

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA**

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

Oklahoma Department of Securities )  
*ex rel.* Melanie Hall, Administrator, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Premier Global Corporation et al., )  
 )  
 )  
Defendants. )  
\_\_\_\_\_ )

MAY 28 2024

RICK WARREN  
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Case No. CJ-2022-5066  
Judge Don Andrews

**RECEIVER’S REPLY TO DEFENDANT RICHARD DEAN’S RESPONSE IN  
OPPOSITION TO RECEIVER’S MOTION TO SETTLE JOURNAL ENTRY**

Eric L. Johnson (the “Receiver”) hereby submits the following Reply to Defendant Richard Dean’s Response in Opposition to Receiver’s Motion to Settle Journal Entry (the “Response”).

**ARGUMENTS AND AUTHORITIES**

**A. DEFEENDANT DEAN WAS ACTING AS A REPRESENTATIVE OF PREMIER DURING HIS COMMUNICATIONS WITH GABLEGOTWALS.**

As a starting point, GableGotwals has confirmed in writing that it:

- 1) never sent a notice of representation for Mr. Dean in his personal capacity;
- 2) never served any response or objection to the Richard Dean Subpoena;
- 3) never produced any documents on behalf of Mr. Dean individually;
- 4) clarified and specifically advised Mr. Dean in the Premier Engagement letter that GableGotwals did not represent Mr. Dean individually, and
- 5) made clear that all other communications with Mr. Dean were with him in his position alongside Steve Parish as the operators of Premier, DDIA and their affiliates, except for *possibly* the few and de minimis communications that GableGotwals had relating to Dean’s individual subpoena sent to him by ODS.

Further, the Receiver has agreed pursuant to the Court’s March 14, 2024 ruling that GableGotwals can segregate out those few communications relating to ODS’ subpoena sent individually to Dean

and identify them on a privilege log. There is no reason, however, that the other documents should have not already been produced.

While Dean cites to *State of Okla. Ex. Rel. Oklahoma Bar Association v. Green*, 936 P.2d 947 (Okla. 1997); it is distinguishable. In *Green*, the attorney being prosecuted for misconduct testified, admitted, and understood that his representation encompassed not only the partnership but also the individual partner as he had filed answers in a lawsuit on behalf of both the company and two of the individual partners. Thus, in *Green*, both the attorney and the client agreed there was an attorney-client relationship.

In the subject case, unlike in *Green*, GableGotwals denies any attorney-client relationship with Dean individually, and this is supported by the evidence.<sup>1</sup> Further, GableGotwals' Engagement letter with Premier clearly delineates that Premier is the client and that GableGotwals does not represent any individuals and only represents Premier. GableGotwals has further advised while it does not believe Dean was ever its client individually, there were a few communications that John Russell had with Mr. Dean about Dean's individual subpoena, but "...GableGotwals' communications with Mr. Dean were with him in his position, alongside Mr. Parish, as operators of Premier, DDIA, and their affiliates." See Response, Ex. A.

Accordingly, with at most the possible exception of the handful of communications with Dean about the personal subpoena, Dean was acting at all times as a "representative" of Premier Global, DDIA, and their affiliates. Pursuant to Okla. Stat. Ann. tit. 12, § 2502(A)(4),

4. A 'representative of the client' is:
  - a. **one having authority to obtain professional legal services**, or to act on advice rendered pursuant thereto, on behalf of the client, or

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<sup>1</sup> See Exhibit 3 of Receiver's Motion to Settle Journal Entry- Email dated 4/2/24 from David Limekiller; and Exhibit A of Dean's Response in Opposition to Receiver's Motion to Settle Journal Entry- Email dated 5/2/24.

b. any other person who, for the purpose of effectuating legal representation for the client, makes or receives a confidential communication **while acting in the scope of employment for the client...**

Because it appears that Dean was acting as a representative of the Premier entities, his communications fall within the attorney-client privilege between corporate entities and GableGotwals. *See Okla. Stat. Ann. tit. 12, § 2502(B)(1)* (explaining the privilege applies to communications “[b]etween the client or a representative of the client and the client's attorney or a representative of the attorney.”). Importantly, however, while his communications may have been covered by the privilege, Mr. Dean does not control the privilege.

Under well-established precedent and authority, the Receiver controls the privilege of the corporate entity for which he or she is appointed. *See, e.g., Okla. Stat. Ann. tit. 12, § 2502(C)* (“The privilege may be claimed by...the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence.”); *see also Girl Scouts-W. Oklahoma, Inc. v. Barringer-Thomson*, 252 P.3d 844, 848 (Okla. 2011) (explaining that the “trustee in bankruptcy of an insolvent corporation had the power to waive the corporation's attorney-client privilege for pre-bankruptcy communications.”); *see also id.* (“When control of a corporation passes to new management, the authority to assert and waive the corporation's attorney-client privilege passes as well. New managers installed as a result of a merger, or simply normal succession, may waive the attorney-client privilege with respect to communications made by former officers and directors.”). Regardless, if Mr. Dean is found to be a representative of the corporate entities, his presence to various communications would not impact the privilege. If he is not a representative of Premier, then there is no privilege and privilege would not attach. Either way, the Receiver is entitled to the documents, and they must be produced.

**B. DEFENDANT DEAN HAS FAILED TO MEET HIS BURDEN TO PROVE AN ATTORNEY-CLIENT RELATIONSHIP EXISTED BETWEEN HIM INDIVIDUALLY AND GABLEGOTWALS.**

As the Court knows, the party seeking to assert the attorney-client privilege as a bar to discovery has the burden of establishing it is applicable. *Matter of Grand Jury Subpoena Duces Tecum Issued on June 9, 1982, to Custodian of Records, Dorokeeb Company v. United States of America*, 697 F.2d 277, 279 (10<sup>th</sup> Cir. 1983); *Feldman v. Pioneer Petroleum, Inc.*, 87 F.R.D. 86, 88 (N.D. Okla. 1980). In addition, even if an attorney-client relationship is established, which in this case it is denied that Dean, individually, had an attorney-client relationship with GableGotwals, the mere status of an attorney-client relationship does not make every communication between the attorney and client protected by the privilege. *Scott v. Peterson*, 126 P.3d 1232, 1234-1235 (Okla. 2005) (burden is upon the party asserting the privilege to show the relationship of attorney and client and other facts to bring the evidence within the terms of the statute pertaining to privileged communications); *Hurt v. State*, 303 P.2d 476, 481 (Okla. Cr. 1956). It is therefore Mr. Dean's burden to expressly prove an attorney-client relationship and advise the Court and parties through a privilege log and testimony: (1) what the protected document, communication and information is; and (2) what the document, communication, and information and relates to. This is necessary to enable the Court and parties to assess the applicability of the privilege or protection. *12 O.S. 3226(B)(5)(a)*.

Dean has the burden to prove: 1) what capacity he was acting in during each communication with GableGotwals; and 2) the potential privilege for each specific communication, not just all communications generally. In fact, the only way that Mr. Dean can claim a privilege is by ultimately taking the stand and testifying as to the alleged privilege so that

the parties and the Court may determine to what extent he was acting as a representative of the Premier entities and in what capacity.

Defendant Dean's blanket assertion of privilege for the entirety of the GableGotwals' files is insufficient under Oklahoma law and is a violation of the Court's findings on March 14, 2024. As the Court explained in *Scott v. Peterson*, 126 P.3d 1232, 1234 (2005), "[a party's] blanket assertion of the privilege for the entire claims file" is insufficient, and instead "[the party] must show that **particular** documents in the claims file are privileged."

Despite this Court's directive, Dean continues to refuse to comply. Mr. Dean's attorneys have admittedly had the 44,000 documents produced by GableGotwals for months. At no time has Mr. Dean provided any type of privilege log related to any communications between him and GableGotwals that they *believe* are privileged. This log should have already been prepared, exchanged between the parties and the Court, and the remaining documents produced. Instead, Mr. Dean's attorneys continue to stall the production of the 44,000 documents, threaten GableGotwals if it complies with the Court's previous directive to produce the documents, and have needlessly imposed additional and significant time and expense on the Receiver in having to again address this issue, on which the Court has previously ruled. The Journal Entry submitted by the Receiver should be entered and GableGotwals ordered to produce to the Receiver within five (5) days of the Court's hearing the documents they had ready to produce to Mr. Dean months ago.

Respectfully submitted,

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### CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2024, a true and correct copy of the above and foregoing was sent electronically to all parties requesting electronic notice and mailed to the parties who have mailing addresses and have entered an appearance.

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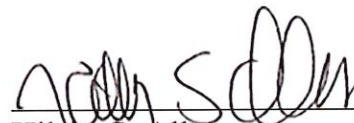
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