

# EXHIBIT G



ELLIS & WINTERS

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March 13, 2012

Robert C. Ekstrand  
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811 Ninth Street, Suite 260  
Durham, North Carolina 27705

Re: Carrington, et al. v. Duke, et al.

Dear Bob, Stefanie:

We have two issues we would like to bring to your attention.

First, we have now deposed eight plaintiffs in the Carrington matter. In each of those depositions, you have instructed the plaintiffs not to answer questions based on your prior representation of the deponent, and/or a "joint defense" privilege. Your instructions have been that "information learned from counsel" is privileged.

We believe that your instructions are largely improper.

The attorney-client privilege does not protect against the disclosure of *facts*. See *Upjohn Co. v. U.S.*, 449 U.S. 383, 395-96 (1981) ("The privilege only protects disclosure of communications; it does

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not protect disclosure of the underlying facts by those who communicated with the attorney."); see also *In re Sealed Case*, 737 F.2d 94 (D.C. Cir. 1984) ("Communications from attorney to client are shielded if they rest on confidential information obtained from the client. Correlatively, 'when an attorney conveys to his client facts acquired from other persons or sources, those facts are not privileged.'" (citations omitted)). Accordingly, the assertion of privilege for *underlying facts* in these circumstances is also improper.

Your instructions, which have been echoed by Cooper & Kirk attorneys, are obstructing Duke's ability to discover information related to the claims being asserted against it.

Second, we write to ask you to identify the extent of the "joint defense" privilege you have continued to assert during these depositions. As the party asserting privilege, you hold the burden of establishing its existence. See *North Carolina Elec. Membership Corp. v. Carolina Power & Light Co.*, 110 F.R.D. 511, 513 (M.D.N.C. 1986).

I asked about the participants in the "joint defense" during the deposition of Michael Catalino. Stefanie identified (1) all members of the 2005-2006 team; (2) all parents of the members of the 2005-2006 team; (3) Coach Pressler; and (4) potentially Jon Lantzy. (Catalino Dep. Tr. 192:24-193:3.) Stefanie indicated on the record that she reserved the right to identify additional participants to the "joint defense."

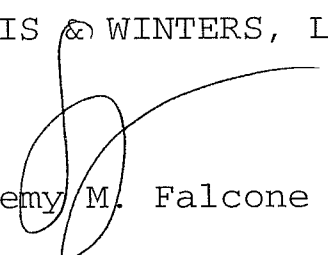
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I also asked when the "joint defense" began. Stefanie stated that it "depends on the person." (*Id.* 195:4-6.)

Please provide the (1) basis of the "joint defense" privilege claimed in this case; (2) the participants in the "joint defense;" and (3) the date on which the "joint defense" began for each participant. If you intend on continuing to make "joint defense" instructions, please provide this information in advance of the March 20, 2012 deposition of Devon Sherwood.

Very truly yours,

ELLIS & WINTERS, LLP



Jeremy M. Falcone

CC: David Thompson  
Thomas Segars