

13-896 Document Chart

<b>BATES#</b>	<b>DOCUMENT DESCRIPTION</b>	<b>RULING</b>
222460	Meeting attendance list	Not privileged. Nothing in this document references or includes communications made for the purpose of securing legal advice.
117049	Email from Marcucci to Kuklish, copy to Widawsky-Hallowell <sup>1</sup>	Informational only, no legal advice requested or given. Email is not privileged. The fact that an attorney was copied does not make the document privileged.
219835	Email from Marcucci to LaBelle resident	No legal advice given. Email is not privileged.
219961	Email from Kuklish to Attorney Hallowell forwarded to another LaBelle resident	Does not appear to be seeking legal advice. Simply providing information. Even if privileged, waived due to copy to third party. Email is not privileged.
219976	Email from Marcucci to Ulery, copy to Kulish	The two residents involved were not at this time even members of CCC. The communication seems to be engaging in environmental activism and not seeking legal advice. Not privileged.
221730	Email from Marcucci to Kuklish, copy to Hallowell	This is correspondence from an activist to a citizen, copied to another attorney. It also does not appear to contain legal advice pursuant to Mr. Kuklish considering joining in a lawsuit. Not privileged.
222037	Email Hallowell to Kuklish, copy Marucci	This communication is well before Kuklish joining CCC. It also does not contain legal advice, rather advice on community activism. Not privileged.
222429	Email from Kuklish to Marucci	This communication is well before Kuklish joining CCC. It also does not contain legal advice, rather advice on community activism. Not privileged.
222644	Email from Kuklish to Marucci	This is an innocuous email that does not appear to be requesting legal advice or providing legal assistance. Not privileged
115226	Email from Kuklish to Marucci	This is an innocuous email that does not appear to be requesting legal advice or providing legal assistance. Not privileged

<sup>1</sup> The court has been advised that Lisa Widawsky-Hallowell is a lawyer with the Environmental Integrity Project who has worked with Kuklish and others to pursue legal rights. She will be referred to as Hallowell throughout.

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219385	Email from Marucci to Phillips	Communication relative to providing legal representation. Privileged.
116871/2	Email from Marucci to Kuklish with attachment	The email is fairly innocuous. The attachment might be relevant to the provision of legal services but it is sent by Kuklish prior to him even becoming a member of CCC and he is not asking for legal advice. Not privileged.
219411	Email from Basile to Marucci forwarded to 3 people, one of whom has an email address at a law firm of Webster and Gobielle.	Review of this document requires a number of assumptions. First, is Basile part of the lawsuit or simply a concerned citizen? Are Webster and Gobielle both representing him? If all of the above questions are answered in the affirmative then the 2nd part of the document might be privileged. The first part of the document is clearly not privileged as it contains no information for the purpose of securing legal advice or assisting in a legal proceeding. <sup>2</sup>
219957	Email from Kuklish to Cathie forwarding email to Hallowell and Marucci	This is the same email that was Bates19961. Same ruling.
221833	Email from Hallowell to Marucci with a copy to Dawes and Smith	It is far from clear that this email contains anything other than innocuous information not meant to obtain legal advice. It is however further sullied by the fact that there are at least 2 people copied on it (there is also a "jmulery" at the top) who are not clients and therefore, any privilege is waived.
222063/4	Email from Kuklish to Mary Koch	Again, this document is confusing. There are 2 emails at the top that indicate a number of people in addition to Koch may have seen the document. Counsel for CCC attest that the other people were clients of Ms. Koch. Assuming this is true then the document may be privileged and I am saying this only because it is from

<sup>2</sup> Counsel for Citizens Coal Council are cautioned that they cannot spread a broad brush to include communications to anyone who happens to be a lawyer from persons who are not either represented by counsel were considering joining in this lawsuit. Ordinary citizens who are or are not a member of CCC do not qualify to assert the attorney-client privilege simply because they are communicating with a lawyer.

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		Kuklish who does eventually become affiliated with Plaintiff and is directed to a lawyer. However, it was shared with others which may defeat the privilege. If they are not clients and simply concerned citizens than the document is not privileged.
222037	On the list provided by counsel for CCC this document is referred to as 222037 – 39. However, the document itself only contains the number 222037 and is identical to the document by the same number referred to above.	
222038	This appears to be the bottom portion of the email referred to in 222037.	
222039	Repeat of 222038.	
115826	Email from Ulery to Kuklish and Marucci	Counsel for CCC assert that Ulery is a client. However, the evidence submitted with the briefs seems to show that none of these concerned citizens were members of CCC until 2/27/13 so I don't see how he could be a client. If Ulery is a client then the redacted portion of the document may be privileged. It is not clear to the court whether the entire document was inadvertently produced and meant to be withheld as privileged. The privilege assertion has many problems. It is sent from a person who may or may not be a client to another person who is a client and to a community organizer. It would be a clearer privilege assertion if sent directly to Marucci who could then be categorized as an agent of counsel. The fact that it is sent to Kuklish implies that he is NOT looking for legal advice. The bottom of the email is advice from Kuklish, not a lawyer so not legal advice. On the whole I would rule it not privileged.
115827	This appears to be page two of 115826, a continuation of the email exchange	The documents is an email from Ulery but it is not clear whether this email went to Kuklish only or both. In any event my opinion on this is the same.

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115824	Email from Ulery to Kuklish	Counsel argues that this email is a forwarded email from Ulery to Kuklish to the attorneys. Nowhere does the email say please send this to counsel. On its face it is simply an email between two non-lawyers and it is not privileged.
219969	Email from Kuklish to counsel, shared with Yma Smith	This is sent prior to 2/27/13 but it is sent by Kuklish directly to a lawyer and might be considered privileged communication prior to the lawsuit. The problem is that it was then shared with another concerned citizen. Any privilege which might have attached is waived.
221833	Duplicate addressed above	
222351	Email from Kuklish to Hallowell	Because this communication is from Kuklish directly to the attorney with no other people copied the court will uphold the privilege.
219547	Email from Hallowell to Kuklish, Marucci and Yma Smith	The communication is not giving legal advice and is copied to an outside party
222082	Email from Kuklish to Hallowell	Similar and a follow up to 222351. Privileged for the same reasons.
222079	Series of emails from Kuklish to Hallowell, Marucci, and Yma Smith	Counsel argues that Yma Smith is a CCC member and a "standing witness." It is far from clear that puts her in the same position as a client. In addition it is my understanding that none of these people were members of CCC until 2/13, almost 2 years after this email. I also note that the communications do not appear to be asking for legal advice but concern issues such as names for citizens' groups. Not privileged.
222080	Second page of 22079	Simply a list of contact persons and numbers to call at OSMRE. This is public information, not legal advice and seems to be simple community activism. Not privileged.
114713	Email from Kuklish to Hallowell	This communication is very short and simply indicates that Kuklish and someone else would like to have a conversation. It does not seek legal

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		advice. In addition, it occurred close to 2 years prior to Kuklish joining CCC and to the filing of this lawsuit. Not privileged.
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