

<b>Tirschwell v TCW Group Inc.</b>
2019 NY Slip Op 30460(U)
February 26, 2019
Supreme Court, New York County
Docket Number: 150777/2018
Judge: Robert D. Kalish
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On December 14, 2017, Tirschwell attended a meeting with Lippman, Marzano, Jackson, and TCW's Chief Compliance Officer Jeffrey Engelsman wherein she was informed that "she was being fired for gross negligence." (Complaint ¶ 83; Am. Answer ¶ 44 [averring that Tirschwell was told she was being discharged for "gross negligence"].) According to TCW Defendants, Tirschwell was discharged because of her "unprecedented" history of compliance violations, numerous complaints from subordinates about her "abusive" management style, and TCW's belief that she would not be able to raise \$100 million in assets for the Distressed Fund by February 28, 2018 pursuant to the terms of her employment contract. (Memo in Opp. at 1.)

According to Jackson, on the day following Tirschwell's firing, TCW retained Elizabeth W. Gramigna, Esq.—"an attorney specializing in workplace investigations . . . to investigate and ascertain facts, make credibility determinations, and reach conclusions to inform TCW's actions with respect to Ms. Tirschwell's allegations, and to guide TCW's course of conduct and response to them." (Jackson Aff. ¶ 8.) Jackson further states that "Ms. Gramigna is not personally or financially interested in the outcome of this litigation, has never previously worked as an investigator for TCW, and has not been instructed or guided in her investigation by TCW or Greenberg Traurig, LLP." (Id. ¶ 9.)

At Marzano's deposition, Marzano stated, in addition to the decision to refer the investigation of Tirschwell's allegations to Gramigna, TCW has on two other occasions referred complaints made to Human Resources to outside investigators rather investigate those complaints internally. (Affirm. in Opp., Ex E [Marzano EBT] at 39:11-25.) Marzano stated that in deciding whether to have an investigation "done internally" or have it "sent outside," she will consider: 1) the amount time that will be involved in the investigation; 2) the expertise required for handling a particular investigation; 3) whether bringing in an "independent party" will help the investigation be perceived as being "handled fairly"; and (4) if "senior members of the firm are involved, that's another consideration where we would be more likely to bring in somebody from the outside." (Marzano EBT at 38:13-39:10.) Ms. Marzano further stated that for an outside investigator to be "independent" it means that the person is "independent from our operations", and that "we don't have, you know, a relationship with the outside third-party investigator in terms of using them for advice or different things like that in other matters," and that the outside investigator is experienced, professional and conducts the investigation in an ethical manner. (Marzano EBT at 42:17-25.)

A "Contract for Legal Services" prepared on Gramigna's letterhead, dated December 15, 2017, and signed by Gramigna and Jackson contains the following paragraphs:

**"Services to Be Rendered.** TCW has retained Gramigna as outside counsel to conduct an independent investigation and to provide a frank and unbiased assessment of facts concerning a workplace complaint. The investigation will examine allegations of sexual harassment, and any additional or different issues that the parties may later define during the course of the investigation. Gramigna has not been engaged to, and will not, provide legal advice to TCW or act as an advocate for TCW in any legal proceeding.

**Purpose of Engagement/Confidentiality.** Gramigna will communicate her objective factual findings to TCW and/or its outside counsel to facilitate the evaluation of legal issues and the rendering of legal advice by counsel to TCW.

The services rendered under this contract are highly confidential; except as required or permitted by law, Gramigna will not communicate with any third party about this matter, or discuss any facts other than in the course of the investigation, without first obtaining the consent of TCW or its outside counsel.”

(Supplemental Affirm in Opp., Ex. 4 [Gramigna Contract] ¶¶2-3 [emphasis in original].)

According to Gramigna’s notes, on December 18, 2017, she first contacted Tirschwell’s counsel to request an interview with Tirschwell. Gramigna’s notes state that during this first discussion, Tirschwell’s counsel expressed his belief that any internal investigation would be a “sham,” and Gramigna responded that she was an independent third-party and would conduct an independent investigation. According to Gramigna, Tirschwell’s counsel stated that he would consider the request, and the parties discussed the potential terms of such an interview over several months, with Tirschwell’s counsel suggesting at one point that Gramigna submit written questions that would be answered in writing. According to Gramigna’s notes, she declined counsel’s suggestion stating that it was not her protocol and that what she was doing was “[n]ot litigation.” (Id.) To date, Tirschwell has not been interviewed by Gramigna.<sup>1</sup>

On January 25, 2018, Tirschwell filed a thirty-three page complaint in this action, alleging the following causes of action:

- (1) Retaliation in violation of New York City Human Rights Law (“NYCHRL”) § 8-107 as against TCW Defendants and Ravich;
- (2) Gender discrimination in violation of NYCHRL § 8-107 as against TCW, TCW Group and Ravich;
- (3) Aiding and abetting in violation of NYCHRL § 8-107 (6) as against Lippman;
- (4) Breach of contract as against TCW; and
- (5) Breach of implied covenant of good faith and fair dealing as against TCW.

In TCW Defendants’ amended answer, TCW Defendants allege that:

“TCW maintains a zero-tolerance policy for harassment or discrimination of any kind and has effective internal complaint procedures available to any employee who believes he or she has experienced harassment or discrimination. If she believed she had such a complaint, Plaintiff unreasonably failed to avail herself of those procedures.

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<sup>1</sup> According to Tirschwell’s counsel, Steven G. Storch, Gramigna contacted him on March 29, 2018. (Storch Aff. in Reply. ¶ 2.) According to Storch, Gramigna “expressly stated to me that her internal workplace investigation is not governed by a litigation schedule and that it is separate and independent. She told me that its purpose was to make findings of facts so that TCW may do what is necessary for its workplace and its culture.” (Id.)

Within twenty-four hours after Plaintiff made her complaint by email to Cheryl Marzano, Company Head of Human Resources, Plaintiff was interviewed by Cheryl Marzano and Meredith Jackson, Company General Counsel, about her complaint. She was told the Company would be engaging an independent investigator to investigate her complaint. Since that time, Plaintiff has failed and refused to meet with the independent investigator subsequently engaged or to provide any evidence in support of her complaint.”

(TCW Amended Answer ¶ 1 [f]-[h].) TCW Defendants assert that to the extent they are found liable for violating NYCHRL, their “liability, damages, and penalties, if any, should be mitigated by virtue of the factors set forth in Section 8-107 (13) (d) and (e) of the New York City Human Rights Law.” (Id. ¶¶ 82-83.)

## ARGUMENTS

On the instant motion, Tirschwell seeks an order from this Court compelling TCW Defendants to produce documents and answer deposition questions related to the aforesaid investigation conducted by Gramigna.<sup>2</sup> Tirschwell first argues that by asserting the Gramigna Investigation as a mitigation defense, TCW Defendants have waived any claim of privilege based on attorney-client communications or the work product doctrine. In addition, Tirschwell argues that because—by TCW Defendants own admission—the Gramigna Investigation was “a routine part of the company’s compliance procedure,” the investigation was never privileged in the first place. Tirschwell further argues that if Gramigna was actually representing TCW Defendants and / or working with TCW Defendants’ counsel, then it would be unethical for Gramigna to present herself as conducting an “independent investigation.”

In opposition, TCW Defendants argue that their assertion of mitigation defenses pursuant to NYCHRL § 8-107 (13) (d) – (e) is not based on the existence and adequacy of the Gramigna Investigation that took place *after* Tirschwell was terminated but rather on “policies, procedures and programs” that existed *prior* to the discriminatory conduct alleged in the complaint. (Memo in Opp. at 6-10.) TCW Defendants further argue that the Gramigna Investigation is protected from disclosure pursuant to the attorney-client privilege because Gramigna was retained to conduct an investigation and, based on her findings, guide TCW’s “course of conduct,” which would include providing legal advice. (Memo in Opp. at 11.) In addition, TCW Defendants argue that the Gramigna Investigation is protected by the attorney work product doctrine because – even though Gramigna has not been “guided” by TCW’s counsel or Human Resources Department – the investigation is occurring in the context of the instant litigation. (Memo in Opp. at 12-16.) TCW Defendants argue that there was nothing improper about Gramigna referring to herself as “independent,” because this only meant that Gramigna was “independent of TCW’s operations” and not that she was “disinterested.” (Memo in Opp. at 5.) Furthermore,

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<sup>2</sup> The request for documents were originally made pursuant to Tirschwell’s First Notice for the Production of Documents to TCW Defendants Nos. 2-8, 11-13 and 90 and to Ravich pursuant to Tirschwell’s First Notice for the Production of Documents to Ravich Nos. 2-4. Both TCW Defendants and Ravich asserted that the requested documents were protected from disclosure pursuant to the attorney-client privilege and the work product doctrine. At various depositions, witnesses were instructed not to answer questions concerning the Gramigna Investigation by counsel for TCW Defendants.

TCW Defendants argue that because Gramigna has not finished her investigation and issued a final report, the instant motion is premature. (Id. at 2.)

In reply, Plaintiff reiterates her arguments and argues additionally that the “independent investigation” cannot be privileged because Elizabeth Gramigna, Esq. is not admitted to practice law in New York or any of the other jurisdictions where TCW has offices—she is only admitted in New Jersey and Pennsylvania.

Days before this motion was scheduled for argument, this Court received letters from Tirschwell and TCW Defendants that informed the Court of an article published in Bloomberg News. The article purportedly quoted from a memorandum sent by Lippman to TCW employees, wherein Lippman stated that based on an “independent investigation” TCW had “learned of some unprofessional communications between Mr. Ravich and Ms. Tirschwell.” (Wright Letter, Ex. A [Bloomberg Article] at 1.) The article further quotes Lippman as stating: “Because we have always maintained that the facts of this case, determined through due process, will determine our actions, TCW is now taking certain disciplinary measures with respect to Mr. Ravich.” (Bloomberg Article at 1.) The article further revealed that Ravich had recently resigned his seat on TCW Group’s board. (Id.)

Tirschwell’s counsel argues, in her letter, that this article is further evidence the “independent” investigation was never privileged—rather, Gramigna performed a routine human resources investigation. (Wright Letter at 2.) In addition, counsel argues that even if the investigation were privileged, “that privilege has been waived by TCW’s publication of the results of the investigation to the media.” (Id.)

In a response letter, TCW Defendants’ counsel argues with regard to Plaintiff’s waiver argument, that “there is no indication of any sort in the press article that any of the conclusions or content of the report were shared” and that “all the article contains is a reference to documents exchanged in the litigation and that were used in deposition.” (Sigda Letter at 1.)

During oral argument, it was revealed that prior to Lippman’s memorandum, Gramigna had provided TCW’s board with an oral interim report concerning her investigation. (Oral Arg. Tr. at 16:02-20:03.) TCW Defendants argued that it previously had not sought to have the court review any documents in camera because “there was nothing to submit to you.” (Oral Arg. Tr. at 21:15-24:16.) However, TCW Defendants offered to submit all materials used in or related to Gramigna’s oral presentation of her interim report. (Id.) Separately, TCW Defendants argued that there was no waiver of privilege regarding the Gramigna Investigation because unlike under the *Faragher-Ellerth* defense applicable to Title VII claims, the sufficiency of the Gramigna investigation only pertained to a potential award of punitive damages after liability is established and Tirschwell makes a showing that TCW Defendants engaged in discrimination with willful or wanton negligence, or recklessness, or a conscious disregard of the rights of others or conduct so reckless as to amount to such disregard. (Id. at 21:11-24.)

At oral argument, the Court directed TCW Defendants to submit all the documents related to the Gramigna Investigation that they were claiming were privileged. In addition, the Court directed TCW Defendants to submit a copy of Gramigna’s engagement letter as well as an

affidavit from Gramigna regarding what she believed to be the scope of her work. (Oral Arg. Tr. at 37:13-34.) TCW Defendants have submitted these materials pursuant to the Court, and the Court has reviewed the relevant documents in camera.<sup>3</sup>

## DISCUSSION

CPLR 3101 (a) directs that there shall be “full disclosure of all evidence material and necessary in the prosecution or defense of an action.” (Id.) “The test is one of usefulness and reason.” (*Allen v. Crowell–Collier Publ. Co.*, 21 N.Y.2d 403, 407 [1968].) CPLR 3101 “embodies the policy determination that liberal discovery encourages fair and effective resolution of disputes on the merits, minimizing the possibility for ambush and unfair surprise.” (*Spectrum Sys. Intern. Corp. v Chem. Bank*, 78 NY2d 371, 376 [1991].) “The supervision of disclosure and the setting of reasonable terms and conditions therefor rests within the sound discretion of the trial court.” (*Ligoure v City of New York*, 128 AD3d 1027, 1028 [2d Dept 2015].)

Notwithstanding the foregoing policy in this state in favor of liberal discovery, the attorney-client privilege and the attorney work product doctrine—both invoked by TCW Defendants on this motion—require that certain materials and communications be “absolutely immune from discovery.” (*Spectrum Sys. Intern. Corp. v Chem. Bank*, 78 NY2d 371, 376 [1991].) For each category, “the burden of establishing any right to protection is on the party asserting it; the protection claimed must be narrowly construed; and its application must be consistent with the purposes underlying the immunity.” (Id.)

There is no real dispute that the sought-after information relating to the Gramigna Investigation is relevant. The question before this Court is whether that information is protected from disclosure pursuant to either the attorney-client privilege or the attorney work product doctrine. This court will discuss the application of each doctrine to the Gramigna Investigation in turn.

### **I. The Gramigna Investigation is not protected by the attorney-client privilege.**

“The attorney-client privilege shields from disclosure any confidential communications between an attorney and his or her client made for the purpose of obtaining or facilitating legal advice in the course of a professional relationship.” (*Ambac Assur. Corp. v Countrywide Home Loans, Inc.*, 27 NY3d 616, 623 [2016].) It is “the oldest among common-law evidentiary privileges, fosters the open dialogue between lawyer and client that is deemed essential to effective representation.” (*Spectrum Sys. Intern. Corp. v Chem. Bank*, 78 NY2d 371, 376 [1991].) In order for the attorney-client privilege to apply, there must be “an attorney-client relationship . . . [which] arises only when one contacts an attorney in his capacity as such for the purpose of obtaining legal advice or services . . . [and] it must be shown that the information to protected from disclosure was a ‘confidential communication’ made to the attorney for the purpose of obtaining legal advice or services.” (*Priest v Hennessy*, 51 NY2d 62, 68-69 [1980].)

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<sup>3</sup> The Court will not consider any additional arguments submitted after oral argument on this motion, including TCW Defendants’ argument that this Court should apply California law to the question of whether the Gramigna Investigation is privileged.

“The privilege is of course limited to communications—not underlying facts.” (*Spectrum Sys.*, 78 NY2d at 377.)

“Obvious tension exists between the policy favoring full disclosure and the policy permitting parties to withhold relevant evidence. Consequently, the burden of establishing any right to protection is on the party asserting it; the protection claimed must be narrowly construed; and its application must be consistent with the purposes underlying the immunity.”

(Id.)

In the context of investigations undertaken by attorneys, an investigative report does not become privileged merely because the report was sent to an attorney or because the attorney conducted the investigation: “a lawyer’s communication is not cloaked with privilege when the lawyer is hired for business or personal advice, or to do the work of a nonlawyer.” (Id. at 379.) “The critical inquiry is whether, viewing the lawyer’s communication in its full content and context, it was made in order to render legal advice or services to the client.” (Id.)

The Court of Appeals has cautioned that adjudicating assertions of privilege “are largely fact-specific processes” and that trial courts should approach such assertions on a case-by-case basis, often by employing in camera review. (Id. at 381-82.)

Having reviewed the Gramigna Investigation materials in camera, it is clear to this Court that the materials are not protected by the attorney-client privilege as there is no evidence that Gramigna’s work was done for the predominant purpose of providing legal advice or services, other than conclusory assertions to that effect. Rather, the overwhelming evidence shows and Gramigna’s own statements make clear that the purpose of the Gramigna Investigation was to make a “frank and unbiased assessment of facts” and Gramigna was not engaged to “provide legal advice to TCW or act as an advocate for TCW in any legal proceeding.” (Gramigna Contract at 1.) To the extent that any legal analysis might be conducted, the Gramigna Contract and Gramigna’s affidavit make clear that that analysis would be conducted by TCW or TCW’s counsel. (Gramigna Contract ¶¶ 2-3; Gramigna Aff. ¶¶ 4-5.)

Notwithstanding statements in Gramigna’s contract that her factual findings were to be used by “TCW and/or its outside counsel to facilitate the evaluation of legal issues and the rendering of legal advice by counsel to TCW[,]” the documents and events surrounding Gramigna’s report make clear that the predominant purpose of Gramigna’s Investigation was to provide information to TCW allowing it to make a decision regarding Ravich’s employment status. (*See Koumoulis v Ind. Fin. Mktg. Group, Inc.*, 295 FRD 28, 45 [EDNY 2013] [“An examination of the content of the disputed communications shows that their predominant purpose was to provide human resources and thus business advice, not legal advice.”], *affd*, 29 F Supp 3d 142 [EDNY 2014]; *Ford v Rector*, 111 AD3d 572, 574 [1st Dept 2013] [same].)

In the notes used by Gramigna at her oral presentation of the interim report, Gramigna states that the scope of her investigation was to determine: (1) whether Ravich had sexual relations with Tirschwell during Tirschwell’s employment at TCW; and (2) whether Ravich cut-

off resources to Tirschwell after she ended the alleged sexual relationship. Notably, she further clarifies that the issue of whether Tirschwell was fired in retaliation for her December 5 complaint was not within the scope of her investigation. After Gramigna gave her interim report, Lippman announced that Ravich would be subject to discipline based on the findings of the report. (Bloomberg Article at 1.)

The notes used by Gramigna at the oral interim report contain no legal analysis, legal research, legal recommendations, or even any non-legal recommendations. They are purely factual findings. In addition, none of the documents submitted for review contain any legal research or legal analysis. Gramigna's work appears to be exclusively devoted to answering those two aforesaid questions: whether there was a sexual relationship between Ravich while Tirschwell was at TCW, and whether Ravich deprived Tirschwell of resources after the alleged relationship ended.

In addition, Gramigna's notes contain various examples of her distinguishing the context of her investigation as being distinct from a litigation context, and her work and method as an investigator being distinct from the work and method of a litigator. For example, when Tirschwell's counsel suggested Gramigna submit her questions in writing, Gramigna responded that this was not her protocol and that what she was doing was "[n]ot litigation." Unable to interview Tirschwell, Gramigna had to review Tirschwell's transcripts instead, and commented that this meant she had to rely on answers to questions posed by a defendant's attorney rather than answers in response to questions she would have used as "an independent investigator to elicit facts." From Gramigna's perspective, rather than her investigation being meant to serve the instant litigation, the litigation appears to pose a hindrance to her investigation.

Lastly, in Gramigna's affidavit, she states:

"As an attorney workplace investigator, I have significant concerns about producing my witness interview notes and my preliminary report and analysis as I believe that doing so would have a profound impact on witness employee participation in workplace investigations in the future, and on the efficacy of an internal process designed to eradicate harassment in the workplace, as it will no longer feel like a safe place to provide candid and open details concerning an ongoing sensitive matter."

(Gramigna Aff. ¶ 16.)

While Gramigna's concern is understandable, the public policy underlying her concern is distinctly different from the public policy underlying the attorney-client privilege, which is to permit an open dialogue between attorney and client so that the attorney can provide legal advice or services. (*See Upjohn Co. v United States*, 449 US 383, 390 [1981] [holding that attorney-client privilege "exists to protect not only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him to give sound and informed advice"].) Whether there should be an absolute or qualified privilege for internal investigations "designed to eradicate harassment in the workplace"—similar perhaps to the quality assurance privilege in the hospital setting—presents a question for the legislature, not this Court. (*See Aldridge v Brodman*, 49 AD3d 1192, 1193 [4th Dept 2008] [stating that the legislative purpose

behind the quality assurance privilege “is to encourage hospitals to review the shortcomings of their physicians, and the statute is intended to encourage frank and open discussion in evaluating personnel”].)

Lastly, to the extent that TCW Defendants continue to maintain their argument that this motion is premature because Gramigna has not issued a final, written report, this Court rejects that argument. TCW Defendants have not submitted any authority that a Court cannot review a party’s assertion of privilege relating to an internal investigation until a final report has been issued, and the Court is aware of no authority for such a proposition.<sup>4</sup>

As such, this Court finds that TCW Defendants have failed to meet their burden of establishing that the communications between TCW and Gramigna were made for the predominant purpose of providing legal advice or legal services. Although Gramigna is an attorney and TCW is Gramigna’s client, their contractual relationship is entirely unrelated to providing legal advice or legal services. Accordingly, the Court finds that materials and answers to question relating to the Gramigna Investigation are not protected from disclosure by the attorney-client privilege. (*Plimpton v Massachusetts Mut. Life Ins. Co.*, 50 AD3d 532, 533 [1st Dept 2008].)

## II. The Gramigna Investigation is not protected by the attorney work product doctrine.

“[A]ttorney work product applies only to documents prepared by counsel acting as such, and to materials uniquely the product of a lawyer's learning and professional skills, such as those reflecting an attorney's legal research, analysis, conclusions, legal theory or strategy.” (*Brooklyn Union Gas Co. v Am. Home Assur. Co.*, 23 AD3d 190, 190-91 [1st Dept 2005].) The doctrine is “very narrowly construed,” and “[m]aterials or documents that could have been prepared by a layperson do not fall within the attorney work product exception.” (*Salzer ex rel. Salzer v Farm Family Life Ins. Co.*, 280 AD2d 844, 846 [3d Dept 2001].)

Here, the evidence reviewed by the Court makes clear that none of the information sought to be protected by the attorney work product doctrine reflects documents that are uniquely the product of Gramigna’s legal training and specific skill set as an attorney. None of the documents submitted for in camera inspection reflect Gramigna’s legal research, legal analysis, or any kind of discussion concerning whether a law may have violated. Rather, Gramigna is simply trying to find out what happened—namely, did Tirschwell and Ravich have a sexual relationship, and, if they did, did Ravich deprive Tirschwell of resources after that alleged sexual relationship ended. While Gramigna’s training and experience as an attorney may have assisted in her investigation, this training and experience did not make her uniquely qualified to conduct such an investigation. Someone with a background in police work, private investigations or in human resources would have also been qualified to conduct the Gramigna Investigation.<sup>5</sup>

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<sup>4</sup> The Court notes that there is no indication of when a “final report” by Gramigna will be issued. A rule allowing, in this case, an employer-defendant to delay judicial review of its assertion of privilege until issuance of a final report might result in employer-defendants delaying the issuance of their reports until the eve of trial or even until after trial, effectively preventing a challenge to the privilege.

<sup>5</sup> Nor is there any evidence that Gramigna served as an “adjunct” to the instant litigation’s defense counsel’s “strategic thought processes.” (*Hudson Ins. Co. v Oppenheim*, 72 AD3d 489, 490 [1st Dept

As such, this Court finds TCW Defendants have failed to establish that materials related to the Gramigna Investigation are protected by the attorney work product doctrine. (*Plimpton v Massachusetts Mut. Life Ins. Co.*, 50 AD3d 532, 533 [1st Dept 2008].)

**III. The issue of waiver is rendered academic given that the asserted privileges never existed.**

As such, having found that the Gramigna Investigation does not qualify for protection from disclosure based on either the attorney-client privilege or the attorney work product doctrine, this Court need not consider whether such privileges were waived—this Court finds that such privileges never existed.

**CONCLUSION**

Accordingly, it is hereby

ORDERED that the motion by Plaintiff Sara Tirschwell, pursuant to CPLR 3124, to compel Defendants TCW Group Inc., TCW LLC and David Lippman (collectively, "TCW Defendants") to produce documents and answer questions posed at depositions concerning an investigation conducted by Elizabeth W. Gramigna, Esq. is granted; and it is further

ORDERED that within five (5) days of the filing of this order, Tirschwell shall serve a copy of this order with notice of entry via NYSCEF; and it is further

ORDERED that within thirty (30) days from the service of this order with notice of entry, any previously withheld documents from the Gramigna Investigation shall be produced and witnesses who were previously directed not to answer questions at depositions based on claims of privilege contrary to the instant order shall be made available to answer such questions at continued depositions; and it is further

ORDERED that any depositions taken pursuant to the above paragraph shall be completed before May 1, 2019.

This Constitutes the decision and order of the Court.

2/26/2019  
DATE

*Robert D. Kalish*  
**HONORABLE ROBERT D. KALISH**  
S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
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			<input type="checkbox"/>	REFERENCE

2010].) Such would, of course, be contrary to the statements by Gramigna, TCW Defendants and litigation counsel's statements that the Gramigna Investigation is independent of TCW Defendants or their counsel.