MS. GOLDING: So those individuals have no standing to
11 say give me this.

12 THE COURT: Okay.

13 MS. GOLDING: Because they are not the client.

14 THE COURT: Okay.

15 MS. GOLDING: Only this nonprofit corporation, the
16 diocese.

17 THE COURT: Yes.

18 MS. GOLDING: And the diocese is not waiving that
19 privilege and those -- as in any corporation, if there's a
20 management change, the old management cannot go back and say,
21 give me this information.

22 THE COURT: Can I give you an example just to be sure
23 that I understand what you are telling me? Let's say that
24 Mark Lawrence, and I'll use him as an example, decides today,
25 this afternoon at 4:00, he no longer wishes to be associated

1 with this eleemosynary corporation, and he establishes that.
2 He goes to Beth Elohim. Clearly doesn't want to be a part of
3 this eleemosynary corporation any longer, right? Okay. Now,
4 what you are telling me is that he no longer, even though he
5 is -- that's the question. Let me have that.
6 Attorney-client information, he doesn't get to get it
7 anymore.

8 MS. GOLDING: He as an individual is not the client.

9 THE COURT: Got it. He would have disassociated himself
10 from that position from which he could receive the
11 attorney-client information, therefore no longer could he
12 receive it.

13 MS. GOLDING: That's correct.

14 THE COURT: Even if he wanted to know, what did you tell
15 me last week when I was in that position; what was it that
16 you said again?

17 MS. GOLDING: He cannot receive that information unless
18 the client, unless the party wants to give it to him, waives
19 that right.

20 THE COURT: All right. I've got the argument.

21 MS. GOLDING: Thank you, Your Honor.

22 MR. TISDALE: Just in response, Your Honor.

23 THE COURT: Yes.

24 MR. TISDALE: The diocese, we'll say the diocese, The
25 Episcopal Church, has two branches to it, an ecclesiastical

1 side and then the corporation side that is made up -- is
2 operated by the bishop and officers, a president and a board
3 of directors, who are the same as the standing committee of
4 the ecclesiastical body. All of the members of The Episcopal
5 Church associated with that are beneficiaries of the
6 corporation and are part of the ecclesiastical body. They
7 are all clients. The diocese, the diocese as a whole has
8 paid Mr. Runyan's fee, legal fees, the people of the diocese,
9 so the beneficiaries are entitled to the information that was
10 generated on their behalf, for which they've paid, by Mr.
11 Runyan. It cannot be insulated in a corporate little blob
12 and not go anywhere else when the officers of the
13 corporation, Bishop Lawrence included, have conducted
14 themselves in such a way that we claim violated the laws of
15 South Carolina in the way the business of the diocese,
16 ecclesiastical and corporately, was operated, and certainly
17 we're the beneficiaries of all that information under 1.13 of
18 the Code of Professional Conduct. The attorney-client
19 privilege does not work to deny the beneficiaries of it of
20 the work of their fiduciaries. That's what we're seeking,
21 the benefit of the work of our fiduciaries, to see what it
22 was in the context of this litigation, and clearly we're
23 entitled to that, and they cannot isolate it to a little
24 group of people to say this is the only place that any
25 information went and it wasn't for the benefit of anybody

1 else. It was for the benefit of every single person who said
2 that they were an Episcopalian and were an Episcopalian in
3 the Diocese of South Carolina, and that included everybody.

4 THE COURT: So you're saying every Episcopalian in South
5 Carolina is entitled to the communications that went between
6 Mr. Runyan and --

7 MR. TISDALE: The leadership of this corporation or the
8 diocese, both.

9 THE COURT: And what of the United States Supreme Court
10 case that Ms. Golding talked about?

11 MR. TISDALE: Which one now, Your Honor?

12 MS. GOLDING: Wilson versus Prescott.

13 THE COURT: That one.

14 MR. TISDALE: Now, there's another issue that has been
15 introduced here.

16 THE COURT: All right.

17 MR. TISDALE: And that is, by the way, with all due
18 respect to Your Honor, we're talking about a religious
19 corporation under the nonprofit statute, nonprofit
20 corporation statute. There's several categories of nonprofit
21 corporations. One of them is religious. One of them is, for
22 example, charity or public charity, and there are four or
23 five of them.

24 THE COURT: Right.

25 MR. TISDALE: And when you organize a corporation, you

1 say which one you are. This one is obviously religious, a
2 religious nonprofit corporation. Now, the nonprofit statute,
3 nonprofit corporation statute, Section 33-31-180, contains a
4 provision that in South Carolina if the religious doctrine
5 governing the affairs of a religious corporation is
6 inconsistent with the law, the First Amendment of the United
7 States Constitution applies.

8 THE COURT: Right.

9 MR. TISDALE: And so what that means is that as a First
10 Amendment right this corporation is controlled by the members
11 of The Episcopal Church and they are entitled to the
12 information that this corporation has because the First
13 Amendment allows it.

14 THE COURT: Interestingly enough, that argument would
15 be -- I'm very clear that that argument, if that one would be
16 applicable, there would be no relief from this Court, period.

17 MR. TISDALE: There would be no what?

18 THE COURT: There would be no relief from this Court.

19 MR. TISDALE: Well, there wouldn't be a lot of issues
20 that are being brought in this case in this Court if that
21 statute is applicable, and we contend that it is.

22 THE COURT: Well, we will have to kind of drain that
23 swamp one bucket at a time. I can't make an over-sweeping --

24 MR. TISDALE: It's a very short statute and it says, if
25 religious doctrine governing the affairs of a religious

1 corporation is inconsistent with the provisions of this
2 chapter, that is, if The Episcopal Church, the unincorporated
3 association, makes a decision that it -- and The Episcopal
4 Church, that it owns this corporation before it left and
5 after it left and all of its assets of the diocese generally,
6 and if that is inconsistent with the chapter on the same
7 subject, the religious doctrine controls to the extent
8 required by the Constitution of the United States, First
9 Amendment.

10 THE COURT: Right.

11 MR. TISDALE: So I think Your Honor's correct that as a
12 part of this litigation this issue will be presented and it
13 is going to be dispositive of many of the issues in this
14 Court at the end of the day, and it certainly controls the
15 situation right now as to whether or not Episcopalians,
16 recognized by The Episcopal Church as The Episcopal Church in
17 South Carolina, are entitled to the work that its lawyer did.

18 THE COURT: And you're saying that that is dictated by
19 ecclesiastical law.

20 MR. TISDALE: By ecclesiastical law and by Section 1.13
21 of the Code of Professional Conduct.

22 THE COURT: Well, let me say that with regards to the
23 Code of Professional Conduct there's relief available in a
24 place -- there is a definition at law of what is the
25 attorney-client privilege, and that is a legal issue.

1 MR. TISDALE: That's correct.

2 THE COURT: When you tell me that ecclesiastical law
3 entitles all Episcopalians to the attorney-client privilege,
4 I would tell you, okay, I would expect that you would then
5 make that request pursuant to whatever governing bodies are
6 ecclesiastical, but I cannot -- I cannot participate in that.

7 MR. TISDALE: Well, Your Honor, Professor Freeman's
8 article addresses the issue that is before the Court today,
9 and it's upon that principle that this needs to be decided.

10 THE COURT: Yes.

11 MR. TISDALE: But what I am saying to you, Your Honor,
12 is that this statute of the State of South Carolina says that
13 the neutral principles of law in South Carolina, as it
14 applies to religious corporations, is what the religious body
15 says, not the corporate lawyers, when its inconsistent.

16 THE COURT: I understand. I understand. And I agree
17 with your statement that there probably will be a lot of
18 areas, many areas that the Court will not walk, will not
19 assist because of the First Amendment, but this isn't one of
20 them.

21 MR. TISDALE: Your Honor, on page 7 in our memo we cited
22 a case of Garner versus Wolfinbarger. It's a federal case,
23 but it addresses this issue head on as well.

24 THE COURT: Okay.

25 MR. TISDALE: And the members of the church are the same

1 as stockholders in a corporation for the purpose of this
2 analysis, and clearly when there are allegations against the
3 officers of a corporation, the shareholders are entitled to
4 the information developed by the attorneys for the
5 corporation to see what the misconduct, if any, might have
6 been, and that's exactly the same situation we have here.
7 The members of the corporation, the members of The Episcopal
8 Church are entitled to the information their lawyer developed
9 for them at their expense.

10 THE COURT: Got it. Okay. Now, I want to leave that
11 issue for a moment, the overriding issue, because I am
12 satisfied that the unincorporated association of individuals
13 is not entitled to breach the attorney-client privilege of
14 the corporate entity. That I am satisfied of. So having
15 made that determination, then we must look more particularly
16 to the individual communications within the log, the
17 privilege log, and so what I want to ask with regards to the
18 privilege log specifically is -- and Ms. Golding, I gather
19 you're handling this, maybe all of the motions today, but
20 certainly this one. Is there an affidavit that explains to
21 me who the different individuals are who are listed in the
22 privilege log as being copied on information and for whom
23 information was sent?

24 MS. GOLDING: Yes, Your Honor. In the affidavit of Mr.
25 Runyan that was submitted to the Court on Monday --

1 THE COURT: Yes.

2 MS. GOLDING: -- Mr. Runyan set forth the individuals
3 that were on the diocese board of directors from 2009 to 2013
4 and identified those individuals. He also identified the
5 members of the board of trustees over the same time period,
6 and so that gives you a guide as to who the recipients are.
7 He also identified what we call the council of advice that he
8 participated in from 2009 to the present, and that's in
9 paragraph 6, the persons in that council, and he identified
10 himself as being legal counsel in his participation. So in
11 Mr. Runyan's affidavit he identifies the individuals and
12 their roles and that incorporates -- and these individuals,
13 some at different times, were recipients of the e-mails.

14 THE COURT: Right.

15 MS. GOLDING: And that establishes their relationship to
16 the corporation at that time and why they were recipients or
17 parties to the e-mails.

18 THE COURT: So what you're telling me is there are
19 different categories of folks.

20 MS. GOLDING: Correct, Your Honor.

21 THE COURT: What is a bishop's council of advice?

22 MS. GOLDING: That may -- I'm going to have to defer to
23 Mr. Runyan with respect to that, Your Honor. I apologize.

24 THE COURT: Right.

25 MS. GOLDING: Thank you.

1 MR. RUNYAN: Your Honor, civilly it's like an executive
2 committee. It consisted at that time of the bishop, who was
3 the chief operating officer of the corporation, employee of
4 the corporation, the presidents of the board of directors at
5 various times, myself, counsel, Mr. Wade Logan, counsel to
6 the bishop -- actually, I'm counsel to the corporation.

7 THE COURT: Interestingly enough, that was my next
8 question because I noticed that there are many communications
9 involving Mr. Logan, and is Mr. Logan acting as counsel, is
10 he acting as a lawyer, or is he acting as an individual on
11 the board of trustees or whatever, and I gather he's got a
12 couple roles.

13 MR. RUNYAN: He's ex officio, I believe, on the trustees
14 and the board of directors and he acts as counsel. I mean,
15 he's here. You can inquire of him, but every time I've been
16 there he acted as counsel.

17 THE COURT: Okay. Tell me this: Under your theory who
18 are the individuals who are allowed to receive information --
19 first of all, let's go through the elements of the
20 attorney-client privilege, and there are three. Number one,
21 it's got to be a communication, it's got to be a
22 communication for the purpose of receiving or giving legal
23 advice, and then obviously the advice, but it's obviously got
24 to be from someone, when you are considering that this is a
25 corporation, it's got to be someone who is allowed to give

1 and receive that information under the corporate law of the
2 State of South Carolina. Are you with me?

3 MR. RUNYAN: I am.

4 THE COURT: Yes. So tell me, for example -- well, board
5 of directors under corporate law are entitled to receive
6 that, officers of the corporation clearly, managing agents I
7 think are entitled to give and receive attorney-client
8 privilege. I guess this council of advice, I don't know what
9 that is corporately. I guess I'm expressing to you, is this
10 an ecclesiastical group, or what is that because I don't
11 know. You know, reading the corporate code, I've never seen
12 a council of advice.

13 MR. RUNYAN: It consists of members who occupy the other
14 roles that we've talked about who act in those other roles.
15 The best description I could give you is an executive
16 committee. It does not make decisions. It takes things to
17 the board of directors for their decision-making, but it does
18 consist of the chairman of the board of directors, two
19 lawyers, the chief operating officer and the managing agent,
20 the registered agent of the corporation, Jim Lewis. I think
21 that's all of them, but that's the concept of it.

22 THE COURT: All right. Mr. Logan.

23 MR. LOGAN: Good morning, Your Honor.

24 THE COURT: Good morning. Mr. Logan, you represent Mr.
25 Lawrence in an individual capacity?

1 MR. LOGAN: No, ma'am. My function as chancellor of the
2 diocese is to give legal advice to the bishop and to other
3 institutions of the diocese which would include the board of
4 directors, as Mr. Runyan's already referenced, and any
5 meeting which I may have attended or any communication which
6 I may have been copied on from Mr. Runyan was involving my
7 legal advice to those bodies and his.

8 THE COURT: And you have served in that capacity from
9 what point?

10 MR. LOGAN: Longer than I -- a while, Your Honor. Since
11 before the time we're talking about. Since before 2009.

12 THE COURT: Since before 2009.

13 MR. LOGAN: Yes, ma'am.

14 THE COURT: Okay. All right. Tell me, I saw a number
15 of names that continued to appear, and I have not gone
16 through the entire log, so I'll share that with you, but
17 Nancy Armstrong, is she a member of one of the boards of
18 trustees?

19 MR. RUNYAN: She's a treasurer, Your Honor, corporate
20 treasurer.

21 THE COURT: Okay. And Lydia Evans?

22 MR. RUNYAN: Lydia Evans has been a member of the
23 standing committee, the standing committee board of
24 directors. It would depend on the timeframe.

25 THE COURT: Probably 2010, in that time period, March

1 2010.

2 MR. RUNYAN: She is listed as being a member of the
3 board of directors in 2010.

4 THE COURT: All right. Now, with regards to the
5 individual communications on the privilege log, I would
6 presume, Mr. Tisdale, that there would be a request for a
7 review of those, for a review of the privilege log, to assure
8 that in fact those are attorney-client privileged
9 communications.

10 MR. TISDALE: Yes, Your Honor, with the -- of course we
11 do not believe -- we believe that we are entitled to them.

12 THE COURT: I understand completely. As I move on to
13 this I am not asking you nor do I hear that you have given up
14 any positions at all.

15 MR. TISDALE: Yes, Your Honor.

16 THE COURT: But if I disagree with your position, it
17 would yet be your position that the communications need to be
18 reviewed to be sure that they are, in fact, attorney-client
19 privileged communications because just because it comes to a
20 lawyer or from a lawyer does not necessarily mean that the
21 attorney-client privilege applies.

22 MR. TISDALE: Of course that's correct, Your Honor.

23 THE COURT: Okay.

24 MR. TISDALE: There's one broader issue I would like to
25 present at the appropriate time --

1 THE COURT: Yes, please.

2 MR. TISDALE: -- but this might not be it. The one
3 thing is that, you see, when this withdrawal occurred in
4 November '12 --

5 THE COURT: Yes.

6 MR. TISDALE: It was a withdrawal of the entire diocese
7 from The Episcopal Church.

8 THE COURT: Yes.

9 MR. TISDALE: So it was not a corporate -- they did not
10 say the corporation is disaffiliating from The Episcopal
11 Church. They said this diocese is disaffiliating from The
12 Episcopal Church. We are no longer affiliated. So these
13 documents and the plan for this withdrawal was not a
14 corporate action. It may have been partly a corporate
15 action, but it was a withdrawal of everybody, an
16 ecclesiastical body, and that ecclesiastical body withdrew,
17 so these -- what they are attempting to do is shield the plan
18 of withdrawal from revelation to anyone by saying it's
19 protected by attorney-client privilege, when the
20 beneficiaries of it were people who were members of the
21 church, a part of the ecclesiastical body, because it was an
22 ecclesiastical withdrawal. And that's why the Professional
23 Conduct Rule 1.13 says, when you represent an organization.
24 Mr. Runyan, with all due respect, was representing the entire
25 body, the ecclesiastical body, as well as the corporation.

1 So just because it was a corporation doesn't shield the
2 documents from the people who are entitled to the
3 information.

4 THE COURT: Okay. All right. And what I want to say in
5 response to that, if the ecclesiastical body gets you those
6 documents, you get them. I won't give them to you on the
7 basis of ecclesiastical law. I just simply cannot. That's
8 where the First Amendment comes in. I am only -- my interest
9 lies in the attorney-client privilege that exists under the
10 law, and for that I'm looking solely to corporate law and the
11 attorney-client privilege as it relates to the representation
12 of corporations. Having said that, having said that, your
13 point very well may become important as one goes through the
14 communications themselves. And any example I would give
15 would be absolutely made up because obviously I've not looked
16 at anything, but if there is perhaps a communication that
17 says, gosh, so-and-so, I was at lunch, and I'm afraid
18 so-and-so might have heard something, and I don't want
19 anybody to find out what we are doing. Let's say that's a
20 communication and that communication is written between
21 individuals but then copied to Mr. Runyan. Attorney-client
22 privilege does not apply. See what I'm saying? So your
23 concerns very well may be addressed in the individual review
24 of the communications.

25 MR. TISDALE: But, Your Honor, also I should say that,

1 as we talked about at the last hearing I think, you see, we
2 do not control the corporation. We are an unincorporated
3 association by necessity because the control has been taken
4 from us, but certainly we claim that we are the corporation
5 and own the corporation, and so that makes the corporation's
6 business our business because of the claim we're making in
7 this litigation, and the cases say and Professor Freeman's
8 article says that when we make these claims, we're entitled
9 to know what they did to affect our interest, and we claim
10 that there have been fiduciary duties which have been
11 breached and that we are entitled clearly to the corporate
12 information for the purpose of fulfilling this claim and
13 gaining control of the corporation that we say we are
14 entitled to.

15 THE COURT: Okay. Got it. I got that argument.
16 Absolutely. Okay. Now --

17 MS. GOLDING: Your Honor, may I make a point with
18 respect to your inquiries of Mr. Tisdale? He has not
19 requested in camera review of the documents. He is not
20 contending that these documents are not subject to
21 attorney-client privilege. He's just contending that I'm the
22 client.

23 THE COURT: In other words, you think I like jumped like
24 ahead a step.

25 MS. GOLDING: That's correct, Your Honor. Thank you.

1 THE COURT: And you're right. I am anticipating that at
2 some point there's going to have to be a review, and since
3 I've got everybody here, I'm like, okay, can we come up with
4 a mechanism other than, you know, the Judge sitting there
5 reading all of them. You know, my self-interest pops right
6 up there. Yes, you've found me out, Ms. Golding.

7 Okay. So I'm going to leave that issue. We're going to
8 move on to another issue, and that issue is -- the next issue
9 is going to go into the motions to compel responses to
10 discovery filed by the plaintiffs, and I love the first one.
11 The plaintiffs want the Court to confirm that supplementation
12 will occur. I left my crystal ball in chambers. I mean, the
13 rules require it. I can't help you there. I loved it. It
14 was like, we just want the Judge to confirm that
15 supplementation will occur. You're entitled to have it
16 occur.

17 MR. RUNYAN: Did I make that motion? I don't remember
18 making that motion.

19 THE COURT: No, that wasn't you. But I loved it. It
20 was like, please have them confirm that supplementation will
21 occur. Well, you don't need that because the rule says
22 supplementation must occur. So I'm going to move on from
23 that one. The next one talks about Interrogatory No. 6 in
24 Request No. 3, and Interrogatory 6 in Request to Produce 3
25 asks for information for -- oh, talk to me about your claims