

IN THE COURT OF APPEALS OF  
MARYLAND

No. 99

September Term, 1997

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E. I. du PONT de NEMOURS & CO.

v.

FORMA-PACK, INC.

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Bell, C.J.  
Eldridge  
Rodowsky  
Chasanow  
Raker  
Wilner  
Cathell,

JJ.

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Dissenting Opinion by Raker, J.,  
in which Eldridge, J. and Wilner, J. join

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Filed: October 8, 1998

I would reverse the judgment of the circuit court because I believe the trial judge applied the incorrect standard in determining whether the documents transmitted between Dupont and Kaplan were protected by the attorney-client privilege or the work product doctrine. In my view, the trial judge erroneously applied a *per se* rule that a function performed by a debt collection agent can *never* be a legal function, and thus can never be protected by the attorney-client privilege or the work product doctrine. Accordingly, I would remand the matter to the circuit court to conduct an *in camera* inspection of the documents in accordance with the request made by Dupont to the trial judge, in order to determine whether the attorney-client privilege or the work product doctrine protects the documents.

At the outset, it is important to note the scope of my disagreement with the majority. Our basic dispute is factual, and surrounds the interpretation of the remarks of the trial judge. For that reason, it is important to set out the Memorandum and Order of the trial court.

“The determinative element establishing the cloak of privilege is the presence of a confidential communication emanating from the client.” *Levitsky v. Prince George’s Co.*, 50 Md. App. 484 (1982). In *Levitsky*, the Court of Special Appeals held that “the mere fact the expert may have communicated his opinion of value to either the attorney or client does not make it a privileged communication.” *Id.* at 494 (citing *State Highway Comm. v. Earl*, 143 N.W.2d 88 ([S.D.] 1966)). In the present case, there was no evidence of communication between DuPont’s legal department and Kaplan which would indicate that DuPont intended the communications between itself and Kaplan would be held in confidence. On the contrary, DuPont hired Kaplan in an attempt to collect an outstanding debt owed by Forma-Pack.

*This Court agrees with Forma-Pack when it finds that the function of a collection agent is non-legal in nature and is no more than a business approach designed to collect outstanding debts.* Maryland had no case law directly on point which addresses whether a collection agent’s communications with an attorney may be undiscoverable pursuant to the attorney-client privilege. As a result, Forma-Pack cites several cases from other jurisdictions in support of its argument. In particular, Forma-Pack cites *Henson v. Wyeth Laboratories, Inc.*, which states that “for the privilege to apply, the confidential communication must be for the primary purpose of soliciting legal, rather than business advice.” *Henson*, 118 F.R.D. 584 (W.D. Va. 1987) (citing *North Carolina Elec. Membership Corp. v. Carolina Power*, 110 F.R.D. 511 (M.D.N.C. 1986)). In addition, Forma-Pack cites that “where an attorney is acting as a business advisor or collections agent, . . . the communication between him and his client are not protected by the privilege.” *In re Witness Before the Grand Jury*, 631 F.Supp. 32 (E.D. Wis. 1985) (quoting *In re Shapiro*, 381 F.Supp. at 22) (N.D. Ill. 1974)).

*This Court is persuaded by the arguments presented by Forma-Pack in these cases because the Court believes that the communication between DuPont and Kaplan is no more than a business approach used in an effort to collect a debt from Forma-Pack.* As such, the Court finds that the communications between DuPont and Kaplan and Kaplan’s agents which refer to the attempts made in collecting a debt owed by Forma-Pack are not protected from discovery pursuant to the attorney-client privilege.

[DuPont] also argues that the communications between DuPont and Kaplan are protected by the work-product doctrine

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DuPont argues that the documents created by Kaplan and subpoenaed by Forma-Pack are protected by the work-product doctrine because once a delinquent account . . . is transferred to DuPont’s legal department, it is presumed that litigation may be necessary. *The Court finds this argument unpersuasive because*

*debt collection, of the type which Kaplan was engaged in, is a business practice and not a legal practice.*

(Emphasis added).

The majority finds that the trial judge, after a full evidentiary hearing, was not clearly erroneous in finding that DuPont failed to meet its burden of proof as to the existence of any privilege. The majority concludes that “it is reasonable for Judge Loney to make the factual finding that when DuPont hired a collection agency that was not authorized to practice law instead of an attorney, the primary purpose was to collect a debt and not to litigate the matter.” Maj. op. at 15. The majority reasons that “there is no basis for rejecting the factual findings that Kaplan was hired to perform a business function, not a legal function, and that the communications between DuPont and Kaplan were not in anticipation of litigation or for trial.” Maj. op. at 16.

I do not believe that the trial judge conducted a *full* evidentiary hearing, nor did the judge make the factual findings as set out by the majority. Rather, I believe that the basis for the court’s ruling was that debt collection does not constitute legal activity. The only possible support for an argument that the trial court gave individualized consideration to the claims of privilege by DuPont is the trial court’s statement, “[i]n the present case, there was no evidence of communication between DuPont’s legal department and Kaplan which would indicate that DuPont intended the communications between itself and Kaplan would be held in confidence.” Nonetheless, the circuit court appeared to base its decision on the premise

that neither the attorney-client privilege nor the work product doctrine could ever shield documents transmitted between an attorney and a collection agent hired on behalf of a client.

The fairest reading of both the emphasized language and the memorandum opinion as a whole leads to the conclusion that the court applied a *per se* rule that a function performed by a debt collection agent can *never* be a legal function, and thus can never be protected by the attorney-client privilege or work product doctrine. This conclusion is reinforced by the fact that DuPont offered to allow the trial judge to conduct an *in camera* inspection of the disputed documents, but the trial judge declined that request.<sup>1</sup> In applying this *per se* rule, the trial court used the wrong legal standard. Indeed, it appears as though the majority also applies a *per se* standard that the attempted recovery of a debt through a collection agent, even if the agent is an attorney, is a business function and not a legal function. See Maj. op. at 20.<sup>2</sup>

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<sup>1</sup> The privilege log is set out in the Appendix.

<sup>2</sup> In support of its argument that debt collection is always primarily a business activity, rather than a legal function, Forma-Pack relies upon *In re Shapiro*, 381 F.Supp. 21 (N.D. Ill. 1974). Specifically, Forma-Pack cites the following passage:

[W]here the attorney acts as a business advisor or collection agent, gives investment advice, or handles financial transactions for his client, the communications between him and his client are not protected by the privilege.

*Id.* at 22. The majority finds *Shapiro* “illustrative in pointing out that many courts have held that debt collection activities do not fall within the ambit of the attorney-client privilege.” Maj. op. at 20. The majority and Forma-Pack read this passage too broadly. *Shapiro* does not state that activity performed by a debt collection agent can *never* be legal activity; rather,  
(continued...)

I am mindful that in discovery matters, the trial court has broad discretion which will be disturbed only upon a showing of abuse. This legal discretion, however, does “not include the privilege of incorrect application of law . . . .” *Brown v. Superior Court, Maricopa County*, 670 P.2d 725, 730 (Ariz. 1983); *Koon v. United States*, U.S. , 116 S.Ct. 2035, 135 L.Ed.2d 392 (1996) (noting that a district court abuses its discretion when it makes an error of law).

The record in this case suggests at least one category of documents which might be privileged. Specifically, Kaplan retained an attorney, Stanley Peck, on behalf of DuPont to file the pending court action in the State of California against Forma-Pack. Communications between DuPont and Kaplan, involving that subject, might well be protected by the attorney-client privilege or work product doctrine. *See* 8 WIGMORE, EVIDENCE § 2317, at 619 (McNaughton rev. 1961) (“[T]he attorney’s agent is also the client’s subagent and is acting as such for the client.”) (footnote omitted).

Although not specifically suggested by the record in this case, other categories of information might be entitled to protection as the subject of communications between a debt collection agent and either an attorney or a client. For instance, as previously discussed, a letter from the agent in direct response to a query by the attorney, if made in anticipation of

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<sup>2</sup>(...continued)

the quoted passage merely stands for the unremarkable proposition that activity motivated solely or primarily by a business purpose, rather than to assist the attorney in the rendition of legal services, is not entitled to protection. Such a proposition is consistent with the scope of the common law attorney-client privilege.

litigation, might be subject to the work product doctrine. Courts have identified other categories of information which might be protected by either the attorney-client privilege or work product doctrine. These categories of information include communications involving: the strength or weakness of a specific claim, *see Spectrum Systems Int'l v. Chemical Bank*, 581 N.E.2d 1055, 1060 (N.Y. 1991); the value of a legal claim and the fees and expenses that may be incurred in its defense, *see Simon v. G. D. Searle & Co.*, 816 F.2d 397, 406 (8<sup>th</sup> Cir. 1987) (Gibson, J., dissenting), *cert. denied*, 484 U.S. 917, 108 S.Ct. 268, 98 L.Ed.2d 225 (1987); and, possible legal strategies for a client to adopt, as well as a prediction about the likely outcome of litigation. *See United States v. Adlman*, 134 F.3d 1194, 1195 (2<sup>nd</sup> Cir. 1998). It follows that the trial court erred in concluding that no communication between DuPont and Kaplan could be protected by either the attorney-client privilege or work product doctrine.

In my view, focusing on a facile checklist of “approved” occupations with whom an attorney may safely communicate will not accurately resolve DuPont’s claim of attorney-client privilege. Instead, under the relevant case law, the proper focus in determining privilege between a lawyer and an agent is on the content and purpose of those communications made during the course of the agency.

Of course, as a threshold matter, the attorney-client privilege applies to an agent only if an agency relationship exists between the attorney and the agent on behalf of the client, or if an agency relationship exists between the client and the agent which involves the attorney. *Rosati v. Kuzman*, 660 A.2d 263, 265 (R.I. 1995); *see* MCLAIN, *supra*, § 503.1, at

482 n.7 (“A “representative of the lawyer” is one employed by the lawyer to assist the lawyer in the rendition of professional services.”) (quoting UNIF. R. EVID. 502(a)(4)). Courts have found an agency relationship to exist “when three elements coalesce: (1) the principal must manifest that the agent will act for him (2) the agent must accept the undertaking and (3) the parties must agree that the principal will be in control of the undertaking.” *Rosati*, 660 A.2d at 265. As to the case-specific determination of whether the privilege extends to communications between attorney or client, and the agent hired on behalf of the client, the proper focus is not on the mere existence of an agency relationship or on whether communications passed to or from the agent. *See United States v. (Under Seal)*, 748 F.2d 871, 875 (4<sup>th</sup> Cir. 1984), *appeal after remand*, 757 F.2d 600 (4<sup>th</sup> Cir. 1985). The proper focus is whether the purpose of the communications was to aid the attorney in providing legal representation to the client. *See* 3 J. WEINSTEIN & M. BERGER, WEINSTEIN’S FEDERAL EVIDENCE §503.12[4][a], at 503-25 (2<sup>nd</sup> ed. 1998) (recognizing that communications between either agent and client or agent and attorney may be privileged, so long as the purpose of the communication is “to assist the attorney in the attorney’s rendition of legal services”) (footnote omitted).

Courts have recognized circumstances in which the attorney-client privilege extends to communications between an attorney and an agent hired on behalf of a client. For instance, in *United States v. Kovel*, 296 F.2d 918, 922 (2<sup>nd</sup> Cir. 1961), the United States Court of Appeals for the Second Circuit concluded that information communicated to an accountant, when the accountant had been employed by a law firm to explain a complicated

tax scenario, would be protected by the privilege if the information communicated was reasonably related to rendering proper representation. It was clear that such advice aided the attorney in representing the client. Similarly, in *In re Allen*, 106 F.3d 582 (4<sup>th</sup> Cir. 1997), *cert. denied sub nom., McGraw v. Better Gov't Bureau, Inc.*, U.S. , 118 S.Ct. 689, 139 L.Ed.2d 635 (1998), the court recognized that the attorney-client privilege extended to communications between an attorney and an agent retained to perform the rudimentary task of conducting an initial factual investigation so that the attorney could more effectively “sift[] through the facts with an eye to the legally relevant.” *Id.* at 601 (quoting *Upjohn Co. v. United States*, 449 U.S. 383, 390-91, 101 S.Ct. 677, 683, 66 L.Ed.2d 584 (1981)).

In determining whether the work product doctrine extends to litigation materials prepared by a party's agent, the relevant inquiry is whether the party asserting the privilege has demonstrated that the primary purpose for the preparation of the materials was in anticipation of litigation. *Cranford v. Montgomery County*, 300 Md. 759, 791, 481 A.2d 221, 237 (1984); *see United States v. Bornstein*, 977 F.2d 112, 117 (4<sup>th</sup> Cir. 1992); *State ex rel. United Hosp. v. Bedell*, 484 S.E.2d 199, 212 (W.Va. 1997). The gravamen of this inquiry focuses upon the “causal relationship between the anticipated litigation and the creation of the document, rather than a requirement that the litigation-causing events have already occurred.” *United States v. Adlman*, 68 F.3d 1495, 1501 (2d Cir. 1995). The Supreme Court of Iowa persuasively has observed:

“Prudent parties anticipate litigation, and begin preparation prior to the time suit is formally commenced. Thus the test should be whether, in the light of the nature of the document and the

factual situation in the particular case, the document can fairly be said to have been prepared or obtained because of the prospect of litigation . . . .” [8 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2024, at 198-99 (1970).] It does not matter that the investigation is routine. Even a routine investigation may be made in anticipation of litigation. Thus a document prepared in the regular course of business may be prepared in anticipation of litigation when the party’s business is to prepare for litigation.

*Ashmead v. Harris*, 336 N.W.2d 197, 200 (Iowa 1983) (internal citations partially omitted).

Other courts have identified instances when a function performed by an agent, on behalf of a client, resulted in the creation of materials in anticipation of litigation. For example, a physician’s letter was held to be protected work product when the letter was in response to a direct request by an attorney as to the cause of the client’s physical ailment. *Sprague v. Office of Workers’ Comp.*, 688 F.2d 862, 868-70 (1<sup>st</sup> Cir. 1982). In *United States v. Adlman*, 134 F.3d 1194 (2<sup>nd</sup> Cir. 1998), the United States Court of Appeals for the Second Circuit addressed the protection from discovery of a study, prepared for an attorney, assessing the likely results of a business transaction which, if it occurred, was expected to result in litigation. The court held that the study was protected from discovery if prepared in anticipation of expected litigation. *Id.* at 1195. The Second Circuit reasoned that the study contained the mental impressions of the agent who prepared the study for the attorney:

[The study] proposed possible legal theories or strategies for [the client] to adopt in response, recommended preferred methods of structuring the transaction, and made predictions about the likely outcome of litigation.

*Id.* at 1195. The *Adlman* court focused upon the nexus between the anticipated litigation and the creation of the materials; the court also focused upon the protection of the mental impressions of an agent generated in anticipation of litigation for an attorney on behalf of a client.

I would have the trial court apply these principles in determining whether the communications between DuPont and Kaplan are in fact protected by either the attorney-client privilege or work product doctrine. I believe that this is an inquiry for the trial court to make in the first instance. In this regard, I agree with the observation of the Court of Appeals of New York that:

[W]hether a particular document is or is not protected is necessarily a fact-specific determination, most often requiring in camera review.

*Spectrum Systems Int'l*, 581 N.E.2d at 1060 (internal citation omitted); see *Couser v. State*, 282 Md. 125, 136, 383 A.2d 389, 395 (1978) (noting that whether the work product doctrine protects data included within prosecutor's jury dossier would seem to depend upon the nature and substance of the information), *cert. denied*, 439 U.S. 852, 99 S.Ct. 158, 58 L.Ed.2d 156 (1978). In *Upjohn Co. v. United States*, 449 U.S. 383, 397-98, 101 S.Ct. 677, 686, 66 L.Ed.2d 584 (1981), the United States Supreme Court emphasized the importance of a "case-by-case" determination of evidentiary privilege. Other courts similarly have recognized the importance of an individualized assessment of the contents of a relevant document in response to a colorable claim of privilege. *In re Allen*, 106 F.3d 582, 608 (4<sup>th</sup> Cir. 1997), *cert. denied sub nom. McGraw v. Better Gov't Bureau, Inc.*, U.S. , 118 S.Ct. 689, 139

L.Ed.2d 635 (1998); *In re Sealed Case*, 29 F.3d 715, 718 (D.C. Cir. 1994); *United States v. White*, 970 F.2d 328, 334-35 (7<sup>th</sup> Cir. 1992); *Payton v. New Jersey Turnpike Auth.*, 691 A.2d 321, 335-36 (N.J. 1997); *State ex rel. United Hosp. v. Bedell*, 484 S.E.2d 199, 211 (W.Va. 1997); *Bartlett v. John Hancock Mut. Life Ins. Co.*, 538 A.2d 997, 999 (R.I. 1988); accord J. LYNCH, JR. & R. BOURNE, MODERN MARYLAND CIVIL PROCEDURE § 7.3(b), at 507 (1993); 8 C. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2035, at 484-86 (2<sup>nd</sup> ed. 1994).

Had the trial court performed an *in camera* review of the documents as requested by DuPont, the court may well have found that some or all of the documents were privileged. The majority states that “it is clear from Ms. Herr’s deposition that DuPont’s own legal department viewed the Forma-Pack collection matter as a business approach, rather than a legal approach taken in anticipation of litigation,” and concludes that “any documents generated between Kaplan and DuPont would be materials created in the ordinary course of business and not in anticipation of litigation.” Maj. op. at 15. The majority views Ms. Herr’s deposition in isolation and ignores her affidavit. The affidavit of Ms. Herr, along with that of DuPont legal assistant Glenn Wiltsee, established that the communications with Kaplan & Kaplan were made with the expectation of confidentiality and in anticipation of litigation. Ms. Herr averred, *inter alia*, in her affidavit:

4. Once an account is sent to the legal department for collection, it is presumed that litigation may be necessary to collect the debt.

\* \* \* \* \*

8. At all times in dealing with collection agencies such as Kaplan & Kaplan, I expect that all communications between myself or anyone else at Dupont's legal department and the collection agency are confidential since the collection agency assists the legal department in the collection of the account and, if necessary, facilitates the institution of a lawsuit.

9. I believed that all communications which I had with Kaplan & Kaplan concerning the Forma-Pack account were confidential.

The affidavit of Glenn Wiltsee was essentially the same as the affidavit of Susan Herr. In addition, the privilege log reveals that numerous communications were made either to facilitate the filing of the litigation in California or were made after litigation had begun.

In sum, I would hold that the trial court erred in concluding that materials transmitted between a debt collection agent and an attorney or a client can never be protected by the attorney-client privilege and work product doctrine. I emphasize that I do not advocate a holding that any of the documents are in fact protected. I would remand the matter to the Circuit Court for Anne Arundel County for the purpose of conducting an *in camera* inspection of the documents that DuPont claims are protected.<sup>3</sup> *See United Coal Cos. v.*

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<sup>3</sup> An *in camera* inspection is not required of every document in every case in which a colorable claim of privilege has been raised. Ordinarily, such decisions are within the sound discretion of the trial court. Whereas here, however, when a party has established a *prima facie* claim of privilege, based in part on a sufficiently detailed privilege log, and the materials for which the claims of privilege are made are relatively few in number, an *in camera* inspection by the trial court would not be unduly burdensome. As reflected in the privilege log reproduced in the Appendix, DuPont's claims of privilege extended only to sixteen documents, generally one or two pages in length.

*Powell Constr. Co.*, 839 F.2d 958 (3<sup>rd</sup> Cir. 1988) (remanding for an *in camera* inspection of disputed documents after trial court applied wrong legal standard to claims of privilege).

Finally, I would note that an individual document may contain both privileged and non-privileged subject matter. Under those circumstances, the trial court should order redaction of the privileged information, and permit discovery of the remaining non-privileged contents of the document. *United States v. (Under Seal)*, 748 F.2d at 878.

Accordingly, I respectfully dissent. Judge Eldridge and Judge Wilner have authorized me to state that they join in the views expressed herein.

**APPENDIX**

In support of its claims of attorney-client privilege and work product doctrine, DuPont introduced the following privilege log:

|                                     |   |
|-------------------------------------|---|
| Document Description                | Letter from Rodney S. Bonds to Charles Hirsch dated May 29, 1997        |
| Identity and Position of Author     | Rodney S. Bonds, Manager, Kaplan & Kaplan, Inc., Manager Legal Dept.    |
| Identity and Position of Recipients | DuPont attorney Mr. Charles Hirsch, Ballard, Spahr, Andrews & Ingersoll |
| Privilege Claimed                   | Attorney Client Privilege/Work Product                                  |

**Exhibit A-1**

|                                     |  |
|-------------------------------------|--|
| Document Description                | Computer record                        |
| Identity and Position of Author     | Kaplan & Kaplan Internal               |
| Identity and Position of Recipients | Internal                               |
| Privilege Claimed                   | Attorney Client Privilege/Work Product |

**Exhibit A-2**

|                                     |   |
|-------------------------------------|---|
| Document Description                | Facsimile from Bonds to Hirsch dated 5/8/97                             |
| Identity and Position of Author     | Rodney S. Bonds, Manager, Kaplan & Kaplan, Manager Legal Department     |
| Identity and Position of Recipients | DuPont attorney Mr. Charles Hirsch, Ballard, Spahr, Andrews & Ingersoll |
| Privilege Claimed                   | Attorney Client Privilege/Work Product                                  |

**Exhibit A-3**

|                                     |   |
|-------------------------------------|---|
| Document Description                | Letter from Edward J. Friedman to Mr. Rodney Bonds dated April 22, 1997                 |
| Identity and Position of Author     | Kaplan & Kaplan attorney Edward J. Friedman, Weinstock, Stevan, Harris & Friedman, P.A. |
| Identity and Position of Recipients | Mr. Rodney Bonds, Kaplan & Kaplan, Manager Legal Dept.                                  |
| Privilege Claimed                   | Attorney Client Privilege/Work Product  |

**Exhibit A-4**

|                                     |   |
|-------------------------------------|---|
| Document Description                | Letter from Edward J. Friedman to Mr. Rodney Bonds dated April 16, 1997                 |
| Identity and Position of Author     | Kaplan & Kaplan attorney Edward J. Friedman, Weinstock, Stevan, Harris & Friedman, P.A. |
| Identity and Position of Recipients | Mr. Rodney Bonds, Kaplan & Kaplan, Manager Legal Dept.                                  |
| Privilege Claimed                   | Attorney Client Privilege/Work Product  |

**Exhibit A-5**

|                                     |  |
|-------------------------------------|--|
| Document Description                | Letter from Brian L. Cella to Kaplan & Kaplan dated March 21, 1997 |
| Identity and Position of Author     | DuPont attorney, Brian L. Cella, Glynn, Cella & Lange              |
| Identity and Position of Recipients | Kaplan & Kaplan  |
| Privilege Claimed                   | Attorney Client Privilege/Work Product                             |

**Exhibit A-6**

|                                     |  |
|-------------------------------------|--|
| Document Description                | Facsimile from Rodney Bonds to Bob Lange dated February 14, 1997 |
| Identity and Position of Author     | Rodney Bonds, Kaplan & Kaplan, Manager Legal Dept.               |
| Identity and Position of Recipients | DuPont attorney Robert J. Lange, Esq., Glynn, Cella & Lange      |
| Privilege Claimed                   | Attorney Client Privilege/Work Product                           |

**Exhibit A-7**

|                                     |  |
|-------------------------------------|--|
| Document Description                | Letter from Robert J. Lange to Mr. Rodney Bonds dated February 4, 1997 |
| Identity and Position of Author     | DuPont attorney Robert J. Lange, Glynn, Cella & Lange                  |
| Identity and Position of Recipients | Rodney Bonds, Kaplan & Kaplan, Manager Legal Dept.                     |
| Privilege Claimed                   | Attorney Client Privilege/ Work Product                                |

**Exhibit A-8**

|                                 |  |
|---------------------------------|--|
| Document Description            | Facsimile from Jim Mullins to DuPont Legal dated June 19, 1996 |
| Identity and Position of Author | Jim Mullins, Kaplan & Kaplan, Legal Representative             |

|  |  |
|--|--|
| Identity and Position of Recipients<br>Privilege Claimed | Faye Vaughn, DuPont Legal<br>Attorney-Client Privilege/Work Product  |
| <b>Exhibit A-9</b>                                       |  |
| Document Description                                     | Letter from Stanley Peck addressed to Jim Mullins dated June 19, 1996  |
| Identity and Position of Author                          | DuPont attorney Stanley Peck   |
| Identity and Position of Recipients                      | Jim Mullins, Kaplan & Kaplan, Legal Representative   |
| Privilege Claimed  | Attorney-Client Privilege/Work Product   |
| <b>Exhibit A-10</b>                                      |  |
| Document Description                                     | Letter from Jim Mullins to Susan Herr dated March 23, 1996 forwarding DuPont Counsel Stanley Peck Progress Report of 3/15/96 |
| Identity and Position of Author                          | Jim Mullins, Kaplan & Kaplan, Legal Representative, Stanley Peck, DuPont counsel   |
| Identity and Position of Recipients                      | Ms. Susan Herr, DuPont Legal   |
| Privilege Claimed  | Attorney-Client Privilege/Work Product   |
| <b>Exhibit A-11</b>                                      |  |
| Document Description                                     | Letter from Jim Mullins to Stanley Peck dated February 22, 1996  |
| Identity and Position of Author                          | Jim Mullins, Kaplan & Kaplan, Legal Representative   |
| Identity and Position of Recipients                      | DuPont attorney Stanley Peck   |
| Privilege Claimed  | Attorney Client Privilege/Work Product   |
| <b>Exhibit A-12</b>                                      |  |
| Document Description                                     | Letter from Stanley Peck to Jim Mullins dated May 31, 1996   |
| Identity and Position of Author                          | DuPont attorney Stanley Peck   |
| Identity and Position of Recipients                      | Jim Mullins, Kaplan & Kaplan, Legal Representative   |
| Privilege Claimed  | Attorney Client Privilege/Work Product   |
| <b>Exhibit A-13</b>                                      |  |
| Document Description                                     | Letter from Jim Mullins to Stanley Peck dated September 27, 1995   |

|  |  |
|--|--|
| Identity and Position of Author                          | Jim Mullins, Kaplan & Kaplan, Legal Representative                     |
| Identity and Position of Recipients<br>Privilege Claimed | DuPont attorney Stanley Peck<br>Attorney Client Privilege/Work Product |

**Exhibit A-14**

|  |  |
|--|--|
| Document Description                                     | Memo from Jim Mullins to Susan Herr date June 23, 1995 attaching 6/14/95, 9/23/95 correspondence from DuPont attorney Stanley Peck and 8/29/94 collection letter to Forma-Pack |
| Identity and Position of Author                          | Jim Mullins, Kaplan & Kaplan, Legal Representative, DuPont attorney Stanley Peck   |
| Identity and Position of Recipients<br>Privilege Claimed | Susan Herr, DuPont Legal<br>Attorney Client Privilege/Work Product   |

**Exhibit A-15**

|  |   |
|--|---|
| Document Description                                     | 8/94 Internal Kaplan & Kaplan "Request for Legal Action Form" |
| Identity and Position of Author                          | Kaplan & Kaplan   |
| Identity and Position of Recipients<br>Privilege Claimed | Internal<br>Attorney Client Privilege/Work Product            |