

ALEXANDER SPEYER; AND HENRY P. :
HOFFSTOT, III :

v. :

ARTHUR P. ZIEGLER, JR.; MARK S. :
BIBRO; JACK R. NORRIS; PITTSBURGH :
HISTORY AND LANDMARKS :
FOUNDATION, A PENNSYLVANIA NON- :
PROFIT CORPORATION; AND :
LANDMARKS FINANCIAL :
CORPORATION, A PENNSYLVANIA :
NON-PROFIT CORPORATION :

PETITION OF: HENRY P. HOFFSTOT, :
JR.; DAVID E. BARENSFELD; PETER H. :
STEPHAICH; PATRICK R. WALLACE; :
ALEXANDER SPEYER; AND HENRY P. :
HOFFSTOT, III :

ORDER

PER CURIAM

AND NOW, this 1st day of November, 2017, the Petition for Allowance of Appeal is **GRANTED**. The issues, as stated by the Parties, are:

Petitioners' Issues at 199 WAL 2017:

- a. Whether, in the context of derivative litigation, the Commonwealth of Pennsylvania will adopt the qualified attorney-client privilege, the scope of which is subjectively determined, as articulated in the often criticized decision of *Garner v. Wolfinbarger*, 430 F.2d 1093 (5th Cir. 1970), *cert. denied*, 401 U.S. 974 (1971), and as articulated in the Restatement (Third) of the Law Governing Lawyers, § 85, where the ambiguous and uncertain scope of such a privilege is inconsistent with Pennsylvania Supreme Court precedent and in conflict with the Pennsylvania statute codifying the attorney-client privilege.

- b. Whether, even if this Court adopts *Garner's* qualified attorney-client privilege as the law of Pennsylvania, such a privilege is applicable to derivative litigation that arises out of disputes between former Board members and current Board members with no corresponding fiduciary relationship.

Respondents' Issues at 219 WAL 2017:

- a. Whether the fiduciary duty exception to the attorney-client privilege is applicable to discovery sought by either the derivative not-for-profit corporate Plaintiff or the purportedly removed Trustees of the not-for-profit corporation who are bringing the derivative action, when the corporation received and/or paid for the advice in question which was given regarding and at the time of events occurring while the individual Plaintiffs were unquestionably Trustees.
- b. Whether the common interest or co-client exception to the attorney-client privilege is applicable to discovery sought by either the derivative not-for-profit corporate Plaintiff or the purportedly improperly removed Trustees of the not-for-profit corporation who are bringing the derivative action, when the corporation received and/or paid for the advice in question, which was given regarding and at the time of events occurring while the individual Plaintiffs were unquestionably Trustees.