FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION
After Remand

Michael Harrington,

Complainant

Docket #FIC 2012-650

against

Thomas Kirk, President, Connecticut Resources Recovery Authority; Laurie Hunt, Director of Legal Services, Connecticut Resources Recovery Authority; and Connecticut Resources Recovery Authority

Respondents

January 10, 2018

In Harrington v. Freedom of Information Commission, 323 Conn. 1 (2016) (Harrington v. FOIC), the Supreme Court reversed the Commission's decision that records of certain communications were exempt from disclosure pursuant to the attorney-client privilege. The Court remanded the case to the Commission for further proceedings consistent with its decision.

This matter was heard as a contested case on May 28, June 25, August 9, and September 3, 2013, and after remand, on March 27, May 24, May 26, and June 30, 2017, at which times the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. Respondent Laurie Hunt is the Director of Legal Services for Connecticut Resources Recovery Authority (CRRA) and was misidentified as General Counsel in the original case caption. Accordingly, the case caption has been amended.[1]

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. The respondents are public agencies within the meaning of §1-200(1), G.S.

2. The Commission takes administrative notice of the record and decision in Docket #FIC 2011-698 (August 8, 2012), Michael Harrington v. Laurie Hunt, Director, Legal Affairs Department, Connecticut Resources Recovery Authority; and Connecticut Resources Recovery

[1] While this case was on appeal, CRRA was reinconstituted and is now known as Materials Innovation and Recycling Authority ("MIRA"), see Public Act 14-94. However, the Commission will continue herein to refer to this entity as CRRA.

Authority (Harrington I). In that case, the Commission concluded that the respondents violated the FOI Act by failing to promptly comply with the complainant's request for records. In fact, at the time the final decision was adopted in that case, the respondents had not concluded their review of all responsive records to determine which, if any, would be claimed exempt from disclosure. Accordingly, the Commission ordered the respondents to adopt a schedule for completion of the response to the request, to complete compliance and to provide responsive records, within 90 days of the final decision. The respondents were also ordered, to the extent any records were withheld, to provide a privilege log to the complainant, indicating which records were withheld and the basis for any claimed exemption. The Commission further invited the complainant, in the event that he "takes issue with any of the claimed exemptions, [to] file an appeal with the Commission…."

3. By letter dated and filed November 16, 2012, the complainant appealed to this Commission, stating that the respondents "wrongfully withheld documents claiming they are privileged." The complainant requested that the Commission issue an order (1) requiring [the respondents] to comply with the requirements of the FOI Act; (2) requiring [the respondents] to provide the requested records for inspection and copying immediately free of cost, and (3) imposing a civil penalty. By letter dated December 5, 2012, the complainant reiterated his request for the imposition of civil penalties.

4. On April 11, 2013, the Commission issued a Notice of Hearing and Order to Show Cause (Notice), which stated, in relevant part, that "[t]his appeal alleges a failure, within the meaning of §1-240(b), G.S., to comply with an order of the Freedom of Information Commission." On April 26, 2013, the respondents filed an Application for More Definite Statement and Detailed Statement, dated April 25, 2013, asserting that the complaint, attached to the Notice, did not reference any order of the Commission, or state how the respondents allegedly failed to comply with any such order.

5. On April 29, 2013, the Commission issued a Notice, cancelling the scheduled hearing, and indicating that an amended Notice of Hearing and Order to Show Cause would be issued.

6. On May 7, 2013, the Commission issued an amended Notice of Hearing and Order to Show Cause, which stated, in relevant part, that "[t]his appeal alleges violations of the FOI Act, as set forth in Chapter 14 of the Connecticut General Statutes."

7. Specifically, at issue in the present appeal are the exemptions claimed for certain records withheld in response to the November 21, 2011 request in Harrington I (see paragraph 2, above); specifically, for "all communications between Tom Ritter and the CRRA staff and Board" from January 1, 2007 to present; "all communications between Peter Boucher and the CRRA staff and Board" from January 1, 2009 to present; "all bills from and payments made to Brown Rudnick…for legal and municipal liaison services provided" from January 1, 2007 to present; and "all documents and communications between the CRRA staff and Board concerning the 2011 municipal liaison RFP…." It is found that, at the time these records were created, Boucher was an attorney with the law firm of Halloran & Sage, and acted as general counsel to CRRA. Several other attorneys at Halloran & Sage, and attorneys associated with other law firms, also provided legal counsel to CRRA during this period, including Douglas Cohen, John Farley, William

Champlin, Alan Curto, Miguel Escalera, Mark Baldwin, William Wilson, Christopher Novak, Thomas Blatchley and Scott McKessey.

8. It is found that, in response to the request for the records, described in paragraph 7, above, the respondents provided the complainant with approximately 2000 pages of Ritter emails, as well as certain Boucher emails and communications determined not to be privileged or otherwise exempt from disclosure. It is found that, after the Court's decision in Harrington v. FOIC, the respondents disclosed to the complainant additional pages of Ritter and Boucher emails. The respondents claimed the remainder of the Ritter emails and the Boucher emails, or portions thereof, are exempt from disclosure pursuant to the attorney-client privilege, §§1-210(b)(1), 1-210(b)(4), and/or 1-210(b)(5),G.S. The respondents further claimed that the billing records are exempt from disclosure pursuant to §1-210(b)(4), G.S., and that the RFP records are exempt pursuant to §§1-210(b)(10) and (b)(1), G.S.[2]

9. At the contested case hearings in this matter held in 2013, the complainant stated that he wished to pursue only a "sampling" of the emails that were responsive to his request for the Boucher emails, while preserving his right to request an in camera inspection of the remainder of the Boucher emails at a later date. Accordingly, in 2013, the respondents submitted for in camera inspection only those Boucher emails that the complainant had indicated that he wished to pursue, and only those emails were reviewed by the Commission, the superior court and the Supreme Court after the final decision was appealed.[3] However, during the contested case hearings held after the Supreme Court remanded the case back to the Commission, the complainant requested that the Commission conduct an in camera inspection of all responsive Boucher emails, including those emails that were not a part of the in camera submission in the original contested case hearings. The hearing officer denied the complainant's request, on the ground that the Commission lacks jurisdiction over those records, and, accordingly, the allegations pertaining to those remaining Boucher emails will not be addressed herein.[4]

10. The respondents submitted the records, identified in paragraphs 7 and 9, above, for in camera inspection by the Commission. It is found that the in camera records consist of emails to or from Ritter and CRRA staff and Board members, and emails on which Ritter was copied (Ritter emails); emails to or from Boucher and CRRA staff and Board members and emails on which Boucher was copied (Boucher emails); as well as certain law firm billing records/invoices (billing records), and emails and memoranda regarding the RFP (RFP records). The billing records are identified herein, in accordance with the page numbers assigned to them by the respondents, as IC 2012-650-BR1 through IC 2012-650-BR4.

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[2] The Commission's decision regarding the billing records and RFP records was not appealed.

[3] Respondents' Exhibit 23 is the in camera index to all responsive Boucher emails the respondents claimed are exempt from disclosure. The yellow highlighting on the index is the complainant's, whereby he indicated the responsive emails he wished to pursue in this appeal.

[4] The Commission agrees with the complainant that he did not waive his right to request these Boucher emails from the respondents, and, in fact, on July 5, 2017, the complainant requested such records, which request was denied by the respondents. The complainant appealed the denial to the Commission and that appeal was docketed as FIC 2017-0453.

11. Section 1-200(5), G.S., defines "public records or files" as

> any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

12. Section 1-210(a), G.S., provides in relevant part that:

> except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours . . . (3) receive a copy of such records in accordance with section 1-212.

13. Section 1-212(a), G.S., provides in relevant part that "any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

14. It is found that the records, identified in paragraphs 7 and 9, above, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

15. Respondent Laurie Hunt (Hunt) was the sole witness to testify on behalf of the respondents at the contested case hearings in this matter, both before and after the remand. Hunt testified, and it is found, that Ritter is an attorney in the government relations practice group at the law firm of Brown Rudnick. It is found that CRRA entered into a municipal government liaison services agreement (MGLSA) with Ritter whereby Ritter provided "municipal government advisor services" to CRRA, including, but not limited to:

> (a) providing CRRA with insight and outreach relative to CRRA and its interactions with municipalities that are currently and/or that may become hosts to CRRA facilities and pertinent or related groups and organizations that are and/or may become affected by CRRA facilities. Such services will be designed to assist CRRA in achieving certain critical goals as well as develping and enhancing relationships with CRRA's host communities.
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> (b) acting as a community liaison for CRRA to provide counsel and outreach to current and/or potential host communities in connection with local issues in the community(s) and the State of Connecticut in general.

(c) recommending to CRRA ways to improve outreach to the current and/or potential host communities and provide other opportunites for outreach.
(d) providing counsel to CRRA to assist CRRA with its critical goals in the current and/or potential host communities as well as develop and enhance CRRA's relationships with its current and/or potential host communities.

16. Hunt testified that CRRA President Tom Kirk, and other CRRA employees, requested legal advice from Ritter during the relevant time period, and that Ritter provided legal advice to CRRA, despite the fact that CRRA hired Ritter to provide municipal liasion services to CRRA, and that Ritter did not provide legal advice to CRRA pursuant to a legal services agreement.

17. Hunt also testified that CRRA employees and Board members regularly communicated, during the time period at issue, via email, with CRRA's legal counsel, which included Ritter, for the purposes of (1) seeking legal advice; and (2) keeping counsel apprised of ongoing business developments, with the expectation that the attorney would respond in the event the matter raised a legal issue. It is found that CRRA was a party to at least two legal controversies at the time of the requests at issue, and was the subject of proposed legislation that potentially would have affected CRRA's business. Such matters, generally, are the subject of the majority of the Ritter and Boucher emails. It is found that, at the time of the hearings in this matter, these legal controversies were pending.

18. The complainant argued, at the hearing in this matter, with regard to the Ritter emails, that because Ritter provided services to CRRA pursuant to the MGLSA, and not under a legal services contract, he was not providing legal advice in a "professional capacity," for the agency. Moreover, the complainant argued that the Ritter emails do not appear to relate to legal advice sought by CRRA, but rather, appear to be communications pertaining to general business advice or legislative matters.

19. With regard to the respondents' claim that the requested records, or portions thereof, are protected by the attorney-client privilege, the applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. That law is well set forth in Maxwell v. FOI Commission, 260 Conn. 143 (2002). In that case, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies "the common-law attorney-client privilege as this court previously had defined it." Id. at 149.

20. Section 52-146r(2), G.S., defines "confidential communications" as:

> [a]ll oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the

> public agency or a public official or employee of such
> public agency from that attorney, and all records prepared
> by the government attorney in furtherance of the rendition
> of such legal advice…

21. A four-part test must be applied to determine whether communications are privileged: "(1) the attorney must be acting in a professional capacity for the agency; (2) the communications must be made to the attorney by current employees or officials of the agency; (3) the communications must relate to the legal advice sought by the agency from the attorney, and (4) the communications must be made in confidence." Lash v. Freedom of Information Commission, 300 Conn. 511, 516 (2011), citing Shew v. Freedom of Information Commission, 245 Conn. 149, 159 (1998).

22. With respect to the first prong, i.e., whether the attorney was acting in a professional capacity for the agency, the Court in Harrington v. FOIC, stated that:

> the evidence [before the Commission] clearly established
> that Ritter's primary role was not as an attorney, but as a
> consultant and liaison. Although we agree with the
> Commission that Ritter *could* provide legal advice, his
> primary role providing other services would seem to
> require a clear basis to conclude that information was being
> conveyed to him for the purpose of having him act in the
> role of legal advisor or that he was providing a legal
> opinion. Extrinsic evidence may undoubtedly provide
> context for making such assessment. Id. at 23. (Emphasis
> in original).

Although the Court did not indicate what evidence might be sufficient to constitute the "clear basis," contemplated by the Court, the Commission interprets the Court's use of this phrase as requiring more specific evidence than Hunt's *general* testimony, described in paragraph 16, above, that CRRA employees regularly requested legal advice from Ritter, and that he provided such legal advice. However, it is found that, during the remanded contested case hearings, the respondents, again, offered only the testimony of Hunt, who was not the author or primary recipient of the majority of the emails at issue, that each such email contained a request for legal advice directed to Ritter, or legal advice from Ritter.[5]

23. With respect to the third prong, i.e., whether the communication relates to the legal advice sought by the agency from the attorney, in Harrington v. FOIC, the Court rejected the respondents' claim (see paragraph 17, above), that the privilege would attach to a communication between an attorney and client that was made for the purpose of "keep[ing] counsel apprised of ongoing business developments, with the expectation that the attorney would respond in the event the matter raised a legal issue." The Court, citing Valente v. Lincoln National Corp., Docket No. 3:09cv693, 2010 WL 3522495, *3 (D. Conn. September 2, 2010), stated, "it is not enough for the party invoking the privilege to show that factual information

[5] There was no dispute regarding the application of the second prong of the four part-test.

'might become relevant to the future rendering of legal advice. Instead, the communication must also either explicitly or implicitly seek specific legal advice about that factual information.'" Id. at 16.

24. With respect to the fourth prong, i.e., whether or not the communication was made in confidence, the fact that a document is marked "confidential" or "attorney-client communication, do not disclose," or the like, creates a presumption of confidentiality, which may be rebutted. Lash, at 519. In addition, "the exclusivity and limited number of distributees signifies that [a communication] was intended to be confidential." Id. at 519-520, citing Blumenthal v. Kimber Mfg., Inc., 265 Conn. 1, 16 (2003). If it is clear from the face of the communication itself, viewed in the context in which it was made, that such communication was intended to be a confidential communication, extrinsic evidence to prove this fact is not necessary. Id.

25. Moreover, it is well established that, generally, disclosure of an attorney-client privileged communication to a third-party waives the privilege. See, e.g., Harp v. King, 266 Conn. 747, 767 (2003). However, "'the presence of certain third parties...who are agents or employees of an attorney or client, and who are necessary to the [legal] consultation, will not destroy the confidential nature of the communication.'" Harrington v. FOIC, at 25 (citiations omitted). In Harrington v. FOIC, the Court noted that Timothy Shea, who is not an attorney, was copied on some of the requested emails, and there was no finding by the Commission that Shea was acting as Ritter's agent in the provision of any legal advice. The Court directed the Commission, on remand, to consider the issue of waiver.

26. During the remanded continued hearing in this matter, the respondents argued, for the first time, that, with respect to certain communications sought by the plaintiff, Ritter was "the functional equivalent" of a CRRA employee, with respect to his responsibility to interact with member towns, and so "it was logical and permissible to include him in these communications and still maintain the privilege." Respondents Memorandum of Law, dated June 16, 2017, at page 3 – 5.[6]

27. In support of this argument, the respondents cited In re Copper Market Antitrust Litigation, 200 F.R.D. 213 (S.D.N.Y 2001), and In re Beiter Co., 16 F.3d 929 (8th Cir. 1994), in which the courts extended the attorney-client privilege to communications between a third-party independent contractor and the attorneys for the client, as well as disclosures to the independent contractor of otherwise privileged communications between the client and its attorneys, in instances where the independent contractor is found to be the "functional equivalent" of an employee of the client. The "functional equivalent" doctrine has been adopted by courts in some jurisdictions, including the United States Court of Appeals for the Eighth and Ninth Circuits; however, the Commission has not found, nor did the respondents cite, any decision in which the Second Circuit Court of Appeals or the Connecticut Supreme Court recognized this doctrine.

28. Although not cited by the respondents, the Connecticut superior court in Raymond Road Associates v. Taubman Centers, Inc., No. X02-UWY-CV075007877-S, judicial district of

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[6] The respondents did not number the pages of their memorandum, but the hearing officer penciled in page numbers for reference.

Waterbury, Complex Litigation Docket at Waterbury, 2009 WL 4069251 (October 30, 2009, Eveleigh, J.), concluded that a third-party consultant was the "functional equivalent" of an employee for purposes of the attorney-client privilege.

29. In Raymond Road, the plaintiffs alleged that the defendants, including the Taubman Company (Taubman), engaged in vexatious litigation in an effort to derail the development of Blue Back Square, a retail, residential and commercial development in West Hartford, Connecticut. The plaintiffs sought copies of documents and written communications which were sent to Christopher Tennyson (Tennyson) by Neil Proto, who was counsel for Taubman. The defendants argued that such documents and communications were protected by the attorney-client privilege, because Tennyson was the "functional equivalent" of a Taubman employee.

30. Tennyson, an attorney, was formerly the senior vice president for corporate affairs at Taubman, with responsibility for managing communications, public relations and media relations. After he left Taubman, that company hired him back as a consultant, under a contract, in which he provided the exact same services to Taubman that he provided as an employee. Tennyson was consulted by Taubman on several of the underlying lawsuits between the plaintiffs and the defendants.

31. In addition to the foregoing facts, the court in Raymond Road, in determining that Tennyson was the "functional equivalent" of a Taubman employee, found it significant that Taubman did not fill Tennyson's position as senior vice president for corporate affairs; Taubman kept Tennyson on a monthly retainer for public relations services, pursuant to an agreement which provided that "all materials shared between Taubman and Tennyson are to be handled confidentially;" and that Taubman and its counsel specifically included Tennyson in the core group of the defendants' representatives responsible for deciding issues of legal strategy.

32. Although Raymond Road does not explicitly set forth the factors that must be present in order for a third-party consultant to be considered the "functional equivalent" of an employee of the client, courts in other jurisdictions that have found a third-party consultant to be the "functional equivalent" of an employee of the corporate client have concluded that the consultant was so thoroughly integrated into the client's corporate structure that he or she is a "de facto" employee.

33. The courts have identified the following factors to be relevant to such determination: (1) the consultant had primary responsibility for a key corporate job (2) the corporate client had insufficient resources to conduct the activity completed by the consultant on the corporation's behalf; (3) a continuous and close working relationship between the consultant and the corporation's principals on matters critical to the corporation's position in litigation; (4) the consultant's services were substantially related to obtaining legal advice; (5) the consultant had the authority to make decisions on the corporation's behalf; (6) the consultant, by virtue of the services he or she provided to the corporation, possessed information the corporation did not have; (7) the consultant, through his or her interactions with the public on the corporation's behalf, became the "public face" of the company; and (8) the percentage of time the consultant spent working for the corporation in relation to time spent working for other clients. See, e.g., United States of America v. Graf, 610 F.3d 1148, 1158-1159 (9th Cir. 2010); In re Bieter

Company, 16 F.3d 929, 936-940 (8th Cir. 1994); Endeavor Energy Resources, L.P. v. Gatto & Reitz, LLC v. Ridec, Inc, et al., No. 2:12cv542 (W.D. Pa. 2017); Schaeffer v. Gregory Village Partners, 78 F. Supp. 3d 1198 (N.D. Ca. 2015) Church & Dwight Co. v. SPD Swiss Precision Diagnostics, GmbH, No. 14-CV-586 (S.D.N.Y 2014); Steinfeld v. IMS Health Inc., No. 10-CV-3301 (S.D.N.Y. 2011); American Manufacturers Mutual Insurance Co. v. Payton Lane Nursing Home, Inc., No. 05-CV 5155, 2008 WL 5231831 (E.D.N.Y. 2008); Export-Import Bank of the United States v. Asia Pulp & Paper Co., Ltd., No. 232 F.R.D, 103, 112-114 (S.D.N.Y. 2005); In re Copper Market Antitrust Litigation v. Viacom v. Sumitomo Corporation, 200 F.R.D. 213, 218-219 (S.D.N.Y. 2001).

34. Even assuming the Connecticut Supreme Court would recognize the "functional equivalent" doctrine in the attorney-client privilege context, and further assuming the Court would require the presence of some or all of the factors set forth in paragraph 33, above, it is found, in the present case, that the respondents offered no evidence during any of the contested case hearings in this matter to prove the existence of any of these factors, with respect to Ritter and his relationship with CRRA, except for the MGLSA, which reflects that Ritter was obligated, pursuant to the terms of that agreement, to keep confidential all information he received from CRRA. However, it is concluded that such fact, alone, is not sufficient to prove that Ritter was the "functional equivalent" of a CRRA employee.

35. In addition, in determining whether or not a communication containing a mix of business and legal advice is entirely exempt from disclosure by the attorney-client privilege, the standard to be applied is the "primary purpose" standard, i.e., if the primary purpose of the communication was seeking or providing legal advice, but the business and legal advice is intertwined or "inextricably linked," the legal advice must predominate for the entire communication to be protected. Harrington v. FOIC, at 21. If seeking or providing legal advice is the primary purpose of the communication, but such legal advice is not "inextricably linked," to other advice, and can therefore be separated, the legal advice may be redacted and the non-legal advice must be disclosed. Id. at 20-21.

36. Further, the Court in Harrington v. FOIC rejected the notion that "communications relating to proposed legislation that potentially would have affected [CRRA's] business, related to legal advice." Id. at 23. The Court also set forth the following principles:

> [I]f a lawyer happens to act as a lobbyist, matters conveyed to the attorney for the purpose of having the attorney fulfill the lobbyist role do not become privileged by virtue of the fact that the lobbyist has a law degree or may under other circumstances give legal advice to the client, including advice on matters that may also be the subject of the lobbying efforts. (Citations omitted).
>
> Summaries of legislative meetings, progress reports, and general updates on lobbying activities do not constitute legal advice and therefore, are not protected by the work-product immunity. (Citations omitted).

> If a lawyer who is also a lobbyist gives advice that requires legal anaysis of legislation, such as interpretation or application of the legislation to fact scenarios, that is certainly the type of communication that the privilege was meant to protect. (Citations omitted). Id. at 23-24.

37. With the foregoing principles as a guide, the Commission conducted additional hearings, as well as a second in camera inspection of the Ritter and Boucher emails still at issue as of the close of the remanded hearings in this matter.[7]

38. With respect to the Ritter emails, the respondents claimed that all of the following are exempt from disclosure pursuant to the attorney-client privilege, and additionally claimed that some of these emails also are exempt from disclosure pursuant to §1-210(b)(1), 1-210(b)(4), and 1-210(b)(5), G.S.

Ritter Emails

Section 1-210(b)(10), G.S. – Attorney-Client Privilege

Ritter 1 – **page 2, email from Peter Egan (CRRA) to Douglas Cohen (outside counsel), and cc'd to Laurie Hunt, Ron Gingerich (CRRA), Tom Kirk (CRRA), and Mike Bzdrya (CRRA), dated March 26, 2008 at 5:01 pm (partial redaction,** see Respondents' Exhibit 16) (email 1)[8]; **pages 1 - 2, email from Cohen to Mike Bzdyra and Egan, and cc'd to Ritter, dated March 27, 2008 at 8:51 am** (email 2).

After careful in camera inspection of email 1, it is found that the redacted portion contains a request from Egan to Cohen for legal advice. After careful in camera inspection of email 2, it is found that such email contains Cohen's legal advice to Egan in response to Egan's request. It is found that Cohen was acting in his professional capacity as counsel to CRRA and that Egan was an employee of CRRA, acting on behalf of CRRA, at the time of such communications.

However, it is also found that both email 1 and email 2 were forwarded to Ritter by Cohen, and that, thereafter, Bzdyra, in an email dated March 27, 2008 at 8:58 am, (which email also is part of Ritter 1 and was disclosed), replied to email 1 and 2 and included Ritter in such email. It is found that the respondents offered no specific evidence from which it could be found that Bzdrya included Ritter in his email for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see

[7] Not all responsive emails are addressed herein because not all are still at issue in this case for the following reasons: the respondents disclosed certain responsive emails to the complainant after the case was remanded; the respondents indicated at the post-remand hearings in this matter that they were no longer claiming an exemption for certain emails and would disclose them; or the complainant indicated he did not wish to pursue certain emails.

[8] Email 1 is responsive to the request because it was forwarded to Ritter.

paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear from a review of the email itself. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation between Egan and Cohen, nor is this fact evident on the face of such communications. To the contrary, the fact that Ritter was not a direct recipient of these communications, but merely was copied on them, suggests that Ritter was not necessary to the legal consultation.

It is therefore found that the respondents failed to prove that any privilege that might have existed with respect to the redacted portion of email 1, and email 2, was not waived when Bzdyra responded to those emails and included Ritter.[9] Accordingly, it is found that the respondents failed to prove that such communications are exempt from disclosure pursuant to the attorney-client privilege.

Ritter 3 – **pages 6, 7, 9 and 10, emails between Kirk and Ritter, dated May 27, 28 and 29, 2008.**

Although the respondents did not offer specific evidence in support of their claim that these emails are protected by the attorney-client privilege, it is clear, from a careful in camera inspection of the emails themselves, that they are a request by Kirk, on behalf of CRRA, for a legal opinion from Ritter in Ritter's professional capacity as counsel to CRRA; Ritter's legal advice in response to Kirk's request; and a discussion between Kirk and Ritter of that advice. It is also found, based on the context in which these communications took place, and the limited number of recipients of such communications, that such communications were made in confidence. Accordingly, it is concluded that these emails are exempt from disclosure pursuant to §1-210(b)(10), G.S.

Ritter 4 – **page 13, email from Kirk to Peter Boucher (outside counsel), Hunt, Paul Nonnenmacher (CRRA), and cc'd to Bzdyra, Jim Bolduc (CRRA), Lisa Bremmer (CRRA) and Moira Kenney (CRRA), dated July 25, 2008 at 10:46 pm** (email 1); **and pages 12 – 13, email from Boucher to Kirk, Hunt and Nonnenmacher, and cc'd to Bzdyra, Bolduc, Bremmer and Kenney, dated July 25, 2008, at 12:14 pm** (email 2); **page 12, email from Kirk to Boucher, Hunt, Nonnenmacher, Bolduc, Bzdyra and Ritter, dated July 25, 2008 at 12:54 pm** (email 3).[10]

After careful in camera inspection of emails 1, 2, and 3, it is found that email 1 contains a request for legal advice, email 2 contains the legal advice itself, and email 3 contains additional information provided by Kirk to Boucher in order to facilitate obtaining further legal advice from Boucher.

[9] The remainder of the Ritter 1 emails were disclosed and are no longer at issue.

[10] Email 1 and email 2 do not appear on the index because, according to Hunt's testimony, initially she believed they were not responsive to the request. However, because both email 1 and email 2 were forwarded to Ritter when Kirk replied to email 2 via email 3, and added Ritter to the list of receipients, both email 1 and email 2 are responsive to the request.

However, it is also found that, when Kirk responded to Boucher, via email 3, he added Ritter to the group of recipients, thereby forwarding email 1 and email 2 to Ritter. It is found that the respondents offered no specific evidence from which it could be concluded that Kirk forwarded emails 1 and 2 to Ritter for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear from a review of the emails themselves. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications. To the contrary, the fact that Ritter was not a direct recipient of these communications, but merely was copied on them, suggests that Ritter was not necessary to the legal consultation.

It is therefore found that the respondents failed to prove that any privilege that might have existed with respect to email 1 and email 2 was not waived when these email communications were forwarded by Kirk to Ritter via email 3. Accordingly, it is found that the respondents failed to prove that these communications are exempt from disclosure pursuant to the attorney-client privilege.

Ritter 5 – **page 15, email from Kirk to Boucher, Hunt, Nonnenmacher and cc'd to Bzdyra, Bolduc, Bremmer and Kenney, dated July 25, 2008 at 10:46.**

It is found that this email is identical to email 1 in Ritter 4. It is therefore found that the respondents failed to prove that this communication is exempt from disclosure pursuant to the attorney-client privilege.[11]

Ritter 6 – **pages 17 – 18, email from Kirk to Ritter, dated December 10, 2008 at 9:08 am (partial redaction); page 17, email from Ritter to Kirk, dated December 10, 2008 at 11:42 am.**

After careful in camera inspection of these email communications, it is found that they do not contain a request for legal advice or the provision of legal advice. It is therefore concluded that these email communications are not exempt from disclosure pursuant to the attorney-client privilege.[12]

Ritter 10 – **pages 27 – 29, four emails between Ritter and Nonnenmacher, dated August 29 and August 31, 2009.**

After careful in camera inspection of these email communications, it is found that they do not contain a request for legal advice or legal advice. It is therefore concluded that these email communications are not exempt from disclosure pursuant to the attorney-client privilege.

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[11] Page 15, email from Bremmer to Ritter, dated July 25, 2008, was disclosed.

[12] The respondents disclosed the remainder of the Ritter 6 emails.

Ritter 11 – **pages 30 – 31, email from Kirk to Bzdyra, Ritter, Hunt, and Nonnenmacher, dated September 1, 2009 at 12:03 pm (redaction,** see Respondents' Exhibit 18**)** (email 3)**; page 32, email from Ritter to Nonnenmacher, dated August 31, 2009 at 7:44 am** (email 2)**; and page 33, email from Nonnenmacher to Ritter, dated August 29, 2009 at 8:15 am** (email 1).[13]

At the hearing in this matter, Hunt testified that these three emails contain two separate requests for legal advice, the legal advice itself, and a discussion of such legal advice. After careful in camera inspection of these email communications, it is found that email 1 does not, on its face, appear to be a request by Nonnenmacher for legal advice from Ritter, and the respondents offered no evidence at the hearing in this matter to support their claim that email 1 was a request for legal advice. It is also found that email 2 does not contain legal advice from Ritter. It is therefore concluded that email 1 and 2 are not exempt from disclosure pursuant to the attorney-client privilege.

At the hearing in this matter, Hunt testified that email 3 contains a discussion of Ritter's legal advice and a request to her, from Kirk, for legal advice. However, it is found that email 3 does not contain a discussion of legal advice.

Accordingly, it is found that the respondents failed to prove that email 3 is exempt from disclosure pursuant to the attorney-client privilege.

Ritter 12 – **page 34-38, four emails among Kirk, Ritter, and Nonnenmacher, each dated September 18, 2009,** (emails 1, 2, 3, and 4) **and attachment (press release); pages 39, 40 and 42, six emails among Kirk, Ritter and Nonnenmnacher, dated September 21, 2009** (emails 5, 6, 7, 8, 9 and 10).

At the hearing in this matter, the respondents claimed that email 1 (on page 38) is a request for legal advice from Kirk, on behalf of CRRA, to Ritter; email 3 contains the legal advice itself; and that emails 2 and 4 are additional information regarding and a discussion of such legal advice. Hunt testified that the fact that the emails are marked "confidential" is evidence that email 1 is a request for legal advice and that emails 2, 3 and 4 are a discussion of legal advice. After careful in camera inspection of these email communications, and attachment, it is found that they do not contain a request for legal advice, and they do not contain legal advice. Accordingly, it is concluded that email 1, email 2, email 3, email 4, and the attachment, are not exempt from disclosure pursuant to the attorney-client privilege.

After careful in camera inspection of emails 5, 6, 7, 8, 9, and 10, it is found that they do not contain a request for legal advice or the provision of legal advice. It is therefore concluded that these email communications are not exempt from disclosure pursuant to the attorney-client privilege.[14]

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[13] The respondents disclosed the other emails comprising Ritter 11.

[14] Ritter 12 contains duplicates of the press release and several of the Ritter 12 emails. In addition, at the hearing in this matter, the respondents stated that they no longer were claiming that the email from Kirk to Ritter, dated September 18, 2009 at 3:52 pm (appearing on pages 37 and 46) is exempt from disclosure.

Ritter 14 – **pages 51 – 52, email from Kirk to Nonnenmacher, Hunt, Bolduc, John Farley (outside counsel), Ritter and Boucher, dated October 9, 2009, at 9:36 am (email redacted), and attachments.**

The respondents claimed that the redacted portion of this email is exempt from disclosure pursuant to the attorney-client privilege because it contains a request for legal advice. After careful in camera inspection of this email communication, and the attachments, it is found that the email contains both a request for legal advice, and a request for business advice. However, the Commisison need not decide the "primary purpose" of this communication, because it is found that the respondents failed to offer specific evidence from which it could be found that Ritter was included in this communication for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose for which Ritter was included, evident on the face of the email itself. Moreover, it is found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications. It is therefore found that the respondents failed to prove that the redacted portion of this email was made in confidence, and accordingly, failed to prove that such communication is exempt from disclosure pursuant to the attorney-client privilege.

With regard to the attachments, consisting of three legal opinions, it is found, after careful in camera inspection of such opinions, that they were authored by attorneys, in their professional capacities as counsel to CRRA, at CRRA's request, and that, in this context, they were made in confidence. However, because Kirk forwarded these legal opinions to Ritter, and because, as discussed above, the respondents failed to prove that Ritter was included in the email in a professional capacity as counsel to CRRA, or as CRRA's agent who was necessary to the legal consultation, it is found that the respondents also failed to prove that they did not waive any privilege that may have attached to such legal opinions, when Kirk disclosed them to Ritter. Accordingly, it is found that the respondents failed to prove that the attachments are exempt from disclosure pursuant to the attorney-client privilege.

Ritter 19 – **page 76, email from Kirk to William Champlin (outside counsel), Miguel Escalera (outside counsel), Ritter, Boucher, and Farley, and cc'd to Bolduc, Hunt and Egan, dated October 28, 2009, at 12:11 am, and attachment (pages 77 – 79).**

The respondents claimed that the email contains a request by Kirk for legal advice regarding the topics listed in the attachment. After careful in camera inspection of the email and attachment, it is found that the email, on its face, does not contain a request for legal advice. However, viewing this email in conjunction with the emails comprising Ritter 20, it is found that such email is a request by Kirk for legal advice from Attorneys Champlin, Escalera, Boucher and Farley, and not a request for legal advice from Ritter. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications. It is therefore found that the respondents failed to prove that this communication with attachment, was made in confidence, and therefore failed to prove that these

records are exempt from disclosure pursuant to the attorney-client privilege. The respondents' alternative claims of exemption are addressed below.

Ritter 20 – page 80, email from Kirk to CRRA board members, dated October 28, 2009, at 1:19 pm, was disclosed. However, the respondents continued to claim that the **attachment** to this email is attorney-client privileged. This attachment is the same as in **Ritter 19**, which is addressed above. Accordingly, it is found that the respondents failed to prove that the attachment is exempt from disclosure pursuant to the attorney-client privilege. The respondents' alternative claims of exemption are addressed below.

Ritter 25 – **page 93, email from Kirk to Ritter and Mark Baldwin (outside counsel), dated April 27, 2010, at 3:32 pm (redaction).**

The respondents claimed that lines 5 through 7 of this email contain a request for legal advice. After careful in camera inspection of this email communication, it is found that lines 5 through 7 contain a request by Kirk, on behalf of CRRA, for legal advice directed to Baldwin in Baldwin's professional capacity as counsel to CRRA, not directed to Ritter. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communication. It is therefore found that the respondents failed to prove that this communication was made in confidence.

Accordingly, it is found that the respondents failed to prove that the email is exempt from disclosure pursuant to the attorney-client privilege.

Ritter 26 – **page 94, email from Kirk to Hunt, and cc'd to Ritter, dated October 13, 2010 at 4:32 pm.**[15]

After careful in camera inspection of this email communication, it is found that it contains a request for legal advice from Kirk to Hunt, as well as certain other information that Kirk apparently provided to Hunt in order to facilitate the provision of legal advice.

However, it is found that that respondents offered no specific evidence from which it could be determined that Ritter was included by Kirk in this email communication for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear from a review of the email itself. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communication. To the contrary, the fact that Ritter was not a direct recipient of this communication, but merely was copied on it, suggests that Kirk was not seeking legal advice from Ritter, and that Ritter was not necessary to the legal consultation Kirk sought with Hunt. It is therefore found that the respondents failed to prove that any privilege that might have existed with respect to this communication was not waived when Kirk included Ritter in it.

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[15] Page 95 was disclosed.

Accordingly, it is conclude that the respondents failed to prove that this email is exempt from disclosure pursuant to the attorney-client privilege.

Ritter 27 – **page 96, email from Nonnenmacher to Hunt and cc'd to Kirk and Ritter, dated November 29, 2010 at 2:54 pm (redaction).**

The respondents claimed, during the hearing in this matter, that the last two paragraphs are a request for legal advice from Nonnenmacher, on behalf of CRRA, to Hunt, in her capacity as in-house counsel to CRRA. After careful in camera inspection of this email communication, it is found that it contains a request for legal advice from Nonnenmacher to Hunt. However, it is also found that the respondents offered no specific evidence from which it could be concluded that Ritter was included in this email communication by Nonnenmacher for the purpose of seeking legal advice from him, in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court. Nor is Ritter's role or the purpose clear from a review of the email itself. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communication. To the contrary, the fact that Ritter was not a direct recipient of this communication, but merely was copied on it, suggests that Nonnenmacher was not seeking legal advice from Ritter, and that Ritter was not necessary to the legal consultation Nonnenmacher sought with Hunt. It is therefore found that the respondents failed to prove that this email communication was made in confidence.

Accordingly, it is concluded that the respondents failed to prove that this communication is exempt from disclosure pursuant to the attorney-client privilege.

Ritter 28 – **page 97, email from Ritter to Kirk, dated January 28, 2011, at 3:27 pm.**

After careful in camera inspection of this email communication, it is found that it does not contain a request for legal advice or the provision of legal advice. It is therefore concluded that this email communication is not exempt from disclosure pursuant to the attorney-client privilege.

Ritter 30 – **page 99, email from Nonnenmacher to Lisa Roman (CRRA), Ritter and Tracey Persico (attorney with Brown Rudnick), and cc'd to Kirk, dated February 24, 2011, at 10:14 am; email from Ritter to Nonnenmacher, Roman, and Persico, and cc'd to Kirk, dated February 24, 2011, at 10:25 am.**

After careful in camera inspection of these email communications, it is found that they do not contain a request for legal advice or the provision of legal advice. It is therefore concluded that these email communications are not exempt from disclosure pursuant to the attorney-client privilege.

Ritter 31 – **page 100, email from Ritter to Nonnenmacher, Persico, Kirk, Egan, Hunt, Bolduc, and Roman, dated February 28, 2011, at 3:58 pm.**[16]

[16] The remainder of the emails comprising Ritter 31 were disclosed.

After careful in camera inspection of this email communication, it is found that it does not contain a request for legal advice or the provision of legal advice. It is therefore concluded that this email communication is not exempt from disclosure pursuant to the attorney-client privilege.

Ritter 33 – **page 103, email from Ritter to Nonnenmacher, Kirk, Egan, Persico, Roman, and Bolduc, dated March 3, 2011, at 11:56 am**.

After careful in camera inspection of this email communication, it is found that it does not contain a request for legal advice or legal advice. It is therefore concluded that this email communication is not exempt from disclosure pursuant to the attorney-client privilege.

Ritter 50 – **pages 157 – 158, attachment** to email from Hunt to Boucher and Ritter, dated April 4, 2011 at 10:07 am.[17]

After careful inspection of the email together with the attachment, and based on Hunt's testimony, it is found that the email contains a request by Hunt, on behalf of CRRA, to Boucher and Ritter, in their professional capacities as counsel for CRRA, for legal advice concerning the content of the attachment. It is also found that this communication was made in confidence. It is therefore concluded that the attachment is exempt from disclosure pursuant to the attorney-client privilege.

Ritter 55 – **page 174, email from Kirk to Hunt, Nonnenmacher, Boucher and Ritter, dated April 6, 2011, lines 3 through 5.**[18]

Hunt testified that lines 3 through 5 contain Kirk's request for legal advice, on behalf of CRRA, to both Boucher and Ritter. However, after careful inspection of this email communication and the redaction in particular, it is found that line 3 contains a request by Kirk for legal advice directed to Boucher only. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communication. It is therefore concluded that the respondents failed to prove that this email communication was made in confidence.

Accordingly, it is found that the respondents failed to prove that lines 3 through 5 of this email are exempt from disclosure pursuant to the attorney-client privilege.

Ritter 59 and 60 – **attachment (pages 181A through 181C)** to email on page 181 from Nonnenmacher to Hunt and Kirk, dated April 21, 2011[19]; **page 182, email from Nonnenmacher to Ritter, and cc'd to Kirk, dated April 25, 2011 at 9:59 am; page 182, email from Ritter to**

[17] The email itself, on page 156, was disclosed.

[18] The remainder of this email, and the other email on page 174, were disclosed.

[19] Both emails on page 181 were disclosed.

Nonnenmacher, and cc'd to Kirk, dated April 25, 2011 at 10:08 am; page 184, email from Ritter to Nonnenmacher and cc'd to Kirk, dated April 25, 2011 at 9:52 am (identical to the email on page 182); **pages 185 – 186, attachment** to email on page 184 from Nonnenmacher to Ritter and cc'd to Kirk and Hunt, which email was disclosed.

Hunt testified that Ritter 59 and 60 should be considered together. Although Hunt testified that the email on page 181 from Nonnenmacher to Ritter, which was disclosed, and the email on page 184, from Nonnenmacher to Ritter, which was disclosed, contain requests for legal advice, and that the attachments are the subject of the requested legal advice, it is found, after careful in camera inspection of these emails and attachments, that the requests do not seek legal advice from Ritter, and that Ritter did not provide legal advice in the Ritter 59 and 60 email communications. Accordingly, it is concluded that these emails and attachments are not exempt from disclosure pursuant to the attorney-client privilege.

Ritter 65 – **page 198, email from Hunt to Boucher, and cc'd to Kirk and Bolduc, dated May 11, 2011 at 1:32 pm** (email 1); **page 197, email from Kirk to Ritter, Timothy Shea (lobbyist with Brown Rudnick), and Persico, dated May 11, 2011 at 2:18 pm** (email 2); **page 197, email from Ritter to Kirk, Shea and Persico, dated May 11, 2011 at 2:21 pm** (email 3).[20]

After careful in camera inspection of email 1, email 2, and email 3, it is found that email 1 contains a request for legal advice from Hunt, on behalf of CRRA, to Boucher, in his professional capacity as counsel to CRRA. It is found that Kirk, who was copied on email 1, responded to Hunt's request to Boucher by forwarding email 1 to Ritter, Shea and Persico (email 2) and asking Ritter a question. Hunt claimed at the hearing that email 2 contains a request for legal advice from Kirk to Ritter, and that Shea and Persico were also included in that email to "assist" Ritter with the provision of legal advice. Hunt further claimed that email 3 contains the legal advice that Ritter provided to Kirk in response to Kirk's request.

It is found that email 2 does not contain a request for legal advice, and email 3 does not contain legal advice. With respect to email 1, it is found that the respondents failed to prove that email 1 was forwarded to Ritter by Kirk for the purpose of seeking legal advice from Ritter in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear from a review of the email itself. It is also found that even if Ritter was included in this communication in his role as CRRA's agent, it is further found that the respondents offered no evidence from which it could be determined that Ritter was necessary to the legal consultation Hunt sought with Boucher. In addition, other than Hunt's testimony that Shea was included in email 2 to "assist" Ritter in providing legal advice, the respondents offered no evidence to prove that Shea was an agent who was necessary to the legal consultation. Such fact is not evident on the face of the communication.

Accordingly, it is found that the respondents failed to prove that any privilege that might have existed with respect to email 1 was not waived when Kirk forwarded it to Ritter and Shea,

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[20] All emails on page 196 were disclosed.

and it is therefore found that the respondents failed to prove that this communication is exempt from disclosure pursuant to the attorney-client privilege. Also, based on the findings above, it is concluded that emails 2 and 3 are not exempt from disclosure pursuant to the attorney-client privilege.

Ritter 69 – **page 207, email from Ritter to Nonnenmacher and Kirk, and cc'd to Shea, dated May 17, 2011 at 5:40 pm (partial redaction,** see Respondents' Exhibit 21).

At the hearing in this matter, Hunt testified that the redacted portion of this email contains legal advice from Ritter to Nonnenmacher, which was provided in response to a request for legal advice contained in the second email on page 207, which email was disclosed, and is therefore no longer at issue. After careful in camera inspection of these two emails, however, it is found that the second email on page 207 does not contain a request for legal advice, and email 1 does not contain legal advice. Accordingly, it is concluded that the redacted portion of the May 17, 2011 email from Ritter on page 207, is not exempt from disclosure pursuant to the attorney-client privilege.

Ritter 70 – **page 212, email from Ritter to Nonnenmacher and Kirk, dated May 17, 2011, at 8:45 am.**

At the hearing, Hunt testified that this email contains legal advice from Ritter, in response to a request for legal advice contained in an email from Nonnenmacher to Kirk and Ritter, dated May 16, 2011 at 5:35 pm, also on page 212, which email was disclosed during the post-remand hearings in this matter. After careful in camera inspection of these emails, it is found the email from Ritter to Nonnenmacher and Kirk, dated May 17, 2011 at 8:45 am, does not contain legal advice from Ritter. Accordingly, it is concluded that this email is not exempt from disclosure pursuant to the attorney-client privilege.

Ritter 73 – **page 215, email from Boucher to Nonnenmacher and cc'd to Ritter, Hunt and Kirk, dated May 18, 2011 at 1:52 pm** (email 1); **page 215-216, redaction in email from Nonnenmacher to Boucher, and cc'd to Ritter, Hunt, and Kirk, dated May 18, 2011 at 1:42 pm** (email begins on page 215, redaction is on page 216) (email 2); **page 218, email from Boucher to Nonnenmacher and cc'd to Ritter, Hunt and Kirk, dated May 19, 2011 at 5:31 pm** (email 3); **email from Nonnenmacher to Boucher, and cc'd to Ritter, Hunt, and Kirk, dated May 19, 2011 at 5:07 pm** (email 4); **email from Boucher to Nonnenmacher and cc'd to Ritter, Hunt and Kirk, dated May 18, 2011 at 5:43 pm** (email 5); **page 219, email from Nonnenmacher to Boucher and cc'd to Ritter, Hunt and Kirk, dated May 18, 2011 at 3:22 pm** (email 6).[21]

Based upon careful in camera inspection of email 1 and email 2, it is found that the redaction in email 2 is a request for legal advice from Nonnenmacher, on behalf of CRRA, to Boucher, in Boucher's professional capacity as counsel to CRRA, and email 1 contains legal advice from Boucher, in his professional capacity as counsel to CRRA, to Nonnenmacher, on

[21] Emails 1, 3, and 5 are not claimed on the index; however, the respondents claimed, at the hearing in this matter, that such emails are exempt from disclosure pursuant to the attorney-client privilege.

behalf of CRRA. However, it is also found that the respondents offered no specific evidence from which it could be concluded that Nonnenmacher included Ritter in these email communications for the purpose of seeking legal advice from him, in a professional capacity as counsel for CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear from a review of the email itself. It is further found that the respondents offered no evidence from which it could be determined that Ritter was CRRA's agent who was necessary to the legal consultation, nor is this fact evident on the face of such communication. To the contrary, the fact that Ritter was not a direct recipient of these email communications, but merely was copied on them, suggests that Nonnenmacher was not seeking legal advice from Ritter, and that Ritter was not necessary to the legal consultation Nonnenmacher sought with Boucher. It is therefore found that the respondents failed to prove that any privilege that might have existed with respect to emails 1 and 2 was not waived by Ritter's inclusion in these communications. Accordingly, it is found that the respondents failed to prove that emails 1 and 2 are exempt from disclosure pursuant to the attorney-client privilege.

After careful in camera inspection of emails 3, 4, 5 and 6, it is found that email 6 contains a request for legal advice from Nonnenmacher to Boucher, in Boucher's professional capacity as counsel to CRRA, and that email 5 contains Boucher's legal advice. However, it is also found that respondents offered no specific evidence from which it could be concluded that Nonnenmacher included Ritter in these email communications for the purpose of seeking legal advice from him in a professional capacity as counsel for CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear from a review of the email itself. It is further found that the respondents offered no evidence from which it could be determined that Ritter was CRRA's agent who was necessary to the legal consultation, nor is this fact evident on the face of such communication. To the contrary, the fact that Ritter was not a direct recipient of these email communications, but merely was copied on them, suggests that Nonnenmacher was not seeking legal advice from Ritter, and that Ritter was not necessary to the legal consultation Nonnenmacher sought with Boucher. It is therefore found that the respondents failed to prove that any privilege that might have existed with respect to emails 5 and 6 was not waived by Ritter's inclusion in these communications.

Accordingly, it is concluded that the respondents failed to prove that emails 5 and 6 are exempt from disclosure pursuant to the attorney-client privilege.

Finally, it is found that emails 3 and 4 do not contain a request for legal advice or legal advice. It is therefore concluded that emails 3 and 4 are not exempt from disclosure pursuant to the attorney-client privilege.

Ritter 76 – **page 229, email from Nonnenmacher to Hunt, Boucher, Kirk, and Ritter, dated May 20, 2011 at 4:08 pm** (email 7); **page 229, email from Ritter to Nonnenmacher, Hunt, Boucher and Kirk, dated May 20, 2011, at 4:29 pm** (email 6); **page 226 - 227, email from Nonnenmacher to Kirk, Hunt, Ritter, and Boucher, dated May 20, 2011 at 3:38 pm** (email 5); **page 226, email from Boucher to Nonnenmacher, Kirk, Hunt and Ritter, dated May 20, 2011 at 19:52:36** (email 4); **page 226, email from Hunt to Boucher, Nonnenmacher, Kirk and Ritter, dated May 20, 2011 at 4:07 pm** (email 3); **page 225, email from Ritter to Hunt, Boucher, Nonnenmacher, and Kirk, dated May 20, 2011 at 4:11 pm** (email 2); **page**

225, email from Nonnenmacher to Ritter, Hunt, Boucher and Kirk, dated May 20, 2011 at 4:14 pm (email 1).[22]

Hunt testified that email 5 contains a request for legal advice from Nonnenmacher, directed to her and Boucher, and that emails 1, 2, 3, 4, 6, and 7 contain responsive legal advice from her, Boucher and Ritter, or a discussion of such legal advice. However, despite the fact that Ritter is a direct receipient of email 5, a careful in camera inspection of email 5 reveals that, although it contains a request for legal advice, such request for legal advice is not directed to Ritter. It is also found that, the respondents offered no specific evidence from which it could be determined that Ritter was included in these communications as CRRA's agent who was necessary to the legal consultation. It is therefore found that the respondents failed to prove that these email communications were made in confidence. Accordingly, it is found that the respondents failed to prove that emails 1, 2, 3, 4, 5, 6, and 7 are exempt from disclosure pursuant to the attorney-client privilege.

Ritter 77 – **page 232, email from Kirk to Nonnenmacher, Hunt, Egan, Bolduc, Boucher, and Ritter, dated May 20, 2011 at 8:21 pm, and attachment.**

Hunt testified that the email contains a request from Kirk, on behalf of CRRA, for legal advice, as well as a discussion of legal advice previously received by Kirk from outside counsel. She also testified that the attachment, on pages 236 and 237, is the subject of the request for legal advice. In support of the claim that the email and attachment are protected by the attorney-client privilege, Hunt noted that the subject line on the email states: ATTY Client privileged." After careful inspection of the email, and attachment, it is found that, arguably, the email contains a request for legal advice and a recitation of legal advice previously received by Kirk from outside counsel.

However, it is also found that that respondents offered no specific evidence from which it could be determined that Ritter was included in this email communication for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear from a review of the emails themselves. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation sought by Kirk, nor is this fact evident on the face of such communications. It is therefore found that the respondents failed to prove that this communication, with the attachment, was made in confidence.

Accordingly, it is found that the respondents failed to prove that the email and the attachment are exempt from disclosure pursuant to the attorney-client privilege.

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[22] The email on page 225 from Ritter to Nonnenmacher, Hunt, Boucher and Kirk, dated May 20, 2011 at 4:28 pm was not claimed to be exempt from disclosure.

Ritter 80 – the email at the top of page 240, from Nonnenmacher to Boucher and cc'd to Curto (outside counsel), Hunt, Kirk, and Ritter, dated May 23, 2011 at 4:17 pm[23], resulted in **the entire email chain that chronologically preceded that email, which chain is contained on pages 240 through page 244,** being forwarded to Ritter.

At the hearing in this matter, Hunt testified that the email chain contains attorney-client privileged communications, and is therefore exempt from disclosure. However, the respondents offered no specific evidence from which it could be concluded that Ritter was included in these communications for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear from a review of the email itself. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications. Therefore, it is found that, even assuming these communications were privileged before they were forwarded to Ritter by Nonnenmacher, the respondents failed to prove that any such privilege was not waived when Nonnenmacher forwarded these emails to Ritter. Accordingly, it is found that the respondents failed to prove that the email chain is exempt from disclosure pursuant to the attorney-client privilege.

Hunt also testified that the **email chain on pages 245 through 255** contains confidential attorney-client privileged communications. It is found, however, after careful in camera inspection of these emails, that **with the exception of the first email on page 245, from Boucher to Nonnenmacher, Kirk, and Curto, and cc'd to Hunt and Ritter, dated May 24, 2011 at 5:39 pm,** this email chain was forwarded to Ritter by Nonnenmacher, and the respondents offered no specific evidence from which it could be concluded that Ritter was included in this email chain for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role or the purpose clear from a review of the emails themselves. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications. Thus, it is found that the respondents failed to prove that any privilege that might have existed with respect to these email communications was not waived when these emails were forwarded to Ritter by Nonnenmacher, and that therefore, the respondents failed to prove that such communications are exempt from disclosure pursuant to the attorney-client privilege.

With respect to the **first email on page 245, from Boucher to Nonnenmacher, Kirk, and Curto, and cc'd to Hunt and Ritter, dated May 24, 2011 at 5:39,** it is found, after careful inspection of such email, that, although it contains legal advice from Boucher to CRRA representatives, when viewed in the context of all the other emails in Ritter 80, and in view of the analysis above, which also is applicable to this email communication , it is found that the respondents failed to prove that such email communication was made in confidence. Accordingly, it is found that the respondents failed to prove that such email is exempt from disclosure pursuant to the attorney-client privilege.

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[23] The email at the top of page 240 from Nonnenmacher to Boucher, which forwarded the email chain to Ritter, was disclosed; the email chain was withheld.

Ritter 81 – Hunt testified that all of the **emails on pages 256 through 267** are attorney-client privileged communications. However, after careful in camera inspection of these emails, it is found that several of them do not contain a request for legal advice or legal advice. To the extent there is a request for legal advice, or legal advice, contained in one or two of these emails, it is found that Ritter was included in such emails by Nonnenmacher or Kirk, or that Nonnemacher or Kirk forwarded such emails to Ritter. Moreover, it is found that the respondents offered no specific evidence from which it could be concluded that Ritter was included in these email communications for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear from a review of the emails themselves. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications. It is therefore found that the respondents failed to prove that these email communications were made in confidence, or, to the extent that such communications were privileged at one time, the respondents failed to prove that such privilege was not waived when the emails were forwarded to Ritter by Nonnenmacher or Kirk.

Accordingly, it is found that the respondents failed to prove that these email communications are exempt from disclosure pursuant to the attorney-client privilege.

Ritter 83 – **page 270, email from Nonnenmacher to Boucher and Kirk and cc'd to Ritter, Hunt and Curto, dated May 25, 2011 at 10:26 am** (email 1); **page 270, email from Boucher to Nonnenmacher and Kirk and cc'd to Ritter, Hunt and Curto, dated May 25, 2011 at 14:16:39** (email 2); **page 270, email from Nonnenmacher to Boucher and Kirk and cc'd to Ritter, Hunt and Curto, dated May 25, 2011 at 10:07 am** (email 3); **page 271, email from Boucher to Kirk and Nonnenmacher and cc'd to Ritter, Hunt and Curto, dated May 25, 2011 at 13:56:28** (email 4); **page 271, email from Kirk to Nonnenmacher and cc'd to Boucher, Ritter, Hunt and Curto, dated May 25, 2011 at 9:39 am** (email 5); **page 272, email from Paul Nonnenmacher to Boucher and Kirk and cc'd to Ritter, Hunt and Curto, dated May 25, 2011 at 10:43 am** (email 6); **page 272, email from Boucher to Nonnenmacher and Kirk and cc'd to Ritter, Hunt and Curto, dated May 25, 2011 at 14:29:30** (email 7); **page 272, email from Nonnenmacher to Boucher and Kirk and cc'd to Ritter, Hunt and Curto, dated May 25, 2011 at 10:27 am** (email 8); **page 275, email from Nonnenmacher to Curto, Boucher and Kirk and cc'd to Ritter and Hunt, dated May 25, 2011 at 11:11 am** (email 9); **page 275, email from Curto to Boucher, Nonnenmacher and Kirk and cc'd to Ritter and Hunt, dated May 25, 2011 at 14:48:36** (email 10); **page 278, email from Ritter to Nonnenmacher, Curto, Boucher and Kirk and cc'd to Hunt, dated May 25, 2011 at 2:44 pm** (email 11); **page 1278, email from Nonnenmacher to Curto, Boucvher and Kirk and cc'd to Ritter and Hunt, dated May 25, 2011 at 2:43 pm** (email 12); **page 278-79, email from Curto to Nonnenmacher, Boucher and Kirk and cc'd to Ritter and Hunt, dated May 25, 2011 at 11:01 am** (email 13); **page 279, email from Nonnenmacher to Boucher and Kirk and cc'd to Ritter, Hunt and Curto, dated May 25, 2011 at 10:27 am** (email 14); **page 281, email from Boucher to Nonnenmacher, Curto and Kirk and cc'd to Ritter and Hunt, dated May 25, 2011 at 2:49 pm** (email 15); **page 284, email from Curto to Nonnenmacher, Boucher, and Kirk and cc'd to Ritter and Hunt, dated May 25, 2011 at 3:04 pm** (email 16); **page 284,**

email from Nonnenmacher to Boucher, Kirk and Curto and cc'd to Ritter and Hunt, dated May 25, 2011 at 2:59 pm (email 17); **page 284, email from Boucher to Kirk, Nonnenmacher and Curto and cc'd to Ritter and Hunt, dated May 25, 2011 at 3:00 pm** (email 18); **page 284, email from Kirk to Nonnenmacher, Curto, and Boucher and cc'd to Ritter and Hunt, dated May 25, 2011 at 2:55 pm** (email 19); and **attachments.**

Hunt testified that all of the **emails and attachments on pages 270 through 287** are attorney-client privileged communications, and that the attachments are privileged because they are the subject of the requested legal advice. After careful in camera inspection of these emails and attachments, it is found that, in email 12, Nonnenmacher requested input from Boucher, Curto, Kirk, Ritter and Hunt, on a draft email he intended to send to the towns, and that in response, Boucher and Curto provided legal advice (emails 2, 4, 10, 13, 15, 16, and 18). It is also found that, in email 11, Ritter responded with a comment on the draft email; however, it is found that this comment is not legal advice.

It is found that the respondents offered no specific evidence from which it could be concluded that Ritter was included in any of these email communications by CRRA for the purpose of seeking legal advice from him in in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role or the purpose clear from a review of the emails themselves. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications. Thus, even if these emails contained a request for legal advice, legal advice, and a discussion of legal advice, as the respondents claimed, it is found that they failed to prove such email communications were made in confidence.

Accordingly, it is found that the respondents failed to prove that these email communications are exempt from disclosure pursuant to the attorney-client privilege.

Ritter 85 – the emails, on page 289, from Kirk to Nonnenmacher, Boucher, and Ritter, and cc'd to Hunt, Bolduc, and Egan (Kirk email), and from Ritter to Kirk, were disclosed. Hunt testified that the statement in the Kirk email, "Lets have this reviewed by lawyers and consultants," is a request for legal advice directed to Boucher and Ritter regarding **the attachment (pages 290 and 291),** which the respondents claimed is attorney-client privileged. It is found that the attachment is a redlined draft of an analysis of a legislative proposal. However, on cross-examination by the complainant, Hunt conceded that she did not know to whom, specifically, Kirk was referring when he requested review and comment by "lawyers and consultants," and it appears that Ritter is the only "consultant" who was included in the email communication. Moreover, Hunt was unable to identify the author of the redlined changes, although she testified that those changes were not Ritter's. Based on the foregoing, it is found that the respondents failed to prove Ritter was included in this email communication for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). To the contrary, the records themselves suggest that Kirk sought advice other than legal advice from Ritter. It is further found that the respondents offered no evidence from which it could be determined that

Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications.

Because the attachment was sent to Ritter under the facts found above, it is further found that, even if the attachment was the subject of a request for legal advice by CRRA to Boucher or Hunt, such attachment was not maintained in confidence.

It is therefore found that the respondents failed to prove that the attachment is exempt from disclosure pursuant to the attorney-client privilege.

Ritter 86 – the email on page 292 was disclosed; however the respondents claimed that the **attachment thereto** is exempt from disclosure pursuant to the attorney-client privilege. After careful inspection of the attachment, it is found that it is identical to the attachment in Ritter 85, and it is therefore concluded that the respondents failed to prove the attachment is exempt from disclosure pursuant to the attorney-client privilege.

Ritter 88 – **page 296, email from Boucher to Nonnenmacher and cc'd to Kirk and Hunt, dated May 31, 2011 at 5:06 pm (second paragraph of email redacted).**[24]

After careful in camera inspection of this email, it is found that it contains legal advice from Boucher to Nonnenmacher. However, it is also found that it was forwarded by Nonnenmacher to Ritter by email dated May 31, 2011 at 5:11 pm. It is also found that the respondents offered no specific evidence from which it could be concluded that Nonnenmacher forwarded this email to Ritter for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role or the purpose clear from a review of the email itself. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications.

Thus, it is found that the respondents failed to prove that any privilege that might have attached to this email was not waived when Nonnenmacher forwarded it to Ritter. Accordingly, it is found that the respondents failed to prove that this communication is exempt from disclosure pursuant to the attorney-client privilege.

Ritter 89 – **page 301, email from Nonnenmacher to Boucher and Hunt, and cc'd to Kirk and Ritter, dated May 31, 2011 at 3:54 pm (redaction)** (email 1); **page 301, email from Ritter to Nonnenmacher, Boucher, and Hunt, and cc'd to Kirk, dated May 31, 2011 at 4:13 pm** (email 2); and **page 301, email from Boucher to Ritter, and cc'd to Kirk, Hunt, and Nonnenmacher, dated May 31, 2011 at 4:20 pm** (email 3).

Hunt testified at the hearing in this matter that the redacted portion of email 1 contains a request for legal advice from Nonnenmacher directed to her, Boucher, and Ritter. She further claimed that email 2 contains legal advice from Ritter, and that email 3 contains legal advice

[24] The remainder of the Ritter 88 emails were disclosed.

from Boucher. However, after careful in camera inspection of these emails, it is found that Hunt's claim that email 1 contains a request for legal advice from Ritter is contradicted by the email itself.

Although it is found that email 3 contains legal advice from Boucher in response to Nonnenmacher's request, in email 1, for legal advice, it is found that the respondents failed to prove that Ritter was included in this email chain for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear from a review of the email itself. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation between Nonnenmacher and Boucher, nor is this fact evident on the face of such communications.

Accordingly, it is found that the respondents failed to prove that these email communications were made in confidence and therefore failed to prove that they are exempt from disclosure pursuant to the attorney-client privilege.

Ritter 94 – **page 312-13, email from Nonnenmacher to Kirk, Hunt, Boucher, and Farley, and cc'd to Ritter, dated June 6, 2011 at 4:24 pm (redaction on page 313, see Respondents' Exhibit 16)** (email 1); and **page 312, email from Ritter to Nonnenmacher, Kirk, Hunt, Boucher and Farley, dated June 6, 2011 at 4:37 pm** (email 2).

Hunt testified that email 1 contains a request for legal advice. Despite the fact that the email is not directed to Ritter, but rather merely copies him on it, Hunt testified that, in this email, Nonnenmacher requested legal advice from Ritter, and from the attorneys to whom the email specifically was directed. Other than this testimony, the respondents offered no specific evidence from which it could be found that Nonnenmacher sought legal advice from Ritter in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear from a review of the email itself. It is therefore found that the respondents failed to prove that Nonnenmacher sought legal advice from Ritter in email 1. It is further found that the respondents offered no evidence from which it could be determined that Ritter was CRRA's agent who was necessary to the legal consultation between Nonnenmacher and the attorneys to whom the request was directed, nor is this fact evident on the face of such communications. Moreover, after in camera inspection of email 2, it is found that such email does not contain legal advice from Ritter.

Based on the foregoing, it is found that the respondents failed to prove that the request for legal advice in email 1 was made in confidence, and, therefore failed to prove that email 1 is exempt from disclosure pursuant to the attorney-client privilege. It is also found that email 2 is not exempt from disclosure pursuant to the attorney-client privilege.

Ritter 106 – **page 350, email from Boucher to Ritter, dated June 9, 2011 at 11:04 am** (redaction, see Respondents' Exhibit 21).[25]

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[25] The remainder of the Ritter 106 emails were disclosed.

Hunt testified that the redacted portion of this email contains legal advice from Boucher to Ritter. According to the respondents, Ritter, as an outside consultant, acted as "the functional equivalent" of a CRRA employee, and that therefore, he was the client in this instance, receiving legal advice from Boucher. As discussed on pages 7 through 9, above, the respondents failed to prove that Ritter was the "functional equivalent" of a CRRA employee. Moreover, even if they had proved that Ritter was the "functional equivalent" of a CRRA employee, it is found, after careful inspection of this email, that the redacted portion does not contain legal advice and therefore is not exempt from disclosure pursuant to the attorney-client privilege.

Ritter 107 – **page 353, email from Boucher to Nonnenmacher, Kirk, Hunt, Farley and Ritter, dated June 13, 2001 at 4:23 pm.**[26]

Hunt testified that this email contains legal advice from Boucher to CRRA provided in response to Nonnenmacher's email to Kirk, Hunt, Farley, Boucher, and Ritter, dated June 13, 2011 at 3:54 pm (bottom of page 353), which email communication was disclosed.

After careful in camera inspection of the email, reviewed in the context of all of the Ritter 107 emails, it is found that it does not contain legal advice from Boucher and that Nonnenmacher's email does not contain a request for legal advice. Accordingly, it is concluded that this email is not exempt from disclosure pursuant to the attorney-client privilege.

Ritter 108 – **page 356, email from Kirk to Boucher, Nonnenmacher, Hunt, Farley and Ritter, dated June 13, 2011 at 4:32 pm** (redaction).[27]

Hunt testified that the redaction contains Kirk's recitation of Boucher's legal advice which was at issue in Ritter 107. However, as found in Ritter 107, and after careful in camera inspection of the redaction in the context of all of the Ritter 108 emails, it is found that the redaction does not contain legal advice.

Accordingly, it is concluded that the redacted portion of this email is not exempt from disclosure pursuant to the attorney-client privilege.

Ritter 116 – **page 368, email from Hunt to Nonnenmacher, and Ritter, and cc'd to Kirk, dated July 27, 2011 at 9:41 pm.**[28]

Hunt testified that this email contains her legal advice to her client in her capacity as in-house counsel to CRRA. Although Hunt did not specifically testify that she considered both Nonnenmacher and Ritter to be her "client" for purposes of this email, this can reasonably be inferred from her testimony. However, as discussed on pages 7 through 9, above, the respondents failed to prove that Ritter was the "functional equivalent" of a CRRA employee, and

[26] The remainder of the Ritter 107 emails were disclosed.

[27] The Ritter 108 emails are essentially identical to the Ritter 107 emails, with the addition of this email from Kirk.

[28] The remainder of the Ritter 116 emails were disclosed.

it is therefore found that they failed to prove that Ritter was Hunt's client for purposes of this email.

Accordingly, it is found that the respondents failed to prove that this email communication was made in confidence, and therefore failed to prove that it is exempt from disclosure pursuant to the attorney-client privilege.

Ritter 119 – **page 372, email from Ritter to Curto and cc'd to Boucher and Hunt, dated October 12, 2011 at 11:46 am.**

Hunt testified that this email was part of an ongoing conversation between outside counsel (Curto and Boucher) and Hunt regarding a request by CRRA to Curto and Boucher for their interpretation of an ethics opinion. At the hearing in this matter, Hunt testified that Curto and Boucher previously had informed her of their interpretation, and then they realized that it would be important for Ritter, as CRRA's consultant, to be aware of the legal issue and understand it the same way that they understood it. According to Hunt, the attorneys forwarded the opinion to Ritter to make Ritter aware of their interpretation, and Ritter responded to Curto and Boucher, in the email at issue, with information related to this interpretation.

The respondents argued that this email communication is protected by the attorney-client privilege because Ritter, as CRRA's agent, was the "functional equivalent" of a CRRA employee, and therefore was the "client." However, as discussed on pages 7 through 9, above, the respondents failed to prove that Ritter was the "functional equivalent" of a CRRA employee.

Accordingly, it is concluded that the respondents failed to prove that this email communication between Ritter and CRRA's outside counsel is exempt from disclosure pursuant to the attorney-client privilege.

Ritter 120 – **page 374, email from Nonnenmacher to Ritter, dated October 26, 2011 at 3:33 pm; and page 374, email from Ritter to Nonnenmacher, dated October 26, 2011 at 3:34 pm (redaction),** (see Respondents' Exhibit 17). [29]

After careful in camera inspection of these emails, viewed in the context of all of the Ritter 120 emails, it is found that the emails themselves contradict the respondents' assertion that they contain a request for legal advice from Ritter in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above); and legal advice. Accordingly, it is found that the respondents failed to prove that these communications are exempt from disclosure pursuant to the attorney-client privilege.

Ritter 122 – **page 380, email from Michael Cassella to Ritter and cc'd to Drew Rankin and Tim Cole, dated December 27, 2011 at 9:50 am** (email 1), and **page 380, email from Ritter to Kirk, dated December 27, 2011 at 10:07 am** (email 2).[30]

[29] The remainder of the Ritter 120 emails were disclosed.

[30] The remainder of the Ritter 122 emails were disclosed.

Hunt testified that Cassella, Rankin and Cole are outside third-parties, and that these individuals provided confidential information, contained in email 2, to Ritter, with the expectation that Ritter would pass the information on to CRRA. The respondents claimed these emails are exempt from disclosure pursuant to the attorney-client privilege. After careful in camera inspection of these emails, it is found that they do not contain a request for legal advice or legal advice. Accordingly, it is concluded that these emails are not exempt from disclosure pursuant to the attorney-client privilege.

The respondents claimed that these emails also are exempt from disclosure pursuant to §1-210(b)(5)(B), G.S. Such claim is addressed below.

Ritter 123 – **page 382, email from Tim Cole, to Michael Cassella, and Ritter, and cc'd to Drew Rankin, dated December 28, 2011 at 4:54 pm** (email 1); and **page 382, email from Ritter to Kirk, dated December 29, 2011 at 10:39 am** (email 2).

The respondents claimed these emails are exempt from disclosure pursuant to the attorney-client privilege. After careful in camera inspection of email 1 and email 2, however, it is found that neither contains a request for legal advice or legal advice. It is therefore concluded that these emails are not exempt from disclosure pursuant to the attorney-client privilege.[31]

The respondents claimed these emails also are exempt from disclosure pursuant to §1-210(b)(5)(B), G.S. Such claim is addressed below.

Ritter 124 – **page 386, email from Ritter to Kirk, dated January 17, 2012 at 10:48 am.**[32]

The respondents claimed this email communication is exempt from disclosure pursuant to the attorney-client privilege. After careful inspection of this email, however, it is found that it does not contain a request for legal advice or legal advice. It is therefore concluded that the email is not exempt from disclosure pursuant to the attorney-client privilege.

The respondents claimed this email also is exempt from disclosure pursuant to §1-210(b)(5)(B), G.S. Such claim is addressed below.

Ritter 125 and 126 – **page 387, email from Kirk to Ritter and cc'd to Hunt, dated February 1, 2012, at 2:11 pm** (redaction) (Ritter 125); and **page 390, email from Ritter to Kirk, dated February 2, 2012 at 11:16 am** (Ritter 126).[33]

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[31] The remainder of the Ritter 123 emails were disclosed.

[32] The two emails on page 385 were disclosed.

[33] The remainder of page 387, and pages 388 and 389, were disclosed.

The respondents claimed that lines 1-12 of the email on page 387 (in Ritter 125) contains a request for legal advice from Kirk to Ritter, and that the email on page 390 (in Ritter 126) contains Ritter's legal advice in response to such request. After careful in camera inspection of both emails, it is found that, although the Ritter 125 email does not contain an explicit request by Kirk for legal advice from Ritter, it contains an implicit request for such advice. However, it is also found that the the respondents failed to prove that these communications are a request by Kirk on behalf of CRRA for legal advice from Ritter in a professional capacity as counsel to CRRA, and legal advice provided by Ritter in this capacity.

It is therefore concluded that these emails are not exempt from disclosure pursuant to the attorney-client privilege belonging to CRRA.

Ritter 127 – **pages 392-395, attachment** to email on page 391 from Kirk to Ritter, Lee Hoffman (outside counsel), John Stafstrom (outside counsel), Nonnenmacher, Bolduc, Hunt and Egan, dated February 6, 2012 at 9:38 am.

Both emails on page 391 were disclosed; however, the respondents claimed the attachment is exempt from disclosure pursuant to the attorney-client privilege.

After careful in camera inspection of the email and attachment, it is found that, arguably, the email contains a request for legal advice. However, it is found that the respondents offered no specific evidence from which it could be determined that Ritter was included in this email communication for the purpose of seeking legal advice from him, in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear from a review of the email and attachment themselves. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation between CRRA and its attorneys, nor is this fact evident on the face of such communications. It is therefore found that the respondents failed to prove that the attachment, which was sent to Ritter, was part of a communication that was made in confidence. Accordingly, it is found that the respondents failed to prove that the attachment is exempt from disclosure pursuant to the attorney-client privilege.

The respondents claimed that the attachment also is exempt from disclosure pursuant to §1-210(b)(5)(B), G.S. Such claim is addressed below.

Ritter 135 – **page 404, email from Nonnenmacher to Kirk, Egan, Perras, Hunt and bcc'd to Ritter, dated October 12, 2012 at 9:29 am.**

At the hearing in this matter, Hunt testifed that this email contains a request for legal advice from Kirk to her. However, after careful in camera inspection of this email, it is found that it does not contain a request for legal advice. Accordingly, it is concluded that this email communication is not exempt from disclosure pursuant to the attorney-client privilege.

39. The respondents also claimed that some of the Ritter emails and/or attachments are exempt from disclosure pursuant to §§1-210(b)(1), 1-210(b)(4), and 1-210(b)(5), G.S.

Section 1-210(b)(1), G.S. – Preliminary Drafts or Notes

40. Section 1-210(b)(1), G.S., provides that disclosure is not required of "preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure."

41. With regard to this claim of exemption, it is found that the respondents offered no evidence, at the hearing in this matter, to prove that any of the emails or attachments thereto, are preliminary drafts or notes; nor did the respondents offer evidence that CRRA had determined that the public interest in withholding the records clearly outweighed the public interest in disclosure. Accordingly, it is concluded that the respondents failed to prove that any of the Ritter emails and attachments still at issue are exempt from disclosure pursuant to §1-210(b)(1), G.S.

Section 1-210(b)(4), G.S. – Strategy and Negotiations with respect to Pending Claims or Pending Litigation

42. Section 1-210(b)(4), G.S., provides that disclosure is not required of "records pertaining to strategy and negotiations with respect to pending claims or pending litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled." "Pending claim" is defined in §1-200(8), G.S., as "a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action in an appropriate forum if such relief or right is not granted." "Pending claim" is defined in §1-200(9), G.S., as:

> (A) a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action before a court if such relief or right is not granted by the agency; (B) the service of a complaint against an agency returnable to a court which seeks to enforce or implement legal relief or a legal right; or (C) the agency's consideration of action to enforce or implement legal relief or a legal right.

43. The respondents claimed that the following records are exempt from disclosure pursuant to §1-210(b)(4), G.S.: Ritter 8, Ritter 13, Ritter 17, Ritter 18, Ritter 19, Ritter 20, Ritter 23, and Ritter 110.

Ritter 8 – **page 21, email from Kirk to Ritter, dated April 27, 2009, at 1:03 pm; and email from Ritter to Kirk, dated April 29, 2009, at 8:18 am.**

At the hearing in this matter, the respondents claimed these emails are exempt from disclosure pursuant to §1-210(b)(4), G.S.[34] After careful in camera inspection of these email communications, it is found that they are records pertaining to strategy with respect to a pending claim or litigation to which CRRA is a party. Accordingly, it is concluded that they are exempt

[34] On the index, the respondents claimed only that these records are exempt pursuant to §1-210(b)(10), G.S.

from disclosure pursuant to §1-210(b)(4), G.S., and the Commission need not consider any alternative claim of exemption.

Ritter 13 – **page 48, email from Ritter to Nonnenmacher and Kirk, dated September 21, 2009, at 6:24 pm;[35] page 49, email from Ritter to Nonnenmacher, dated September 21, 2009, at 3:10 pm; and page 49 – 50, email from Nonnenmacher to Ritter, dated September 21, 2009, at 3:01 pm.**

The respondents claimed these emails are exempt from disclosure pursuant to §1-210(b)(4), G.S.[36] After careful in camera inspection of these emails, it is found that they are records pertaining to strategy with respect to a pending claim or litigation to which CRRA is a party. Accordingly, it is concluded that they are exempt from disclosure pursuant to §1-210(b)(4), G.S. Therefore, Commission need not consider any alternative claim of exemption.

Ritter 17 –**page 61, email from Kirk to Bill Champlin (outside counsel), Hunt, Miguel Escalera (outside counsel) and Ritter, cc'd to Bzdyra, Nonnenmacher, Bolduc and Eagan, dated October 16, 2009, at 1:27 am, and attachment (pages 62 – 67).**

The respondents claimed this email and attachment are exempt from disclosure pursuant to §1-210(b)(4), G.S.[37] After careful in camera inspection of these records, it is found that they are records pertaining to strategy with respect to a pending claim or litigation to which CRRA is a party. Accordingly, it is concluded that the email and attachment are exempt from disclosure pursuant to §1-210(b)(4), G.S. Therefore, the Commission need not consider any alternative claim of exemption.

Ritter 18 – during the post-remand hearings, the respondents stated that they no longer were claiming an exemption for the emails on page 69. However, the respondents continued to claim that the attachment to these emails is exempt from disclosure pursuant to §§1-210(b)(4)[38]. After careful inspection of the attachment, it is found that the **attachment in Ritter 18 (pages 70 – 75),** is identical to the attachment in Ritter 17. Accordingly, it is concluded that the attachment is exempt from disclosure pursuant to §1-210(b)(4), G.S. Therefore, the Commission need not consider any alternative claim of exemption.

Ritter 19 – After careful in camera inspection of the attachments, it is found that pages 77 through 79 are records pertaining to strategy with respect to a pending claim or litigation to which CRRA is a party. Accordingly, it is concluded that such pages are exempt from disclosure pursuant to §1-210(b)(4), G.S. However, it is also found that the email on page 76 is not a

[35] The other email on page 48, from Nonnenmacher to Ritter and Kirk, dated September 21, 2009, at 4:57 pm, was disclosed.

[36] The respondents claimed these records also are exempt pursuant to §1-210(b)(10), G.S.

[37] The respondents claimed these records also are exempt pursuant to §1-210(b)(10), G.S. In addition, the respondents disclosed both emails on pages 60 and the email at the top of page 68. The other email on page 68 is identical to the email on page 61.

[38] The respondents claimed these records also are exempt pursuant to §1-210(b)(10), G.S.

record pertaining to strategy or negotiation with respect to a pending claim or litigation to which CRRA is a party. It is therefore concluded that such email communication is not exempt from disclosure pursuant to §1-210(b)(4), G.S.

The respondents claimed that the email on page 76 also is exempt from disclosure pursuant to §1-210(b)(5), G.S. Such claim is addressed below.

Ritter 20 – After careful in camera inspection of the attachments, it is found that such attachments (pages 81 and 82) are identical to the attachments in Ritter 19. Accordingly, it is concluded that such pages are exempt from disclosure pursuant to §1-210(b)(4), G.S. However, it is also found that page 80 is not a record pertaining to strategy or negotiation with respect to a pending claim or litigation to which CRRA is a party. It is therefore concluded that such page is not exempt from disclosure pursuant to §1-210(b)(4), G.S.

The respondents claimed that the email on page 80 also is exempt from disclosure pursuant to §1-210(b)(5), G.S. Such claim is addressed below.

Ritter 23 – **page 88, email from Kirk to CRRA board members, and cc'd to Marianne Carcio, Kenney, Hunt, Nonnenmacher, Escalera, Champlin, and Ritter, dated December 23, 2009, at 10:38 am (partial redaction,** see Respondents' Exhibit 16).[39]

The respondents claimed the redacted portion of this email is exempt from disclosure pursuant to §§1-210(b)(4), G.S.[40] After careful in camera inspection of this email, it is found that the redacted portion pertains to a pending claim or litigation to which CRRA is a party. Accordingly, it is concluded that the redacted portion is exempt from disclosure pursuant to §1-210(b)(4), G.S. Therefore, the Commission need not consider any alternative claim of exemption.

Ritter 110 – **page 363, email from William Wilson (outside counsel) to Kirk, Hunt, Egan, Bolduc, Virginia Raymond (CRRA), and Escalera and cc'd to Boucher, and Farley, dated June 22, 2011 at 1:16 pm; page 362, email from Escalera to Wilson, Kirk, Egan, Bolduc and Raymond, and cc'd to Boucher and Farley, dated June 22, 2011 at 2:22 pm; page 360 – 361, email from Kirk to Boucher, Escalera, Farley, Wilson, Hunt and Ritter and cc'd to Raymond, Egan and Bolduc, dated June 23, 2011 at 9:19 am; page 360, email from Boucher to Kirk, Escalera, Farley, Wilson, Hunt, and Ritter and cc'd to Raymond, Egan and Bolduc, dated June 23, 2011 at 2:04 pm; page 360, email from Kirk to Boucher, Escalera, Farley, Wilson, Hunt and Ritter, and cc'd to Raymond, Egan, and Bolduc, dated June 23, 2011 at 2:49 pm.**[41]

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[39] The other two emails on page 88, and the attachment (on pages 89 – 92) were disclosed.

[40] The respondents claimed these records also are exempt pursuant to §§1-210(b)(1) and 1-210(b)(10), G.S.

[41] Although the respondents claimed only emails 3 and 5 are exempt from disclosure, at the hearing in this matter, they claimed all emails comprising Ritter 110 are exempt.

Hunt testified that these emails contain a discussion of legal advice relating to how CRRA should proceed in the arbitration/litigation with MDC, and claimed that such emails are exempt from disclosure pursuant to §§1-210(b)(4), 1-210(b)(1) and 1-210(b)(10), G.S. After careful in camera inspection of these emails, it is found that they are records pertaining to strategy with respect to a pending claim or litigation to which CRRA is a party. Accordingly, it is concluded that such email communications are exempt from disclosure pursuant to §1-210(b)(4), G.S. Therefore, the Commission need not consider any alternative claim of exemption.

Section 1-210(b)(5)(B), G.S. – Commercial or Financial Information Given in Confidence, Not Required by Statute

44. Section 1-210(b)(5)(B), G.S., provides that disclosure is not required of "commercial or financial information given in confidence, not required by statute."

45. The Commission has previously determined that all three parts of this exemption must be met: First, the information must be commercial or financial information; second, it must be given in confidence; and third, it must not be required by statute. See Advisory Opinion #82.

46. The respondents claimed that the following emails are exempt from disclosure pursuant to §1-210(b)(5)(B), G.S.: Ritter 19, Ritter 20, Ritter 122, Ritter 123, Ritter 124, Ritter 127 and Ritter 129.

Ritter 19 and Ritter 20 – **page 76, email from Kirk to Champlin, Escalera, Ritter, Boucher, and Farley, and cc'd to Bolduc, Hunt and Egan, dated October 28, 2009, at 12:11 am, with attachments** (Ritter 19); **pages 81-82, attachments** (Ritter 20).

As found above, the attachments in Ritter 19 and Ritter 20 are identical. After careful in camera inspection of the email and attachments, it is found that the email does not contain commercial or financial information. It is also found that the attachments, arguably, contain information that could be considered commercial or financial information; however, it is found that such information is CRRA's information and therefore, it was not "given in confidence," as that phrase is used in §1-210(b)(5)(B), G.S.

Accordingly, it is found that the respondents failed to prove all three parts of the exemption, and that they therefore failed to prove that the email and attachments are exempt from disclosure pursuant to §1-210(b)(5)(B), G.S.

Ritter 122, Ritter 123, Ritter 124, and Ritter 129 – **page 380, email from Michael Cassella to Ritter and cc'd to Drew Rankin and Tim Cole, dated December 27, 2011 at 9:50 am; page 380, email from Ritter to Kirk, dated December 27, 2011 at 10:07 am** (Ritter 122);[42] **page 382, email from Tim Cole, to Michael Cassella, and Ritter, and cc'd to Drew Rankin, dated December 28, 2011 at 4:54 pm; page 382, email from Ritter to Kirk, dated December 29, 2011 at 10:39 am** (Ritter 123); **page 386, email from Ritter to Kirk, dated**

[42] The remainder of the Ritter 122 emails were disclosed.

January 17, 2012 at 10:48 am[43] (Ritter 124); **and page 398, email from Kirk to Mike Casella (third party) and cc'd to Egan and Ritter, dated February 8, 2012 at 2:39 pm** (Ritter 129).

The Ritter 122, 123, 124 and 129 emails pertain to the same issue/discussion. With respect to the respondents' claim that these emails are exempt from disclosure under §1-210(b)(5)(B), G.S., it is found that the respondents failed to prove any of the three parts of the exemption.

Accordingly, it is found that the respondents failed to prove that these emails are exempt from disclosure pursuant to §1-210(b)(5)(B), G.S.

Ritter 127 – **pages 392-395, attachment** to email on page 391 from Kirk to Ritter, Lee Hoffman (outside counsel), John Stafstrom (outside counsel), Nonnenmacher, Bolduc, Hunt and Egan, dated February 6, 2012 at 9:38 am. Both emails on page 391 were disclosed.

After careful in camera inspection of the attachment, it is found that, although arguably, some of the information contained therein is financial information, such information is CRRA's financial information, and therefore it was not "given in confidence," as that phrase is used in §1-210(b)(5)(B), G.S.

Accordingly, it is concluded that the attachment is not exempt from disclosure pursuant to §1-210(b)(5)(B), G.S.

47. Based upon all of the foreging, it is concluded that the respondents violated §§1-210(a) and 1-212(b), G.S., by failing to disclose to the complainant all of the Ritter emails, or portions thereof, and attachments not specifically found to be exempt from disclosure on pages 10 through 35, above.

Boucher Emails

48. With regard to the Boucher emails still at issue, the respondents claimed all such emails are exempt from disclosure pursuant to the attorney-client privilege.[44] The Commission has conducted a second in camera inspection, post-remand, as follows:

Section 1-210(b)(10), G.S. – Attorney-Client Privilege

Boucher 15 – **pages 3-4, email from Alan Curto to Kirk, Gaffey, Bzdyra and Hunt, and cc'd to Boucher and Farley, dated January 13, 2009 at 11:04 am** (email 1); **and page 3, email from Bzdyra to Curto, Kirk, Gaffey, Hunt, Boucher and Farley, dated January 13, 2009 at 11:34 am** (email 2).

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[43] The two emails on page 385 were disclosed.

[44] Not all responsive emails that are on the in camera index are addressed herein because: the respondents disclosed certain emails to the complainant after the case was remanded; the respondents indicated during the post-remand hearings that they would disclose certain emails; or the complainant indicated he no longer wish to pursue certain emails. Also, see paragraph 9, above.

After careful inspection of these emails, it is found that email 1 contains legal advice from Curto, acting in his professional capacity as counsel to CRRA, provided to officials at CRRA, acting in the performance of their official duties, which advice was made in confidence. Accordingly, it is found that email 1 is exempt from disclosure pursuant to the attorney-client privilege.

It is found that the third line in email 2 contains a comment from Bzdyra pertaining to the legal advice provided by Curto, and therefore it is exempt from disclosure pursuant to the attorney-client privilege. However, it is also found that the first two lines of email 2 do not contain comments pertaining to legal advice, and in addition, during the hearing in this matter, Hunt revealed the substance of the first two lines during her testimony. Accordingly, it is concluded that the first two lines of email 2 are not exempt from disclosure pursuant to the attorney-client privilege.

Boucher 17 – **page 5, email from Curto to Boucher, dated January 15, 2009 at 11:29 am** (email 1); **and email from Boucher to Bzdyra and Hunt, and cc'd to Curto, dated January 15, 2009 at 11:49 am** (email 2), **and attachments.**

After careful inspection of these emails and attachments, it is found that the following portion of email 2 contains legal advice from Boucher, acting in his professional capacity as counsel to CRRA, provided to officials at CRRA acting in performance of their official duties, which advice was made in confidence: line 1, last seven words, and line 2, all.

Accordingly, it is concluded that the above-described portion of email 2 only is exempt from disclosure pursuant to the attorney-client privilege.

In addition, it is found that the following portion of email 1 is a communication between Curto and Boucher, attorneys at Halloran and Sage, acting in their professional capacities for CRRA, that is related to, and prepared in furtherance of, the legal advice provided by Curto to CRRA in email 2: last seven words.

Accordingly, it is concluded that the above-described portion of email 1 only is exempt from disclosure pursuant to the attorney-client privilege.

It is also found that the attachments contain the legal advice from Curto to CRRA, referenced in email 1 and email 2. Accordingly, it is concluded that the attachments are exempt from disclosure pursuant to the attorney-client privilege.

Boucher 34 – **page 9, email from Bzdyra to Boucher and Curto, and cc'd to Hunt, Kirk and Nonnenmacher, dated January 30, 2009 at 4:17 pm (redaction).** The remainder of this email, as well as the attachment on pages 10-18, were disclosed.

The respondents redacted the entire third line of this email, claiming it contains a request for legal advice from Bzdyra to Boucher and Curto (see Respondents' Exhibit 24). After careful in camera inspection of this email, it is found that the redacted portion contains a request for legal advice from Bzdyra, on behalf of CRRA, to Attorneys Boucher and Curto, acting in their

professional capacities as counsel to CRRA, which was made in confidence. Accordingly, it is concluded that the third line of the email only is exempt from disclosure pursuant to the attorney-client privilge.

Boucher 53 – **page 19, email from Bzdyra to Boucher, dated February 25, 2009, at 9:25 am** (redaction). The remainder of this email, as well as the attachments, were disclosed.

The respondents claimed that the redaction consists of Bzdyra's request for legal advice from Boucher (see Respondents' Exhibit 24). After careful inspection of the email, it is found that the redacted portion contains a request for legal advice from Bzdyra, made on behalf of CRRA, to Boucher, in his professional capacity as counsel to CRRA, which was made in confidence. Accordingly, it is concluded that the redacted portion only of the email is exempt from disclosure pursuant to the attorney-client privilge.

Boucher 93 – **page 26, email from Curto to Boucher, dated April 21, 2009, at 3:23 pm** (email 1); **page 26, email from Boucher to Bzdyra and Hunt, dated April 21, 2009, at 3:41 pm** (email 2), and **pages 28-30, attachments**. Although the respondents did not claim an exemption for email 1 on the in camera index, at the hearing they claimed email 1 is exempt from disclosure pursuant to the attorney-client privilege.

The respondents claimed that email 1, email 2, and the attachments, are exempt from disclosure pursuant to the attorney-client privilege. After careful in camera inspection of these records, it is found that email 2 and the attachments contain legal advice requested by CRRA from Boucher, in his professional capacity as counsel to CRRA, which was made in confidence.

In addition, it is found that email 1 is a communication, made in confidence, between Curto and Boucher, acting in their professional capacities as counsel to CRRA, related to, and prepared in furtherance of, the legal advice provided by Boucher to CRRA in email 2. Accordingly, it is concluded that email 1 is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 94 – **page 31, email from Bzydra to Boucher, dated April 21, 2009, at 4:08 am.** The other two emails on page 31, which together comprise Boucher 94, are identical to email 1 and email 2 in Boucher 93.

Hunt testified that this email is exempt from disclosure pursuant to the attorney-client privilege because, in it, Bzydra responded to Boucher's legal advice by informing Boucher that there would be further action.

After careful in camera inspection of these three emails together, it is found that the email communication from Bzydra was made on behalf of CRRA, in confidence, to Boucher, and pertains to, and was made in furtherance of, the legal advice sought by CRRA from Boucher in his professional capacity as counsel to CRRA. Accordingly, it is concluded that such email is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 191 – **page 36, email from Hunt to Boucher and cc'd to Kirk, and Ray O'Brien (CRRA board member), dated November 23, 2009 at 12:40 pm** (email 1); **page 36, email from Boucher to Hunt and cc'd to Christopher Novak (outside counsel), dated November 23, 2009, at 1:13 pm** (email 2); and **page 36, email from Hunt to Boucher and cc'd to Novak, dated November 23, 2009, at 3:12 pm** (email 3). The attachments to these emails (page 37 and 38), were disclosed.

The respondents claimed that email 1, email 2, and email 3, are exempt from disclosure pursuant to the attorney-client privilege. After careful in camera inspection of such emails, it is found that they consist of a request for legal advice from Hunt, on behalf of CRRA, directed to Boucher in his professional capacity as counsel to CRRA, which was made in confidence; Boucher's initial response to Hunt's request; and additional information provided by Hunt to Boucher to assist in Boucher's rendering of such advice. Accordingly, it is concluded that email 1, email 2 and email 3, are exempt from disclosure pursuant to the attorney-client privilege.

Boucher 192 – **page 39, email from Boucher to Hunt, dated November 23, 2009, at 3:20 pm.** The other three emails on pages 39 and 40, which together comprise Boucher 192, are identical to email 1, email 2, and email 3, in Boucher 191.

The respondents claimed that, in this email, Boucher acknowleged Hunt's prior email and added a comment, and that such email is exempt from disclosure pursuant to the attorney-client privilege.

After careful in camera inspection of all four of these emails together, it is found that the email from Boucher to Hunt was made in confidence and pertains to, and was made in furtherance of, the legal advice sought by CRRA from Boucher. Accordingly, it is concluded that such email is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 362 –**page 56, email from Hunt to Bzdyra, Kirk and Nonnenmacher and cc'd to Farley, dated January 7, 2011 at 2:01 pm** (email 1); **page 56, email from Nonnenmacher to Hunt, Bzdyra and Kirk, and cc'd to Farley, dated January 7, 2011 at 2:18 pm** (email 2); **page 56, email from Farley to Nonnenmacher, Hunt, Bzdyra and Kirk, and cc'd to Scott McKessy (outside counsel), dated January 7, 2011, 2:21 pm** (email 3); **page 55-56, email from Kirk to Farley, Nonnenmacher, Hunt and Bzdyra and cc'd to McKessy, dated January 10, 2011 at 9:13 am** (email 4); **page 55, email from Farley to Kirk, and cc'd to Nonnenmacher, Hunt, Bzdyra, McKessy, Boucher, and Curto, dated January 10, 2011 at 10:13 am; and attachment (pages 60-61)** (email 5).[45]

With respect to email 1, Hunt testified that it contains legal advice from her, in her capacity as counsel to CRRA, to CRRA representatives. After careful in camera inspection of email 1, in the context of all other emails in Boucher 362, it is found that Hunt provided legal advice in her professional capacity as in-house counsel to CRRA in email 1, and that such advice

[45] Boucher 362 consists of ten emails and a two page attachment. The respondents disclosed five, withheld four, and redacted a portion of another one of these emails. At the request of the hearing officer, the respondents submitted a separate index to the Boucher 362, 363, and 364 in camera records, which has been marked as Respondents' Exhibit 25.

was provided in response to a request for legal advice from CRRA representatives. Accordingly, it is concluded that email 1 is exempt from disclosure pursuant to the attorney-client privilege.

With respect to email 2, Hunt testified that it contains a request for legal advice from Nonnenmacher to her and to Farley. After careful inspection of email 2, it is found that only the final line of such email contains a request for legal advice from Nonnenmacher to Hunt and Farley. With respect to such request, it is found that it was made by Nonnenmacher, on behalf of CRRA to Hunt, in Hunt's professional capacity as in-house counsel to CRRA, and to Farley, acting in his professional capacity as counsel to CRRA, and that such request was made in confidence. Accordingly, it is concluded that the last line of email 2 only is exempt from disclosure pursuant to the attorney-client privilege. The respondents claimed that the remainder of this email also is exempt from disclosure pursuant to §§1-210(b)(1) and 1-210(b)(4), G.S. Such claims are addressed below.

With respect to email 3, Hunt testified that, in that email, Farley responded to Nonnenmacher's request for legal advice, contained in email 2, with legal advice. After careful inspection of email 3, it is found that it contains legal advice from Farley, in his professional capacity as counsel to CRRA, to CRRA, and that such advice was given in confidence. Accordingly, it is concluded that email 3 is exempt from disclosure pursuant to the attorney-client privilege.

With respect to email 4, the respondents claimed that all of such email is exempt from disclosure pursuant to the attorney-client privilege, except for the very last line, which line was disclosed. After careful inspection of the remainder of email 4, it is found that it does not contain legal advice, a request for legal advice, or information that may facilitate the provision of requested legal advice. Accordingly it is concluded that the remaining portion of email 4 is not exempt from disclosure pursuant to the attorney-client privilege. The respondents claimed that the remaining portion of email 4 also is exempt from disclosure pursuant to §§1-210(b)(4) and 1-210(b)(1), G.S. Such claims are addressed below.

With respect to email 5, after careful in camera inspection, it is found that it does not contain legal advice. However, with respect to the attachment, after careful in camera inspection, it is found that the attachment contains legal advice to CRRA from Farley, in his professional capacity as counsel to CRRA, which advice was requested by CRRA, and given in confidence. Accordingly, it is concluded that the attachment only is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 363 – Boucher 363 is identical to Boucher 362, with the addition of one email and the deletion of the attachment; **page 62, email from Boucher to Nonnenmacher, Farley, Kirk, Hunt, Bzdyra, McKessy and Curto, dated Janaury 10, 2011 at 12:33 am** (redacted).

The respondents claimed that the second sentence in this email is exempt from disclosure pursuant to the attorney-client privilege. The first sentence was disclosed. After careful inspection of this email, it is found that the second sentence contains legal advice from Boucher, provided in his professional capacity as counsel to CRRA, to CRRA representatives, in response to a request by CRRA representatives for such advice. It is found that this communication was

made in confidence. Accordingly, it is found that the redacted portion of this email only is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 364 – Boucher 364 is identical to Boucher 362, with the addition of one email and the deletion of the attachment. **Page 67, email from Farley to Nonnenmacher and Kirk, and cc'd to Hunt, Bzdyra, McKessy, Boucher and Curto, dated January 10, 2011, at 12:33 pm.**

The respondents claimed this email is exempt from disclosure pursuant to the attorney-client privilege. After careful in camera inspection of this email, it is found that it consists of legal advice from Farley, provided in his professional capacity as counsel to CRRA, to Nonnenmacher, on behalf of CRRA, pursuant to a request by CRRA for such advice. It is found that this communication was made in confidence. Accordingly, it is concluded that this email is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 365 – Boucher 365 consists of six emails, four of which are duplicates of emails contained in Boucher 362. The two additional emails in Boucher 365, both on page 72, were disclosed.

Boucher 408 – **page 81, email from Boucher to Hunt and cc'd to James Maher (outside counsel), dated March 31, 2011 at 5:04 pm,** (email 1) **and attachment.** Although there is a second email on page 81, the respondents did not claim an exemption for it on the index (email 2).

After careful inspection of email 1 and the attachment, it is found that the attachment contains legal advice from Boucher, acting in his professional capacity as counsel to CRRA, provided to Hunt, acting in performance of her official duties, which advice was made in confidence. It is further found that this legal advice was requested by CRRA. Accordingly, it is concluded that the attachment is exempt from disclosure pursuant to the attorney-client privilege.

However, it is found that email 1 does not contain a request for legal advice or legal advice, and it is therefore concluded that such email is not exempt from disclosure pursuant to the attorney-client privilege.

Boucher 410 – **page 87, email from Boucher to Hunt and cc'd to James Maher (outside counsel), dated March 31, 2011 at 5:04 pm.** This email is identical to email 1 in Boucher 408, above.

Boucher 413 – Boucher 413 consists of four emails on page 92; two of the emails on page 92 are identical to email 1 and email 2 in Boucher 408.[46]

Boucher 441 and 449 – Boucher 441: **page 101, email from Kristen Gentile (third-party) to Sotoria Montanari (CRRA), dated March 20, 2011 at 10:07 pm** (email 1); **page 100, email from Sotoria Montanari to Joseph Fortner (outside counsel), dated April 8, 2011**

[46] At the hearing in this matter, Hunt stated that the respondents will disclose the other two emails.

at 10:42 am (email 2); **page 100, email from Fortner to Montanair and cc'd to Boucher, Curto and Hunt, dated April 12, 4:09 pm** (email 3); **page 100, email from Montanari to Fortner, dated April 12, 2011 at 4:17 pm** (email 4); **page 99, email from Fortner to Montanari and cc'd to Boucher, Curto, and Hunt, Jr., dated April 13, 2011 at 12:31 pm** (email 5)**; and page 99, email from Montanari to Fortner, and cc'd to Boucher, Curto and Hunt, dated April 13, 2011 at 2:50 pm** (email 6).

According to Hunt's testimony at the hearing in this matter, the Boucher 441 and 449 emails pertain to some manuals regarding certain games that were developed for use at CRRA's Trash Museum. At the hearing, the respondents claimed that all of the emails are exempt from disclosure pursuant to the attorney-client privilege.

After careful in camera inspection of the Boucher 441 emails identified above, it is found that email 2 contains a request for legal advice from CRRA employee Montanari to Fortner, in his professional capacity as counsel to CRRA, regarding the issue raised in email 1. It is found that such request for legal advice was made in confidence. It is found that email 3 and 5 contain Fortner's legal advice. It is found that email 4 provides additional information provided by Montanari, on behalf of CRRA, to Fortner in order to faciliate the provision of legal advice, as well as a request for additional legal advice. It is also found that emails 1, 2, 3, 4 and 5 are communications that were made in confidence. Accordingly, it is concluded that emails 1, 2, 3, 4, and 5 are exempt from disclosure pursuant to the attorney-client privilege. However, it is found that email 6 does not contain legal advice, a request for legal advice or additional information provided to facilitate the requested legal advice, and therefore it is concluded that such email is not exempt from disclosure pursuant to the attorney-client privilege.

Boucher 449: **Page 102, email from Montanari to Fortner, and cc'd to Boucher and Hunt, dated April 19, 2011 at 4:18 pm; and page 102 email from Fortner to Montanari, and cc'd to Boucher and Hunt, dated April 19, 2011 at 4:24 pm.**

After careful in camera inspection of the Boucher 449 emails identified above, it is found that they contain additional information provided by Montanari, on behalf of CRRA to Fortner, in his professional capacity as counsel to CRRA, to faciliate the requested legal advice, and additional legal advice from Fortner. It is found that both email communications were made in confidence. Accordingly, it is concluded that these two emails are exempt from disclosure pursuant to the attorney-client privilege.

Boucher 453 – **page 103, email from Hunt to Boucher and cc'd to Kirk, dated April 26, 2011 at 11:55 am.**

After careful in camera inspection of this email, it is found that lines 2 – 5 contain a request for legal advice from Hunt, on behalf of CRRA, to Boucher, in his professional capacity as counsel to CRRA, and that such request was made in confidence. Accordingly, it is concluded that the email is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 454 –**pages 104 –106, emails among Nonnenmacher, Kirk and Farley, and copied to other CRRA representatives and Boucher, each dated April 16, 2011.**

After careful in camera inspection of these email communications, it is found that they pertain to a request for legal advice from CRRA representatives, acting on behalf of CRRA, to Farley, in his professional capacity as counsel to CRRA, and a discussion of strategy with respect to such legal advice. It is also found that these email communications were made in confidence. It is therefore concluded that these email communications are exempt from disclosure pursuant to the attorney-client privilege.

Boucher 463 – **page 107, email from Boucher to Kirk and cc'd to Nonnenmacher and Hunt, dated April 28, 2011 at 4:19 pm** (redaction).[47]

According to Hunt's testimony, the redacted portion of this email contains legal advice from Boucher to Kirk regarding how to get a particular bill pulled from the Senate calendar. After careful in camera inspection of the redaction, as well as a review of the remainder of the emails comprising Boucher 463, it is found that such redaction does not contain legal advice. Accordingly, it is concluded that the redacted portion is not exempt from disclosure pursuant to the attorney-client privilege.

Boucher 501 – **page 110, email from Boucher to Nonnenmacher, Kirk, Gaffey, Egan and Hunt, and cc'd to Ritter, Persico, Shea and Roman, dated May 10, 2011 at 1:21 pm** (redaction).[48]

According to Hunt's testimony, the redacted portion of this email contains legal advice from Boucher to CRRA. After careful in camera inspection of the redaction, as well as review of the remainder of the emails comprising Boucher 501, it is found that such redaction does not contain legal advice. Accordingly, it is concluded that the redacted portion is not exempt from disclosure pursuant to the attorney-client privilege.

Boucher 516 – **page 133, email from Nonnenmacher to Boucher and cc'd to Ritter, Hunt and Kirk, dated May 18, 2011 at 1:42 pm** (redaction).[49]

The respondents claimed that the redacted portion of this email is a request for legal advice from Nonnenmacher to Boucher and Hunt. After careful inspection of such redaction as well as a review of the remainder of the emails comprising Boucher 516, it is found that the redacted portion is a request for legal advice from Nonnenmacher, on behalf of CRRA, to Boucher and Hunt, in their professional capacities as counsel to CRRA. However, it is also found that the respondents offered no evidence from which it could be determined that Nonnenmacher included Ritter in this email for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear from a review of the email itself. It is further found that the respondents offered no evidence from which it could be

[47] All of Boucher 463 was disclosed except for a portion of the above-identified email on page 107.

[48] All of Boucher 501 was disclosed except for a portion of the above-specified email on page 110.

[49] All of Boucher 516 was disclosed, except for a portion of the above-specified email on page 133.

found that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications.

Accordingly, it is found that the respondents failed to prove that this email communication was made in confidence. It is therefore found that the respondents failed to prove that the redacted portion of this email is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 517 – Boucher 517 is essentially the same email chain as Boucher 516, with the addition of two emails on page 141; one of those two emails was disclosed, the other is still at issue: **page 141, email from Boucher to Nonnenmacher and cc'd to Ritter, Hunt and Kirk, dated May 18, 2011 at 1:52 pm.**

The respondents claimed this email contains Boucher's legal advice in response to Nonnenmacher's request for legal advice in Boucher 516. After careful inspection of this email, as well as a review of the remainder of the emails comprising Boucher 517, it is found that the email contains Boucher's legal advice, provided in response to Nonnenmacher's request for such advice. However, because Boucher also copied Ritter on this email communication, and in view of the fact that Nonnenmacher initially included Ritter on the request to Boucher (see Boucher 516, above), it is found that the respondents failed to prove that the advice was provided in confidence. It is therefore found that the respondents failed to prove that this email is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 519 – Boucher 519 is essentially the same email chain as Boucher 516, with the addition of an email on **page 147, email from Nonnenmacher to Boucher and cc'd to Ritter, Hunt, and Kirk, dated May 18, 2011 at 3:22 pm.**

The respondents claimed this email contains a request for legal advice from Nonnenmacher to Boucher. After careful inspection of such email, as well as a review of the remainder of the emails comprising Boucher 519, it is found that such email is a request for legal advice from Nonnenmacher, on behalf of CRRA, to Boucher, in his professional capacity as counsel to CRRA. However, it is also found that the respondents offered no specific evidence from which it could be determined that Ritter was included in this email for the purpose of seeking legal advice from him, in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear on the face of the email itself. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications.

Accordingly, it is found that the respondents failed to prove that the request for legal advice contained in the email was made in confidence. It is therefore found that the respondents failed to prove that the email is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 521 – Boucher 521 is essentially the same email chain as Boucher 516, with the addition of three emails on **page 152, email from Boucher to Nonnenmacher and cc'd to Hunt and Thomas Blatchley (outside counsel), dated May 18, 2011 at 4:10 pm; email from**

Nonnenmacher to Boucher and cc'd to Hunt, dated May 18, 2011 at 4:14 pm; and email from Boucher to Nonnenmacher and cc'd to Blatchley, dated May 18, 2011 at 5:13 pm.

The respondents claimed these emails are exempt from disclosure pursuant to the attorney-client privilege. After careful in camera inspection of such emails, it is found that they are communications, made in confidence, between counsel for CRRA and Nonnenmacher, on behalf of CRRA, concerning legal advice that was requested by CRRA and provided to CRRA by Boucher. Accordingly, it is concluded that these email communciations are exempt from disclosure pursuant to the attorney-client privilege.

Boucher 523 – Boucher 523 is essentially the same email chain as Boucher 516, with the addition of the email at the top of **page 156, email from Boucher to Nonnenmacher and cc'd to Hunt, dated May 19, 2011 at 6:05 pm.**

The respondents claimed this email is additional legal advice from Boucher to Nonnenmacher. After careful in camera inspection of this email and review of the remainder of the emails comprising Boucher 523, it is found that it contains legal advice from Boucher, in his professional capacity as counsel to CRRA, to Nonnenmacher, in response to a request for such advice from Nonnenmacher, on CRRA's behalf. It is found that such advice was given in confidence. Accordingly, it is concluded that this email communication is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 524 – Boucher 524 is essentially the same email chain as Boucher 516, with the addition of **three emails on page 159A, and 159B; email from Boucher to Nonnenmacher and cc'd to Ritter, Hunt and Kirk, dated May 18, 2011 at 5:43 pm; email from Nonnenmacher to Boucher and cc'd to Ritter, Hunt and Kirk, dated May 19, 2011 at 5:07 pm; and email from Boucher to Nonnenmacher and cc'd to Ritter, Hunt and Kirk, dated May 19, 2011 at 5:31 pm.**

The respondents claimed these three emails are communications between counsel for CRRA and Nonnenmacher, on behalf of CRRA, concerning legal advice that was requested by CRRA and provided to CRRA by Boucher. After careful inspection of these emails, as well as a review of the remainder of the emails comprising Boucher 524, it is found that they are communications between Boucher and Nonnenmacher pertaining to legal advice that was requested by Nonnenmacher on behalf of CRRA. However, it is also found that the respondents offered no specific evidence from which it could be determined that Ritter was included in these email communications for the purpose of seeking legal advice from Ritter, in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear from a review of the emails themselves. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications. To the contrary, the fact that Ritter was not a direct recipient of these communications, but merely was copied on them, suggests that Ritter was not necessary to the legal consultation.

Accordingly, it is found that the respondents failed to prove that these email communications were made in confidence. It is therefore concluded that the respondents failed to prove that such emails are exempt from disclosure pursuant to the attorney-client privilege.

Boucher 533 – **page 172, email from Nonnenmacher to Kirk, Hunt, Ritter and Boucher, dated May 201, 2011 at 3:38 pm (redacted)** (email 1); **and email from Boucher to Nonnenmacher, Kirk, Hunt and Ritter, dated May 20, 2011 at 3:54 pm** (email 2).

At the hearing in this matter, the respondents indicated that they were no longer claiming an exemption for the majority of email 1 and therefore would disclose it with the final line of such email redacted. The respondents claimed the redacted portion of email 1, and all of email 2, are exempt from disclosure pursuant to the attorney-client privilege.

After careful in camera inspection of email 1 and email 2, it is found that the redacted portion is a request for legal advice from Nonnenmacher, on behalf of CRRA, to Hunt and Boucher, and that email 2 contains Boucher's legal advice in response to such request. However, it is also found that the respondents offered no specific evidence from which it could be found that Ritter was included in these emails for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role or the purpose clear from a review of the email itself. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications.

Accordingly, it is found that the respondents failed to prove that the redacted portion of email 1 was made in confidence, and that email 2 was made in confidence. It is therefore found that the respondents failed to prove that such emails, or portions thereof, are exempt from disclosure pursuant to the attorney-client privilege.

Boucher 535 – Boucher 535 is essentially the same email chain as Boucher 533, with the addition of three emails on **page 177, email from Boucher to Nonnenmacher, Kirk, Hunt and Ritter, dated May 20, 2011 at 19:52:36** (email 1); **email from Hunt to Boucher, Nonnenmacher, Kirk and Ritter, dated May 20, 2011 at 4:08 pm** (email 2); **and email from Nonnenmacher to Hunt, Boucher, Kirk and Ritter, dated May 20, 2011 at 4:08 pm** (email 3).

The respondents claimed that these emails contain legal advice from Boucher and Hunt, provided in response to a request for such advice from Nonnenmacher. After careful in camera inspection of such emails, it is found that email 1 and email 2 contain legal advice from Boucher and Hunt, in their professional capacities as counsel to CRRA, in response to a request for such advice from Nonnenmacher, on behalf of CRRA. However, it is also found that the respondents offered no specific evidence from which it could be found that Ritter was included in these emails for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear from a review of the emails themselves. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an

agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications.

Accordingly, it is found that the respondents failed to prove that the communications in email 1 and email 2 were made in confidence. It is therefore concluded that the respondents failed to prove that such emails are exempt from disclosure pursuant to the attorney-client privilege.

Boucher 536 – Boucher 536 is essentially the same email chain as Boucher 533 and 535, with the addition of two emails on **page 180, email from Ritter to Hunt, Boucher, Nonnenmacher and Kirk, dated May 20, 2011 at 4:11 pm** (email 1); **and email from Nonnenmacher to Ritter, Hunt, Boucher and Kirk, dated May 20, 2011, at 4:11 pm** (email 2).

The respondents claimed that email 1 is legal advice provided by Ritter to CRRA and that email 2 is a request from Nonnenmacher to Boucher for additional legal advice. After careful in camera inspection of these emails, it is found that email 1 does not contain legal advice and email 2 does not contain a request for legal advice. Accordingly it is concluded that these emails are not exempt from disclosure pursuant to the attorney-client privilege.

Boucher 537 – Boucher 537 is essentially the same email chain as Boucher 533, 535 and 536, with the addition of two emails on **page 180, email from Nonnenmacher to Hunt, Boucher, Kirk and Ritter, dated May 20, 2011 at 4:08 pm** (email 1); and **email from Ritter to Nonnenmacher, Hunt, Boucher and Kirk, dated May 20, 2011 at 4:29 pm** (email 2).

The respondents claimed that email 1 is a request for legal advice from Nonnenmacher, and that email 2 is Ritter's legal advice in response to Nonnenmacher's earlier request for legal advice. After careful in camera inspection of these emails, it is found that email 1 does not contain a request for legal advice and email 2 does not contain legal advice. Accordingly it is concluded that these emails are not exempt from disclosure pursuant to the attorney-client privilege.

Boucher 538 – Boucher 538 is essentially the same email chain as Boucher 533, 535, 536, and 537, with the addition of three emails on **page 183, email from Nonnenmacher to Hunt and cc'd to Boucher, dated May 20, 2011 at 5:20 pm** (email 1); **email from Hunt to Nonnenmacher and cc'd to Boucher, dated May 20, 2011 at 5:21 pm** (email 2); and **email from Boucher to Hunt and Nonnenmacher, dated May 20, 2011 at 5:40 pm** (email 3);

After careful in camera inspection of these emails, it is found that email 1 communicates legal advice previously received by Nonnenmacher, from Boucher, to Hunt, and that such communication was made in confidence. It is also found that such previously received legal advice was requested by Nonnnemacher, on behalf of CRRA, from Boucher, in his professional capacity as counsel to CRRA, and that this communication was made in confidence. Accordingly, it is concluded that email 1 is exempt from disclosure pursuant to the attorney-client privilege.

It is also found that email 2 contains a request for legal advice from Hunt, on behalf of CRRA, to Boucher, in his professional capacity as counsel to CRRA, which was made in confidence. Accordingly, it is concluded that email 2 is exempt from disclosure pursuant to the attorney-client privilege.

However, it is found that email 3 does not contain legal advice, and therefore it is concluded that email 3 is not exempt from disclosure pursuant to the attorney-client privilege.

Boucher 542 – **page 190, email from Nonnenmacher to Ritter and cc'd to Boucher, Kirk and Hunt, dated May 23, 2011 at 8:49 pm** (email 1) (redaction); page 190, **email from Boucher to Nonnenmacher and Ritter and cc'd to Kirk and Hunt, dated May 23, 2011 at 8:55 am** (email 2).

After careful in camera inspection of these email communications, it is found that the respondents failed to prove that email 1 contains a request by Nonnenmacher for legal advice from Ritter, in a professional capacity as counsel to CRRA; rather, the communication contained in email 2 from Boucher suggests that the request for legal advice was directed to Boucher, not to Ritter. It is further found that the respondents offered no evidence from which it could be found that Ritter was an agent of CRRA who was necessary to the legal consultation Nonnenmacher apparently sought from Boucher, nor is this fact evident on the face of such communications. It is therefore found that the respondents failed to prove that the communications in email 1 and email 2 were made in confidence. Accordingly, it is found that the respondents failed to prove that such communications are exempt from disclosure pursuant to the attorney-client privilege.

Boucher 544 – **page 193 and 194, email from Curto to Boucher and cc'd to William Wilson II, and Blatchley, dated May 17, 2011 at 4:38 pm** (email 1); **page 193, email from Boucher to Hunt, dated May 17, 2011 at 4:38 pm** (email 2); **email from Hunt to Boucher, dated May 17, 2011 at 4:56 pm** (email 3); and **email from Boucher to Nonnenmacher and cc'd to Hunt, dated May 23, 2011 at 11:05 am** (email 4).

The respondents claimed that these emails are exempt from disclosure pursuant to the attorney-client privilege. After careful in camera inspection of these emails, as well as the emails comprising Boucher 547, it is found that Nonnenmacher forwarded all of these emails to Ritter, via email dated May 23, 2011 at 4:17 pm (see Boucher 547, page 201 of the in camera submission). It is found that the respondents offered no specific evidence that these emails were forwarded by Nonnenmacher to Ritter for the purpose of requesting legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above. Nor is Ritter's role, or the purpose, not clear on the face of such email. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications.

Accordingly, it is found that the respondents failed to prove that they did not waive any privilege that might have existed with respect to these emails when Nonnenmacher forwarded

them to Ritter. It is therefore found that the respondents failed to prove that the emails identified above are exempt from disclosure pursuant to the attorney-client privilege.

Boucher 545 – Boucher 545 is essentially the same email chain as Boucher 544, with an additional **email on page 193, from Nonnenmacher to Boucher and Curto and cc'd to Hunt, dated May 23, 2011 at 11:32 am, an attachment (page 198), and additional questions inserted by Nonnenmacher into the email from Curto to Boucher on pages 196 and 197.** The attachment was disclosed to the complainant at the hearing in this matter.

Although the respondents claimed, on the index to the in camera records, that the additional email on page 193 is exempt from disclosure pursuant to the attorney-client privilege, at the hearing in this matter, Hunt stated that the respondents no longer were claiming that exemption and that this email would be disclosed to the complainant.

With regard to the additional questions inserted into the Curto email on pages 196 and 197, after careful in camera inspection of such questions, and of the emails in Boucher 547, it is found that Nonnenmacher forwarded these questions to Ritter, via email dated May 23, 2011 at 4:17 pm (see Boucher 547, page 201 of the in camera submission). It is found that the respondents offered no specific evidence that Nonnenmacher forwarded these questions to Ritter for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court, (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear from the face of such email. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications.

It is therefore found that the respondents failed to prove that any privilege that might have existed with respect to the questions was not waived when Nonnenmacher forwarded them to Ritter. Accordingly, it is found that the respondents failed to prove that the questions are exempt from disclosure pursuant to the attorney-client privilege.

Boucher 547 – Boucher 547 is essentially the same email chain as Boucher 544, with the addition of three pages of draft minutes (pages 206 through 208), and four emails: **page 202 to 203, email from Curto to Boucher, dated May 23, 2011 at 1:39 pm; page 201 to 202, email from Curto to Boucher, dated May 23, 2011 at 2:02 pm; page 201, email from Boucher to Nonnenmacher and cc'd to Curto and Hunt, dated May 23, 2011 at 2:17 pm; and email from Nonnenmacher to Boucher and cc'd to Curto, Hunt, Kirk and Ritter.**

The respondents disclosed the draft minutes to the complainant at the hearing in this matter. After careful in camera inspection of the emails, it is found that Nonnenmacher forwarded the emails identified above, to Ritter, via email dated May 23, 2011 at 4:17 pm (page 201 of the in camera submission). It is found that the respondents offered no specific evidence that these emails were forwarded by Nonnenmacher to Ritter for the purpose of seeking legal advice from Ritter in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear on the face of such email. It is further found that the respondents offered no evidence from

which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications.

Accordingly, it is found that the respondents failed to prove that any privilege that might have existed with respect to the emails identified above was not waived when Nonnenmacher forwarded them to Ritter. Thus, it is found that the respondents failed to prove that such emails are exempt from disclosure pursuant to the attorney-client privilege.

Boucher 548 – Boucher 548 is essentially the same email chain as Boucher 544, with the addition of six emails: **email, page 210, email from Nonnenmacher to Boucher and cc'd to Curto, and Hunt, dated May 23, 2011 at 4:47 pm; page 210, email from Boucher to Nonnenmacher, dated May 23, 2011 at 5:59 pm; page 209, email from Nonnenmacher to Boucher, dated May 23, 2011 at 6:04 pm; page 209, email from Boucher to Nonnenmacher, dated May 23, 2011 at 6:24 pm; page 209, email from Curto to Boucher, dated May 23, 2011 at 6:43 pm; page 209, email from Boucher to Nonnenmacher, dated May 23, 2011 at 7:58 pm.**

After careful in camera inspection of the above-specified emails, it is found that they consist of Curto's and Boucher's legal advice, given to CRRA, in their professional capacities as counsel to CRRA, at CRRA's request for such advice, and additional requests for legal advice by CRRA to Boucher. It is further found that these communications were made in confidence. However, it is found that Nonnenmacher forwarded these emails to Ritter via an email dated May 24, 2011 at 11:46 am (see Boucher 556, page 247 of the in camera submission). It is found that the respondents offered no evidence that Nonnenmacher forwarded these emails to Ritter for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear on the face of the email. Further, it is found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications.

Accordingly, it is found that the respondents failed to prove that any privilege that might have existed with respect to the above-identified email communications was not waived when they were forwarded by Nonnenmacher to Ritter. Thus, it is found that the respondents failed to prove that these email communications are exempt from disclosure pursuant to the attorney-client privilege.

Boucher 549 – **page 216, email from Boucher to Nonnenmacher, Kirk and Hunt, dated May 24, 2011 at 10:28 pm.**

The respondents claimed this email contains additional information from Boucher related to earlier legal advice Boucher provided to CRRA. After careful in camera inspection of this email communication, it is found that it is a discussion of legal advice previously provided by Boucher, in his profesional capacity as counsel to CRRA, to Nonnenmacher on behalf of CRRA at the request of CRRA, and which was made in confidence. Accordingly, it is concluded that this email is exempt from disclosure pursuant to the attorney-client privilge.

Boucher 550 – **page 217, email from Boucher to Nonnenmacher, Kirk and Hunt, dated May 24, 2011, at 10:36 pm.**

The respondents claimed that this email contains legal advice from Boucher to CRRA. After careful in camera inspection of this email, it is found that it is legal advice from Boucher, acting in his professional capacity as counsel to CRRA, to Nonnenmacher, on behalf of CRRA, in response to an implied request for legal advice, which was made in confidence. Accordingly, it is concluded that the email communication is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 551 – **page 220-221, email from Boucher to Nonnenmacher, Kirk and Hunt, dated May 24, 2011 at 10:28 am; email from Nonnenmacher to Boucher, Kirk, and Hunt and cc'd to Ritter, Persico, Shea, and Roman, dated May 24, 2011 at 10:38 am; page 219, email from Boucher to Nonnenmacher, Kirk and Hunt and cc'd to Ritter, Persico, Shea and Roman, dated May 24, 2011 at 11:00 am; and email from Nonnenmacher to Boucher, Kirk and Hunt, and cc'd to Ritter, Persico, Shea and Roman, dated May 14, 2011 at 11:24 am.**

Although the respondents claimed on the index that all four emails on pages 219 through 221 are exempt from disclosure, at the hearing, they indicated that they no longer claimed an exemption for the email at the top of page 219 from Nonnenmacher to Boucher, Kirk, and Hunt, cc'd to Ritter, Persico, Shea and Roman, dated May 24, 2011 at 11:24 am.

With respect to the other three emails, after careful in camera inspection, it is found that all three emails were forwarded or copied to Ritter by Nonnenmacher. In addition, it is found that the respondents offered no specific evidence that these emails were forwarded or copied to Ritter by Nonnenmacher for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear on the face of such email. It is further found that the respondents offered no evidence from which it could be found that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications.

Accordingly, it is found that the respondents failed to prove that these email communications were made in confidence or that any privilege that might have attached to them was not waived when Nonnenmacher forwarded them to Ritter. It is therefore found that the respondents failed to prove that these three email communications are exempt from disclosure pursuant to the attorney-client privilege.

Boucher 552 – Boucher 552 is essentially the same email chain as Boucher 551, with the addition of the email at the top of page 228, from Nonnnemacher to Boucher, Kirk, and Hunt, and cc'd to Ritter, Persico, Shea and Roman, dated May 24, 2011 at 11:53. At the hearing in this matter, the respondents stated that they no longer were claiming an exemption for this email.

Boucher 553 – Boucher 553 consists of seven emails which, on the index, the respondents claimed are exempt from disclosure pursuant to the attorney-client privilege. At the

hearing in this matter, however, the respondents stated that they no longer claimed an exemption for the email, on page 233, from Nonnenmacher to Boucher, Kirk and Hunt, and cc'd to Ritter Persico, Shea and Roman, dated May 24, 2011 at 11:24 am.

With regard to the **remaining six emails**, it is found that all of them included Ritter or ultimately were forwarded to Ritter, by a CRRA official or employee. It is found that one of these six emails also was sent to Shea. It is found that the respondents offered no evidence, at the hearing in this matter, that Ritter was included in these communications for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear on the face of such emails. It is further found that the respondents offered no evidence from which it could be found that Ritter was the agent CRRA, or that Shea was Ritter's agent, who were necessary to the legal consultation, nor are these facts evident on the face of such communications.

It is therefore found that the respondents failed to prove that these communications were made or kept in confidence. Accordingly, it is found that the respondents failed to prove that these communications are exempt from disclosure pursuant to the attorney-client privilege.

Boucher 554 – Boucher 554 is essentially the same email chain as Boucher 555, with the addition of the email on page 236, from Nonnenmacher to Kirk, Boucher, and Ritter and cc'd to Hunt, dated May 24, 2011 at 12:51 pm. The respondents stated at the hearing that they are not claiming an exemption for this additional email.

Boucher 555 – Boucher 555 is essentially the same email chain as 553, with the addition of the email at the top of **page 240, from Ritter to Kirk, Nonnenmacher and Boucher and cc'd to Hunt, dated May 24, 2011 at 1:54 pm.** The respondents claimed that this email is exempt from disclosure pursuant to the attorney-client privilege.

After careful inspection of this email, it is found that it does not contain legal advice. It is therefore concluded that such email is not exempt from disclosure pursuant to the attorney-client privilege.

Boucher 556 – Boucher 556 consists essentially of the same emails that comprise Boucher 544, 545, 547, and 548, with the addition of **four emails on pages 246, through the top of page 248.** After careful in camera inspection of these additional emails, it is found that Ritter was copied on all four of them. It is further found that the respondents offered no evidence, at the hearing in this matter, that Ritter was included in these communications for the purpose of requesting legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role or the purpose clear from the face of such emails. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications. To the contrary, the fact that Ritter was not a direct recipient of these communications, but merely was copied on them, suggests that Ritter was not necessary to the legal consultation.

It is therefore found that the respondents failed to prove that these communications were made in confidence. Accordingly, it is concluded that the respondents failed to prove that these communications are exempt from disclosure pursuant to the attorney-client privilege.

Boucher 557 – Boucher 557 is essentially the same email chain as Boucher 556, with the addition of the **email, on page 255, from Kirk to Nonnenmacher, Boucher and Curto and cc'd to Hunt and Ritter, dated May 24, 2011, at 3:19 pm, and the letter on pages 264 – 265.** The respondents claimed that the additional email and the letter are exempt pursuant to the attorney-client privilege.

The email and letter have been reviewed in camera. It is found that the respondents offered no evidence, at the hearing in this matter, that Ritter was included in this communication for the purpose of requesting legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role or the purpose clear on the face of such email. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communication. To the contrary, the fact that Ritter was not a direct recipient of these communications, but merely was copied on them, suggests that Ritter was not necessary to the legal consultation.

It is therefore found that the respondents failed to prove that the communication and letter were made and kept in confidence. Accordingly, it is concluded that the respondents failed to prove that such records are exempt from disclosure pursuant to the attorney-client privilege.

The respondents also claimed that the letter is exempt from disclosure pursuant to §1-210(b)(1), G.S. Such claim is addressed below.

Boucher 558 – Boucher 558 is essentially the same email chain as Boucher 556, with the addition of **five emails on pages 266 and 267**. The respondents claimed that all of these emails are exempt from disclosure pursuant to the attorney-client privilege.

Based upon a careful in camera inspection of these additional emails, it is found that Ritter was included in all of them by Nonnenmacher. It is further found that the respondents offered no evidence, at the hearing in this matter, that Ritter was included in these communications for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role or the purpose clear on the face of such emails. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications.

It is therefore found that the respondents failed to prove that these email communications were made in confidence. Accordingly, it is found that the respondents failed to prove that such communications are exempt from disclosure pursuant to the attorney-client privilege.

Boucher 559 – Boucher 559 is essentially the same email chain as Boucher 556, with the addition of the **email, at the top of page 280, from Boucher to Nonnenmacher, Kirk, and Curto and cc'd to Hunt, and Ritter, dated May 24, 2011 at 5:39 pm.** The respondents claimed this email is exempt from disclosure pursuant to the attorney-client privilege.

Based upon a careful in camera inspection of this additional email, it is found that it contains legal advice from Boucher, in his professional capacity as counsel to CRRA, in response to Nonnenmacher's request for such advice, which request was contained in an email from Nonnenmacher on which he included Ritter (and is part of Ritter 558, addressed above). Under these circumstances, it is found that the respondents failed to prove that the email from Boucher to Nonnenmacher, Kirk, and Curto and cc'd to Hunt, and Ritter, dated May 24, 2011 at 5:39 pm was made in confidence. It is therefore found that the respondents failed to prove that such email is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 568 – **page 291-292, email from Boucher to Nonnenmacher, Kirk, and Hunt, dated May 24, 2011 at 14:26:02** (email 1); **page 291, email from Nonnenmacher to Boucher, dated May 25, 2011 at 11:43 am** (email 2); **page 291, email from Boucher to Nonnenmacher and cc'd to Hunt, dated May 25, 2011 at 12:13 pm** (email 3).

The respondents claimed that all three of these emails are exempt from disclosure pursuant to the attorney-client privilege. After careful in camera inspection of these emails, it is found that email 1 also appears in Boucher 551, and, for the reasons set forth above, it is concluded that such email is not exempt from disclosure pursuant to the attorney-client privilege.

It is also found that email 2 and email 3 consist of a further request for legal advice from CRRA, to Boucher, in his professional capacity as counsel to CRRA, and Boucher's legal advice. However, it is further found that these two emails were forwarded to Ritter by Nonnenmacher, via email dated May 25, 2011, at 12:58 pm (see Boucher 570, page 296 of the in camera submission). It is also found that the respondents offered no evidence, at the hearing in this matter, that Ritter was included in this email communication for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role or the purpose clear on the face of such emails. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications.

It is therefore found that the respondents failed to prove that any privilege that may have existed with respect to email 2 and email 3 was not waived when Nonnenmacher forwarded them to Ritter. Accordingly, it is found that the respondents failed to prove that such email communications are exempt from disclosure pursuant to the attorney-client privilege.

Boucher 569 – Boucher 569 is essentially the same email chain as 568, with the addition of two emails on **page 293, email from Nonnenmacher to Boucher and cc'd to Hunt, dated May 25, 2011 at 12:22 pm** (email 1); and **email from Boucher to Nonnenmacher and cc'd to Hunt, dated May 25, 2011 at 12:45 pm** (email 2).

The respondents claimed that email 1 and email 2 are exempt from disclosure pursuant to the attorney-client privilege. After careful in camera inspection of these emails, it is found that email 1 and email 2 consist of a further request for legal advice from CRRA, to Boucher, in his professional capacity as counsel to CRRA, and Boucher's legal advice. However, it is also found that these two emails were forwarded to Ritter by Nonnenmacher, via email dated May 25, 2011, at 12:58 pm (see Boucher 570, page 296). It is also found that the respondents offered no evidence, at the hearing in this matter, that Nonnenmacher forwarded these emails to Ritter for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear on the face of such email. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communication.

It is therefore found that the respondents failed to prove that any privilege that may have existed with respect to email 1 and email 2 was not waived when Nonnenmacher forwarded them to Ritter. Accordingly, it is found that the respondents failed to prove that such email communications are exempt from disclosure pursuant to the attorney-client privilege.

Boucher 570 – Boucher 570 is essentially the same email chain as Boucher 569, with the addition of two emails on **page 296, email from Nonnenmacher to Boucher and cc'd to Hunt, Ritter and Kirk, dated May 25, 2011 at 12:58 pm** (email 1); and **email from Boucher to Nonnenmacher and cc'd to Hunt, Ritter and Kirk, dated May 25, 2011 at 1:30 pm** (email 2).

The respondents claimed that these two email communications are exempt from disclosure pursuant to the attorney-client privilege. After careful in camera inspection of these emails, it is found that email 1 and email 2 consist of a further request for legal advice from CRRA, to Boucher, in his professional capacity as counsel to CRRA, and Boucher's legal advice. However, it is also found that the respondents offered no evidence, at the hearing in this matter, that Ritter was included in these email communications for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role or the purpose clear on the face of such emails. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of Boucher, Hunt or CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications. To the contrary, the fact that Ritter was not a direct recipient of these communications, but merely was copied on them, suggests that Ritter was not necessary to the legal consultation.

It is therefore found that the respondents failed to prove that email 1 and email 2 were made in confidence. Accordingly, it is found that the respondents failed to prove that such email communications are exempt from disclosure pursuant to the attorney-client privilege.

Boucher 574 – Boucher 574 is essentially the same email chain as Boucher 570, with the addtion of two emails on **page 300, email from Kirk to Boucher and Nonnenmacher and cc'd to Hunt and Ritter, dated May 25, 2011 at 2:52 pm** (email 1); **and email from Nonnenmacher to Kirk and Boucher and cc'd to Hunt and Ritter, dated May 25, 2011 at 2:54 pm** (email 2).

The respondents claimed these two email communications are exempt from disclosure pursuant to the attorney-client privilege. After careful in camera inspection of these emails, it is found that email 1 does not contain legal advice, and it is therefore concluded that it is not exempt from disclosure pursuant to the attorney-client privilege.

It is also found that, with respect to email 2, the respondents offered no evidence, at the hearing in this matter, that Nonnenmacher included Ritter in this email communication for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role or the purpose clear on the face of such email. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communication. To the contrary, the fact that Ritter was not a direct recipient of these communications, but merely was copied on them, suggests that Ritter was not necessary to the legal consultation.

Therefore, it is found that the respondents failed to prove that email 2 was made in confidence. Accordingly, it is found that the respondents failed to prove that email 2 is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 585 – Pages 306 and 307 were disclosed. However, on the index to the in camera records, the respondents claimed that the **attachment, on pages 308 and 309**, is exempt from disclosure pursuant to the attorney-client privilege.

Upon a careful in camera inspection of the attachment, it is found that it contains legal advice from Boucher and Curto to CRRA. It is also found that such attachment was forwarded to Ritter by Nonnenmacher, via email dated May 26, 2011 at 4:40 pm (see page 306 of the in camera submission). It is further found that the respondents offered no evidence, at the hearing in this matter, that Nonnenmacher forwarded the attachment to Ritter for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role or the purpose clear on the face of such email. It is further found that the respondents offered no evidence from which it could be determined that Ritter was the agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communication.

It is therefore found that the respondents failed to prove that any privilege that might have existed with respect to the attachment was not waived when Nonnenmacher forwarded the attachment to Ritter. Accordingly, it is found that the respondents failed to prove that the attachment is exempt from disclosure pursuant to the attorney-client privilege.

The respondents claimed that the attachment also is exempt pursuant to §1-210(b)(1), G.S. Such claim is addressed below.

Boucher 588 – The respondents disclosed all of Boucher 588 except for the second paragraph of the email at the top of **page 311, from Boucher to Nonnenmacher and cc'd to Kirk and Hunt, dated May 31, 2011 at 5:06 pm.** The respondents claimed that the redacted portion is legal advice provided by Boucher to CRRA.

After careful in camera inspection of the Boucher 588 emails, it is found that the email at issue was forwarded to Ritter by Nonnenmacher on May 31, 2011 at 5:10 pm (see page 310 of the in camera submission). It is further found that the respondents offered no evidence, at the hearing in this matter, that Nonnenmacher forwarded this email to Ritter for the purpose of seeking legal advice from him in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear on the face of such email. It is further found that the respondents offered no evidence from which it could be determined that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communication.

It is therefore found that the respondents failed to prove that any privilege that might have attached to the email at issue was not waived when Nonnenmacher forwarded it to Ritter. Accordingly, it is found that the respondents failed to prove that the redacted portion of the email is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 590 – Boucher 590 is essentially the same email chain as Boucher 588, with the addition of the email at the top of **page 315, from Hunt to Boucher and cc'd to Kirk, dated May 31, 2011 at 5:49 pm** (redaction), and the attachment on page 319. The respondents claimed that the redacted portion of the email is exempt from disclosure pursuant to the attorney-client privilege, but did not claim an exemption for the attachment on page 319.

After careful in camera inspection of the email at issue, it is found that the redacted portion contains information provided by CRRA to Boucher in furtherance of CRRA's specific request for legal advice from Boucher, in his professional capacity as counsel to CRRA. It is found that such information was provided by Hunt to Boucher in confidence. Accordingly, it is concluded that the redacted portion is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 591 – Boucher 591 is essentially the same email chain as Boucher 590, with the addition of the email at the top of page 320, from Boucher to Hunt, dated May 31, 2011 at 6:03 pm. At the hearing in this matter, the respondents indicated that they were not claiming an exemption for this email.

Boucher 592 – Boucher 592 is essentially the same email chain as Boucher 588, with the addition of the three emails on **page 325, from Boucher to Hunt dated May 31, 2011 at 6:02 pm; email from Hunt to Boucher, dated May 31, 2011 at 6:29 pm; and email from Boucher to Hunt, dated May 31, 2011 at 7:06 pm.** The respondents claimed that these three emails are attorney-client privileged communications that are exempt from disclosure.

After careful in camera inspection of the emails, it is found that they consist of a discussion of legal advice, which advice was provided by Boucher to CRRA, an additional request from Hunt for legal advice from Boucher, and additional information provided to Boucher in furtherance of the legal advice that was requested. It is found that Boucher provided legal advice in his professional capacity as counsel to CRRA, and that Hunt acted on behalf of CRRA. It is also found that such communications were made in confidence. Accordingly, it is concluded that such emails are exempt from disclosure pursuant to the attorney-client privilege.

<u>Boucher 593</u> – Boucher 593 is essentially the same email chain as Boucher 592, with the addition of the email on **page 330, from Hunt to Boucher, dated June 1, 2011 at 9:33 am**. The respondents claimed this email is exempt from disclosure pursuant to the attorney-client privilege.

After careful in camera inspection of the email at issue, it is found that it contains additional information provided by Hunt to Boucher in furtherance of the legal advice CRRA requested from Boucher. It is found that both Boucher and Hunt engaged in this email communication in their professional capacities, Boucher as counsel to CRRA and Hunt on behalf of CRRA. It is also found that such communication was made in confidence. Accordingly, it is concluded that the email is exempt from disclosure pursuant to the attorney-client privilege.

<u>Boucher 599</u> – Boucher 599 consists of two emails, both on page 334, but the respondents claimed only that the first **email, from Boucher to Nonnenmacher and cc'd to Hunt, dated June 6, 2011 at 8:49 am**, is exempt from disclosure pursuant to the attorney-client privilege. The respondents disclosed the second email.

After careful in camera inspection of the email at issue, which consists of four sentences, it is found that only the first sentence contains legal advice from Boucher, acting in his professional capacity as counsel to CRRA, which legal advice was requested by Nonnenmacher on behalf of CRRA. It is found that such legal advice was given in confidence. Accordingly, it is concluded that the first sentence of this email only is exempt from disclosure pursuant to the attorney-client privilege.

<u>Boucher 602</u> – Boucher 602 consists of two emails. The respondents claimed that only the first email, on **page 335, from Boucher to Kirk, and cc'd to Hunt and Nonnenmacher, dated June 6, 2011 at 2:26 pm**, is exempt from disclosure pursuant to the attorney-client privilege. The respondents disclosed the other email.

After careful in camera inspection of the email at issue, it is found that such email contains legal advice from Boucher, provided in his professional capacity as counsel to CRRA, to CRRA, which advice was requested previously by Kirk on behalf of CRRA. It is found that such communication was made in confidence. Accordingly, it is concluded that the email is exempt from disclosure pursuant to the attorney-client privilege.

<u>Boucher 611</u> – The respondents redacted portions of the **email beginning on page 344, from Boucher to Nonnenmacher, Kirk, Hunt and Ritter, dated June 6, 2011 at 23:47:27 (redaction)**, and disclosed the remainder of Boucher 611. The respondents claimed that the redacted portions consist of legal advice from Boucher to CRRA.

However, after careful in a camera inspection of all emails comprising Boucher 611, it is found that, even if the redactions contain legal advice, the respondents failed to prove that Ritter was included in this email chain, initiated by Nonnenmacher on behalf of CRRA, for the purpose of seeking legal advice from Ritter in a professional capacity as counsel to CRRA, as contemplated by the <u>Harrington</u> Court (see paragraphs 21 and 22, above). Nor is Ritter's role, or the purpose, clear on the face of such email communications. In addition, it is found that the

respondents offered no evidence that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications. Accordingly, it is concluded that the respondents failed to prove that this email communication, including the redacted portion, was made in confidence, and therefore failed to prove it is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 612 – Boucher 612 is essentially the same email chain as Boucher 611 but with the addition of the email at the top of page 348, from Boucher to Nonnenmacher, Kirk, and Hunt, dated June 7, 2011 at 7:28 am, and the attachment on pages 349-350. The respondents disclosed both the additional email and the attachment.

Boucher 655 – **page 380, email from Nonnenmacher to Boucher and cc'd to Hunt, dated June 24, 2011 at 2:16 pm.** The respondents claimed that this email is exempt from disclosure pursuant to the attorney-client privilege.

After careful in camera inspection of this email, it is found that it consists of two sentences, and that the second sentence only is a request for legal advice from Nonnenmacher, on behalf of CRRA, to Boucher in Boucher's professional capacity as counsel to CRRA. It is also found that such request for legal advice was made in confidence. Accordingly, it is concluded that the second sentence of the email at issue only is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 656 – **page 381, email from Boucher to Hunt, dated June 24, 2011 at 3:13 pm.** The respondents claimed that this email is exempt from disclosure pursuant to the attorney-client privilege.

After careful in camera inspection of this email, it is found that it contains legal advice from Boucher in his professional capacity as counsel to CRRA, provided to Nonnenmacher on behalf of CRRA, at CRRA's request. It is also found that such legal advice was made in confidence. Accordingly, it is concluded that this email communication is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 660 – Boucher 660 consists of four emails, three of which were disclosed to the complainant. The remaining email at issue is on **page 386, from Boucher to Ritter, Hunt, Kirk, Bolduc and Nonnenmacher, dated June 28, 2011 at 1:15 pm.** The respondents claimed that this email is exempt from disclosure pursuant to the attorney-client privilege, because it contains legal advice from Boucher to CRRA.

After careful in camera inspection of this email, in the context of the entire email chain, it is found that Hunt, on behalf of CRRA, in an email to Boucher, dated June 28, 2011 at 11:18 am (see bottom of page 386 of the in camera submission), which was disclosed, provided information to Kirk, Ritter and outside counsel, to facilitate a previous request for legal advice from Boucher concerning the Stein/Mullane matter. It is also found that the respondents offered no evidence from which it could be determined that Ritter was included in this email chain, initiated by Hunt behalf of CRRA, for the purpose of seeking legal advice from Ritter in a professional capacity as counsel to CRRA, as contemplated by the Harrington Court (see

paragraphs 21 and 22, above). Nor is Ritter's role or the purpose clear on the face of such email communications. In addition, it is found that the respondents offered no evidence that Ritter was an agent of CRRA who was necessary to the legal consultation, nor is this fact evident on the face of such communications.

Accordingly, it is found that, even if the email at issue contained legal advice, the respondents failed to prove that such email was a communication made in confidence. It is therefore concluded that the respondents failed to prove that the email at issue is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 664 – **page 388, email from Hunt to Boucher, dated July 8, 2011 at 10:44 am.** The respondents claimed this email is exempt from disclosure pursuant to the attorney-client privilege because it contains a request for legal advice from Hunt to Boucher. The attachment was disclosed.

After careful in camera inspection of this email, it is found that it contains a request for legal advice from Hunt, on behalf of CRRA, to Boucher, in his professional capacity as counsel to CRRA, provided in response to CRRA's request for such legal advice, and that such communication was made in confidence. Accordingly, it is concluded that this communication is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 665 – Boucher 665 is essentially the same email chain as Boucher 664, with the addition of two emails on page 390. One of those additional emails was disclosed to the complainant, and the other, **from Boucher to Hunt, dated July 8, 2011 at 11:25**, was disclosed with redactions. The respondents claimed the redacted portion is exempt from disclosure pursuant to the attorney-client privilege.

After careful in camera inspection of this email, it is found that the redacted portion contains legal advice from Boucher, in his professional capacity as counsel to CRRA, requested by Hunt, on behalf of CRRA, and that such legal advice was given in confidence. Accordingly, it is concluded that the redacted portion of this email communication is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 745 – **page 400, email from Hunt to Boucher and cc'd to Farley, dated October 5, 2011 at 2:48 pm, and attachment on pages 401-402.** The respondents disclosed a second attachment on page 403. The respondents claimed that the email and attachment still at issue are exempt from disclosure pursuant to the attorney-client privilege.

After careful in camera inspection of the email and attachment, it is found that the email is a request by Hunt, on behalf of CRRA, for legal advice from Boucher, in his professional capacity as counsel to CRRA, concerning the attachment. It is also found that such communciation was made in confidence. Accordingly, it is concluded that the email and attachment are exempt from disclosure pursuant to the attorney-client privilege.

Boucher 750 – **page 406, email from Matthew Teich (outside counsel) to Boucher and cc'd to Curto, dated October 10, 2011 at 11:27 am** (email 1); and **email from Boucher to**

Hunt, dated October 11, 2011 at 9:07 am (email 2). The respondents did not claim an exemption for the attachment on pages 407-412.

Based upon careful in camera inspection of email 2, and Hunt's testimony, it is found that it contains legal advice from outside counsel to Hunt, on behalf of CRRA, provided in response to a request for legal advice, which request is contained in earlier emails. It is found that such legal advice was given in confidence. It is also found that email 1 is a communication between Teich and Boucher and Curto, all of whom were attorneys at Halloran and Sage, acting in their professional capacities as counsel to CRRA, which was made in confidence and was related to, and prepared in furtherance of, the legal advice provided by Boucher to CRRA in email 2. Accordingly it is concluded that both email 1 and email 2 are exempt from disclosure pursuant to the attorney-client privilege.

Boucher 751 – Boucher 751 is essentially the same email chain as Boucher 750, with the addition of two emails on page 413, which emails the respondents indicated at the hearing in this matter that they would disclose.

Boucher 800 – at the hearing in this matter and on the index, the respondents indicated that all of the Boucher 800 emails were disclosed, except for the **email, on page 448, from Boucher to Jim Perras (CRRA), and cc'd to Blatchley, dated January 2, 2012 at 10:15 am.** The respondents claimed that this email is exempt from disclosure pursuant to the attorney-client privilege.

After careful in camera inspection of this email, it is found that it contains legal advice from Boucher, provided in his professional capacity as counsel to CRRA, to Perras, in response to a request for legal advice from Perras, on behalf of CRRA. It is also found that such legal advice was given in confidence. Accordingly, it is concluded that this email communication is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 839 – Boucher 839 consists of four emails, all of which were disclosed, except for a portion of the **email, on page 466, from Boucher to Perras, and cc'd to Hunt, dated March 6, 2012, at 12:28 pm.** The respondents claimed that the redacted portion of this email is exempt from disclosure pursuant to the attorney-client privilege.

After careful in camera inspection of this email, it is found that the redacted portion is legal advice from Boucher, provided in his professional capacity as counsel to CRRA, to Perras, on behalf of CRRA, in response to a previous request for such legal advice from CRRA. It is also found that such legal advice was given in confidence. Accordingly, it is concluded that the redacted portion of the email at issue is exempt from disclosure pursuant to the attorney-client privilege.

Boucher 869 – at the hearing in this matter, the respondents indicated that they would disclose all of Boucher 869.

Boucher 967 – Boucher 967 is essentially the same email chain and attachment as Boucher 408, with the addition of the first email on **page 488, from Hunt to Curto and cc'd to**

Boucher, dated September 17, 2012 at 2:33 pm. The respondents claimed this email is exempt from disclosure pursuant to the attorney-client privilege.

After careful in camera inspection of this email, it is found that it contains a discussion of the legal advice previously provided by Boucher, in his professional capacity as counsel to CRRA, requested by Hunt, on behalf of CRRA. It is found that such email communication was made in confidence. Accordingly, it is concluded that the email is exempt from disclosure pursuant to the attorney-client privilege.

Section 1-210(b)(1), G.S. – Preliminary Drafts or Notes

49. With regard to this claim of exemption, it is found that the respondents offered no evidence, at the hearing in this matter, to prove that any of the emails or attachments thereto, constitute preliminary drafts or notes; nor did the respondents offer evidence that CRRA had determined that the public interest in withholding the records clearly outweighed the public interest in disclosure. Accordingly, it is found that the respondents failed to prove that any of the Boucher emails and attachments still at issue are exempt from disclosure pursuant to §1-210(b)(1), G.S.

Section 1-210(b)(4), G.S.

50. The respondents claimed that the remaining portion of email 2 and the remaining portion of email 4 of the Boucher 362 emails, which portions were found not to be exempt from disclosure pursuant to the attorney-client privilege (see discussion, above), also are exempt from disclosure pursuant to §1-210(b)(4), G.S.

Boucher 362 –**page 56, email from Nonnenmacher to Hunt, Bzdyra and Kirk, and cc'd to Farley, dated January 7, 2011 at 2:18 pm** (email 2); and **page 55-56, email from Kirk to Farley, Nonnenmacher, Hunt and Bzdyra and cc'd to McKessy, dated January 10, 2011 at 9:13 am** (email 4).

After careful in camera inspection of the remaining portion email 2 and the remaining portion of email 4, it is found that they contain a discussion of strategy with respect to pending litigation to which CRRA is a party. Accordingly, it is concluded that the remaining portion of email 2 and the remaining portion of email 4 are exempt from disclosure pursuant to §1-210(b)(4), G.S.

51. Based upon all of the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(b), G.S., by failing to disclose to the complainant all of the Boucher emails, or portions thereof, and attachments not specifically found to be exempt from disclosure, on pages 35 through 61, above.

Billing Records

52. With regard to the billing records, the respondents claimed such records are exempt from disclosure pursuant to §1-210(b)(4), G.S.

53. After careful in camera inspection of the billing records, it is found that such records indicate the dates work was performed, time/hours spent on work performed, corresponding dollar amounts billed, total amounts billed, previous balances, previous payments, balance due, the names of attorneys who performed work, law firm letterhead, dates the billing statements were issued, and the name and office address of the public agency to which the bill was submitted. IC 2012-650-BR1, IC 2012-650-BR2 and IC 2012-650-BR4 do not contain any description of any litigation strategy, or description of the specific nature of the services provided, and accordingly, it is concluded that they are not exempt from disclosure pursuant to §1-210(b)(4), G.S. With regard to IC 2012-650-BR3, which contains a description of the work performed, it is concluded that certain information only is exempt from disclosure pursuant to §1-210(b)(4), G.S., as follows: under the caption Description, in the first entry, everything after the word "to;" in the second entry, everything after the word "regarding"; in the third entry, everything after the word "regarding;" in the fourth entry, from the word "draft" in the first line, to the word "Continue" in the fifth line, and everything after the word "to" in the seventh line, to the word "(.4)" in the last line.

54. Based upon the foregoing, it is concluded that the respondents violated the FOI Act by failing to comply with the request for IC 2012-650-BR1, IC 2012-650-BR2, and IC 2012-650-BR4, and those portions of IC 2012-650-BR3 not specifically found to be exempt in paragraph 53, above.

RFP Records

55. Finally, the respondents claimed that the RFP records are exempt from disclosure on the grounds that they are attorney-client privileged, and that they constitute preliminary drafts or notes, within the meaning of §1-210(b)(1), G.S.

56. It is found that the RFP records consist of emails from CRRA staff members to Hunt, in which the staff members requested legal advice from Hunt pertaining to a draft email and draft memoranda to CRRA board members. It is found that such communications were made in confidence. After careful review of the RFP records, it is concluded that such records meet all four parts of the four-part test for attorney-client privilege and therefore are exempt from disclosure. It is further concluded that the attachments to such emails, consisting of the draft memoranda, are attorney-client privileged and therefore also are exempt from disclosure.

57. Accordingly, it is concluded that the respondents did not violate the FOI Act by withholding the RFP records, described in paragraph 56, above, from the complainant.[50]

58. With regard to the request for the imposition of civil penalties against the respondents, the Commission, in its discretion, declines to consider such request, under the facts and circumstances of this case.

59. On August 7, 2013, the respondents filed an "Application for Hearing Pursuant to General Statutes Section 1-206(b)(2)," alleging that the complaint in this matter was filed

[50] Based upon this finding, it is unnecessary for the Commission to consider the additional claims of exemption.

frivolously, without reasonable grounds and solely for the purpose of harassing CRRA.[51] In support of their application, the respondents asserted: "Mr. Harrington, being an attorney, knew full well that [a request for all communications between CRRA and Mr. Boucher, CRRA's general counsel], was certain to create an enormous burden upon the respondent agency and was certain to generate a large number of well-founded attorney client privilege claims." At the hearing in this matter, the respondents argued that they are entitled to a hearing on their application pursuant to §1-206(b)(2), G.S.

60. Section 1-206(b)(2), G.S., provides, in relevant part:

> [i]f the commission finds that a person has taken an appeal under this subsection frivolously, without reasonable grounds and solely for the purpose of harassing the agency from which the appeal has been taken, after such person has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against that person a civil penalty of not less than twenty dollars nor more than one thousand dollars.

61. It is found that the complainant did not take the appeal herein frivolously, without reasonable grounds and solely for the purpose of harassing CRRA. Moreover, §1-206(b)(2), G.S., cited by the respondents, permits a complainant the opportunity to be heard, not a respondent.

62. For the reasons set forth above, the respondents' application is denied.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Forthwith, the respondents shall provide the complainant with a copy of all of the Ritter and all of the Boucher emails not specifically determined to be exempt from disclosure, in the findings above, as well as a copy of the in camera records, described in paragraph 54 of the findings, above.

2. Henceforth, the respondents shall strictly comply with the requirements of §§1-210(a) and 1-212(a), G.S.

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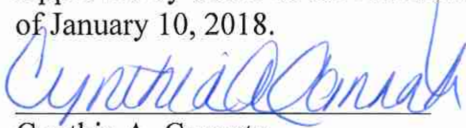
[51] In their application, the respondents also ask the Commission to consider a July 13, 2012 records request by the complainant to the respondents as part of the inquiry into whether sanctions against the complainant are appropriate. As the July 13th request is not at issue before this Commission, such request will not be considered at this time.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 10, 2018.



Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

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THOMAS KIRK, PRESIDENT, LAURIE HUNT, GENERAL COUNSEL, CONNECTICUT RESOURCES RECOVERY AUTHORITY; AND CONNECTICUT RESOURCES RECOVERY AUTHORITY, c/o Attorney Daniel J. Kirsch, Halloran & Sage, LLP, 225 Asylum Street, 18th Floor, Hartford, CT 06103, c/o Dan E. LaBelle, Esq., Halloran & Sage LLP, 315 Post Road West, Westport, CT 06880

Cynthia A. Cannata
Acting Clerk of the Commission

FIC 2012-650/FD/CAC/1/10/2018