2026 WL 1728925 (N.C.Super.), 2026 NCBC Order 57 (Trial Order)
Superior Court of North Carolina.
Wake County

WATTS GUERRA LLC, Plaintiff,
v.
SERIES 1 OF OXFORD INSURANCE COMPANY NC LLC, Defendant.

No. 25CV023398-910.
June 13, 2026.

Order on Motion to Compel

Julianna Theall Earp, Judge.

***1**

This document is designated an Order of Significance by the North Carolina Business Court. Orders of Significance are not published as Business Court opinions but may be cited and relied upon.

1. **THIS MATTER** is before the Court on Defendant Series 1 of Oxford Insurance Company NC LLC's (Oxford's) Motion to Compel (Motion), (ECF No. 67). Oxford seeks an order requiring the production of certain documents withheld by Watts Guerra LLC (Watts LLC) on privilege and relevance grounds.

2. The Court, having considered the Motion, briefing, and other matters of record, and following an *in camera* review of the documents in question, concludes for the reasons stated below that the Motion should be **GRANTED in part** and **DENIED in part**. [1]

Parker Poe Adams & Bernstein LLP by Charles E. Raynal, IV and Cristina Chenlo Stam, and Susman Godfrey, LLP by Shawn Rabin, Samir Doshi, and Bill Carmody, for Plaintiff Watts Guerra LLC, a Puerto Rico Limited Liability Company.

Brooks, Pierce, McLendon, Humphrey & Leonard LLP by Jennifer K. Van Zant, Gabrielle E. Supak, Robert J. King, and Debevoise & Plimpton LLP by Susan Reagan Gittes, Ardis Strong, and Jaime Fried, for Defendant Series 1 of Oxford Insurance Company NC LLC, a North Carolina Limited Liability Company.

Earp, Judge.

I. FINDINGS OF FACT [2]

3. In September 2021, Watts LLC invested in mass tort lawsuits brought by New York law firm Gacovino, Lake & Associates, P.C. that had a purported value of more than $340 million (Gacovino Book). (Compl. ¶¶ 1, 12–13, ECF No. 3.) Watts LLC also paid a total of $7 million to purchase twelve $10 million insurance policies from Oxford (Policies). (Compl. ¶¶ 2, 4, 14–15.) The insurance was intended to cover any shortfall between Watts LLC's $120 million expected payout from the Gacovino Book and its actual return as of 15 September 2024. (Compl. ¶¶ 2, 4, 14–15.)

4. Beginning in mid-2024, the parties discussed potential claims on the Policies as their expiration dates approached in September. (Compl. ¶¶ 22–23.) Thus began a long-running debate between Watts LLC and Oxford regarding whether and

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when Watts LLC would file a claim, Watts LLC's document-production obligations under the Policies, and whether Oxford had repudiated the Policies. (*E.g.*, Compl. ¶¶ 24–30.) When the parties failed to reach agreement, Watts LLC filed the first of two claims on the Policies for approximately $118 million on 29 November 2024. (Compl. ¶¶ 3, 23, 27.) The parties unsuccessfully negotiated for months, and Watts LLC filed its second claim on the Policies on 16 June 2025. (Compl. ¶¶ 4–5.)

***2** 5. In July 2025, Watts LLC brought this suit against Oxford. (*See* Compl. 1.) Watts LLC's claims are based on two distinct theories. First, it alleged that Oxford breached the contract by repudiating the Policies. (Compl. ¶ 53.) Second, Watts LLC alleged that Oxford engaged in a deliberate scheme to postpone any claim on the Policies that Watts LLC might make. (Compl. ¶¶ 55–60.) The motive for this plot, Watts LLC claims, was to keep a large contingent liability off Oxford's books while Oxford's parent company entertained bids from prospective buyers. (Compl. ¶¶ 19, 36–27.) [3]

6. Oxford sent Watts LLC a request for production of "[d]ocuments sufficient to show the terms of [Watts LLC's] fee agreement with Susman Godfrey, LLP (Susman) [c]oncerning its representation of [Watts LLC] in this litigation and in [c]laims under the Policies." (Def. Series 1 of Oxford Ins. Co. NC LLC's First Reqs. Produc. & Inspection Materials to Pl. Watts Guerra LLC No. 42, Def.'s Br. Supp. Mot. Compel Ex. 30, ECF No. 69.30 [Def.'s RFP].) Oxford also requested "[a]ll [d]ocuments and [c]ommunications [c]oncerning any and all term sheets, offers or any potential or actual business agreement [Watts LLC] reviewed, solicited, exchanged, w[as] aware of, or had reason to be aware of [c]oncerning the Gacovino Book" and "any Claim — actual or contemplated—[Watts LLC] submitted on the Policies." (Def.'s RFPs Nos. 4, 6.)

7. In response, Watts LLC objected to producing materials related to its engagement of Susman on privilege and relevance grounds. (Pl. Watts Guerra LLC's Resps. & Objs. Def. Series 1 of Oxford Ins. Co. NC LLC's First Reqs. Produc. & Inspection Materials, Def's Br. Supp. Mot. Compel Ex. 31, at 7–9, 27–28. ECF No. 69.31.) Following completion of the Business Court Rule (BCR) 10.9 process, the Court permitted the parties to proceed to motion practice, and Oxford filed this Motion. (Def. Series 1 of Oxford Ins. Co. NC LLC's Br. Supp. Mot. Compel Ex. 34, at 1, ECF No. 68.34.)

8. After Watts LLC identified the responsive documents at issue, the Court ordered Watts LLC to produce "its engagement agreement with Susman and the seventeen communications related to the material terms of that agreement, including the fee amounts, deadlines, and conditions" for *in camera* review by the Court. (Order for *in Camera* Review of Docs. ¶ 9(a), ECF No. 89 [*In Camera* Order].) Watts produced the documents, and the Court has reviewed them *in camera.* Accordingly, the Motion is ripe for disposition.

II. CONCLUSIONS OF LAW

9. Oxford seeks to discover Watts LLC's fee agreement and related communications with Susman because, Oxford says, "such documents are relevant to [Watts LLC]'s bad faith and [UDTPA] claims and not protected by privilege." (Def. Series 1 of Oxford Ins. Co. NC LLC's Br. Supp. Mot. Compel 3, ECF No. 68 [Def.'s Br. Supp.].)

10. The fee agreement is included in the engagement agreement between Susman and Watts LLC. Watts LLC objects to producing the engagement agreement because, it argues, the Motion is not ripe and the engagement agreement is not discoverable because it is both privileged and not relevant to this case. (Pl. Watts Guerra LLC's Opp'n Def. Series 1 of Oxford Ins. Co. NC LLC's Mot. Compel 8, 10, 15, ECF No. 81 [Pl.'s Br. Opp'n].) The Court considers each of these objections in turn.

***3** 11. First, Watts LLC argues that the Motion is not ripe because Oxford failed to comply with Rule 10.9's meet-and-confer requirement. (Pl.'s Br. Opp'n 8.) The evidence before the Court is insufficient to determine the content of the parties' meetings before submitting their BCR 10.9 dispute. Regardless, Watts LLC has been on notice since that submission—through briefing of the motion to compel—of Oxford's position. Indeed, the Court authorized the parties to proceed to motion practice. It therefore rejects Watts LLC's ripeness argument.

A. Relevance and Privilege

12. Rule 26 is broad and permits parties to discover any relevant, non-privileged matter. N.C. R. Civ. P. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party ...."); *Friday Invs., LLC v. Bally Total Fitness of the Mid-Atl., Inc.*, 370 N.C. 235, 238 (2017) (citing N.C. R. Civ. P. 26) ("Rule 26 provides for a broad scope of discovery ....").

13. "To be relevant for purposes of discovery, the information [sought] need only be 'reasonably calculated' to lead to the discovery of admissible evidence." *Duke Energy Carolinas, LLC v. AG Ins. SA/NV*, 2019 NCBC LEXIS 75, at *4 (N.C. Super. Ct. Nov. 22, 2019) (alteration in original) (quoting *Shellhorn v. Brad Ragan, Inc.*, 38 N.C. App. 310, 314 (1978)).

14. The burden is on the party resisting discovery to show that the motion to compel should not be granted. *Window World of Baton Rouge, LLC v. Window World, Inc*., 2019 NCBC LEXIS 54, at *60 (N.C. Super. Ct. Aug. 16, 2019), *aff'd per curiam*, 377 N.C. 551 (2021). Decisions on motions to compel discovery are within the trial court's discretion. *See Friday Invs*., 370 N.C. at 241 (citing *Firemen's Mut. Ins. Co. v. High Point Sprinkler Co*., 266 N.C. 134, 143 (1966)).

15. The attorney–client privilege protects even relevant documents from discovery. *See Friday Invs.*, 370 N.C at 238 (quoting *In re Miller*, 357 N.C. 316, 335 (2003)) (discussing requirements for attorney–client privilege to "apply and thus exclude relevant evidence"). However, "[t]he mere fact that an attorney–client relationship exists … does not automatically trigger the attorney–client privilege." *Id.* at 240 (citing *Dobias v. White*, 240 N.C. 680, 684 (1954)). "For the attorney–client privilege to apply, the communication must satisfy the five-factor *Murvin* test ...." *Id.* The five elements are:

> (1) the relation of attorney and client existed at the time the communication was made, (2) the communication was made in confidence, (3) the communication relates to a matter about which the attorney is being professionally consulted, (4) the communication was made in the course of giving or seeking legal advice for a proper purpose although litigation need not be contemplated and (5) the client has not waived the privilege.

Id. (quoting *State v. Murvin*, 304 N.C. 523, 531 (1981)). "If any one of these five elements is not present in any portion of an attorney–client communication, that portion of the communication is not privileged." *Id.* (citation modified).

16. "The general rule is that, when an attorney and client communicate in the presence of a third party, the communications are not privileged because they 'are not confidential and because that person's presence constitutes a waiver.' " *Technetics Grp. Daytona, Inc. v. N2 Biomed., LLC*, 2018 NCBC LEXIS 116, at *6 (N.C. Super. Ct. Nov. 8, 2018) (citing *Berens v. Berens*, 247 N.C. App. 12, 20 (2016)). But "the privilege is not lost if the third party is an agent of the client or the attorney." *Kelley v. Charlotte Radiology, P.A.*, 2019 NCBC LEXIS 84, at *6 (N.C. Super. Ct. May 15, 2019) (first citing *Murvin*, 304 N.C. at 531; and then citing *Berens*, 247 N.C. App. at 20–22). The third party's "authority to act on [the client]'s behalf" is "an essential element of agency" in this context. *Id.* at *12 (first citing *Berens*, 247 N.C. App. at 21; and then citing *Peace River Elec. Coop. v. Ward Transformer Co.*, 116 N.C. App. 493, 504 (1994)).

***4** 17. Moreover, "[i]t is well established that '[a] waiver of certain communications can waive the attorney–client privilege not only as to the particular communication but to other communications relating to that same subject matter.' " *Id.* at *19 (alteration in original) (quoting *Morris v. Scenera Rsch., LLC*, 2011 NCBC LEXIS 34, at *32 (N.C. Super. Ct. Aug. 26, 2011)). Still, " '[t]he modern trend decidedly favors a balanced approach' based on principles of fairness." *Id.* (alteration in original) (quoting *Technetics*, 2018 NCBC LEXIS 116, at *17).

18. A subject-matter waiver may arise, for example, when the client "share[s] communications with third parties in order to 'gain adversarial advantage in judicial proceedings.' " *Id.* at *19–20 (quoting *XYZ Corp. v. United States (In re Keeper of the*

Records), 348 F.3d 16, 24 (1st Cir. 2003)). "[W]hen the disclosure does not create an unfair advantage, courts typically limit the waiver to the communications actually disclosed." *Window World*, 2019 NCBC LEXIS 54, at *38 (quoting *Technetics*, 2018 NCBC LEXIS 116, at *18). "This is especially so in the case of an extrajudicial disclosure made outside the context of litigation." *Id.* (citations omitted).

19. "[T]he party asserting the attorney–client privilege … has the burden of establishing that privilege." *Glob. Textile All., Inc. v. TDI Worldwide, LLC*, 375 N.C. 72, 76 (2020) (citing *State v. McNeill*, 371 N.C. 198, 240 (2018)). Like determinations on motions to compel discovery generally, attorney–client privilege determinations are a matter within the Court's discretion. *Id.* (citing *Friday Invs.*, 370 N.C. at 241) (applying abuse of discretion standard to trial court's attorney–client privilege determination). When making this determination, "courts are obligated to strictly construe the privilege and limit it to the purpose for which it exists." *Buckley LLP v. Series 1 of Oxford Ins. Co. NC LLC*, 2020 NCBC LEXIS 136, at *17–18 (N.C. Super. Ct. Nov. 9, 2020) (quoting *Evans v. United Servs. Auto. Ass'n*, 142 N.C. App. 18, 31 (2001)).

B. *In Camera* Review

20. With these background principles in mind, the Court turns to the documents Watts LLC provided for *in camera* review pursuant to the 2 June 2026 *In Camera* Order. (*In Camera* Order.) [4]

21. The documents fall into three broad categories: (1) emails discussing the terms of the engagement agreement with drafts of the engagement agreement attached; (2) emails among Mikal Watts, representatives from Susman, and representatives from third parties CornerSight and VPR Funding; and (3) emails between Mikal Watts and Susman regarding local counsel and litigation strategy. The Court considers each in turn.

1. Drafts of the Engagement Agreement and Accompanying Emails

22. This Court has recognized that "[t]here is little North Carolina law on the status of engagement agreements, but federal courts generally find that agreements outlining the general nature of the representation rather than the specific work that the attorney will perform are not protected by the attorney–client privilege ...." *Kelley*, 2019 NCBC LEXIS 84, at *23–24 (citing federal cases). Thus, when "[t]he documents at issue … broadly outline terms governing the typical attorney–client relationship but do not address the substance of [the lawyers'] work in representing [the client] with any specificity," they "must be produced." *Id.* at *24.

***5** 23. The Court has carefully reviewed the emails and their attached drafts of the engagement agreement. [5] For the most part, the draft agreements outline the general nature of the legal representation and do not specify the substance of the work Susman was engaged to perform. Likewise, the emails transmitting drafts of the engagement agreement are not communications made for the purpose of obtaining or providing legal advice. Rather, they address logistical matters related to the execution of the agreement itself. Just as a general outline of the attorney– client relationship is not privileged content, these communications are not privileged.

24. However, one section of the agreement —that exists uniformly across all drafts reviewed *in camera*—contains a description of the substantive work to be completed by Susman and therefore warrants privilege protection. That section appears on page two under the heading "CONTINGENT FEE," in the second paragraph, the first sentence. The attorney–client privilege protects the information contained in this sentence, and Watts LLC may redact it in its production of these documents to Oxford.

25. Oxford contends that the Court should conclude that Watts LLC waived this privilege because Mikal Watts disclosed certain terms of his firm's relationship with Susman during his negotiations with Oxford. Although Oxford does not claim that Watts LLC—through Mikal Watts or otherwise—disclosed the very documents that Oxford now seeks, Oxford relies on subject matter waiver, i.e., that Mikal Watts' disclosure of certain information about the engagement agreement prevents Watts LLC from

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claiming that any information in the engagement agreement is privileged. (*See* Def.'s Br. Supp. 16 ("Having selectively disclosed this information to gain negotiating leverage, [Watts LLC] cannot now claim privilege over the underlying terms.").) Oxford argues that Watts LLC "rel[ied] on the [engagement agreement] as a source of deadlines and urgency in [Watts LLC]'s Policies-related negotiations with Oxford and even require[ed] that Susman receive a $2 million payment to facilitate a further standstill agreement." (Def.'s Br. Supp. 15.)

26. The fact that Mikal Watts may have disclosed some information contained in his firm's engagement agreement with Susman during his negotiations with Oxford is not alone sufficient to establish subject matter waiver. Instead, the Court must analyze the disclosures in light of the fairness concerns articulated in *Kelley*, *Technetics*, and *Morris*. Notably, the disclosures Oxford identifies occurred outside the litigation and during negotiations for a business solution, a fact that weakens Oxford's argument that the disclosures were to gain litigation advantage.

27. Furthermore, Mikal Watts' disclosures may have served to *weaken* Watts LLC's litigation position by revealing information that supports Oxford's explanation for the delays (that they were due to Watts LLC's relationship with Susman), rather than Watts LLC's explanation (that Oxford orchestrated the delays to avoid having a claim on its books.) This likelihood suggests that Watts LLC's purpose in making the disclosures was not for Watts LLC to gain a litigation advantage. For these reasons, the Court concludes that Mikal Watts' disclosure of limited aspects of the engagement agreement did not result in a subject matter waiver. As a result, the privileged portion of the engagement agreement remains protected from disclosure.

28. The engagement agreement and related communications are relevant to the claims and defenses in this case. Susman's financial control—or lack of control— over the negotiations bears on whether the reason for Watts LLC's delay in making a claim was, in fact, due to Oxford's misconduct as Watts LLC contends, or to Susman's control. At the very least, the information is reasonably calculated to lead to the discovery of admissible evidence, which is all that Rule 26 requires for information not subject to privilege to be discoverable.

2. CornerSight Emails

***6** 29. Next, Watts LLC has withheld emails among Mikal Watts, representatives from third parties CornerSight and VPR Funding, and Susman.[6] All of these communications include at least one person from CornerSight or VPR Funding who does not fall within the attorney–client relationship between Watts LLC and Susman. That fact alone defeats a privilege claim because the communications were not made in confidence, and Watts LLC has waived the privilege by virtue of the third parties' inclusion on the email chains. Watts LLC has not argued that these third-party representatives were its agents for purposes of this representation, nor could it—CornerSight and VPR Funding were Watts LLC's counterparties, not its representatives, in the relevant discussions.

30. The emails meet Rule 26's standard for relevance because they reflect efforts to extend the claim-filing deadlines that occurred in the context of finding a business solution, which bears on the parties' competing explanations for the delays. Because these emails are relevant and not privileged, Watts LLC is required to produce them.

3. Emails with Susman Regarding Strategy

31. Finally, Watts LLC has withheld an email thread between Mikal Watts and representatives from Susman.[7] The thread pertains to litigation strategy and contains advice of counsel concerning retention of North Carolina lawyers in this case. The Court concludes that these matters fall within the attorney–client privilege and are therefore not subject to production.[8]

C. Costs

32. The Motion requests that Watts LLC pay Oxford's costs and attorneys' fees incurred in seeking to obtain these materials pursuant to Rule 37(a)(4). (Mot. ¶ C.) Under the Rule, if the Court grants a motion to compel discovery, it "shall … require the party … whose conduct necessitated the motion … to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees." N.C. R. Civ. P. 37(a)(4). The Court may decline to award these expenses if it "finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust." N.C. R. Civ. P. 37(a)(4).

33. As discussed above, the Court sustains Watts LLC's privilege objection with respect to one email chain (exhibit 18) and one recurring sentence in several drafts of the engagement agreement. Otherwise, the Court overrules Watts LLC's objection. Watts LLC's refusal to produce emails that plainly include third parties is particularly unjustified, especially because Watts LLC made no agency or related argument to support its position. The Court concludes, therefore, that Watts LLC's opposition to the Motion was not *substantially* justified and no other circumstances make an award of expenses unjust. Accordingly, Oxford shall submit for the Court's consideration a petition and supporting evidence with respect to its request for expenses incurred to obtain this Order.

34. **WHEREFORE**, the Court, in its discretion, **GRANTS in part** and **DENIES in part** the Motion and **ORDERS** as follows:

a. Watts LLC shall produce to Oxford exhibits 1–9 of its *in camera* submission, except that Watts LLC's objection is sustained to the extent that Watts LLC may redact the first sentence of the second paragraph of each draft of the engagement agreement under the heading "CONTINGENT FEE" prior to production;

***7** b. Watts LLC's objection is overruled, and it shall produce to Oxford exhibits 10–17 of its *in camera* submission in their entirety;

c. Watts LLC's objection is sustained, and it shall not be required to produce exhibit 18 of its *in camera* submission;

d. Watts LLC shall pay the reasonable expenses Oxford incurred in obtaining this Order in an amount to be determined by the Court;

e. Oxford shall file a petition and submit evidence supporting its request for expenses no later than 13 July 2026; and

f. This Order shall take effect on 13 July 2026.

SO ORDERED, this the 13th day of June 2026.

/s/ Julianna Theall Earp

Julianna Theall Earp

Special Superior Court Judge for Complex Business Cases

Footnotes

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1 The parties declined the opportunity for a hearing and chose to stand on their briefs.

2 Findings of fact are not necessary because no party requested them. *See* N.C. R. Civ. P. 52(a)(2). Nevertheless, the Court opts to make factual findings for the limited purpose of deciding this Motion. *See Watkins v. Hellings*, 321 N.C. 78, 82 (1987) (recognizing trial court's discretion to make findings in support of order on motion absent party request). The Court intends for any finding of fact more appropriately considered a conclusion of law to be considered as such and *vice versa*.

3 Oxford moved to dismiss the Complaint in its entirety for failure to state a claim. (Mot. Dismiss, ECF No. 7.) The Court concluded that Watts LLC failed to plead repudiation sufficient for the breach of contract claim to survive the Motion to Dismiss. *Watts Guerra LLC v. Series 1 of Oxford Ins. Co. NC LLC*, 2026 NCBC LEXIS 52, at *16–17 (N.C. Super. Ct. Mar. 3, 2026).

4 Watts LLC's *in camera* production included a letter identifying the following individuals:

- Shawn Rabin — Attorney, Susman Godfrey LLP
- Bill Carmody — Attorney, Susman Godfrey LLP
- Sarah Hannigan — Attorney, Susman Godfrey LLP
- Laura Parrella — Legal Assistant, Susman Godfrey LLP
- Mikal Watts — Principal of Plaintiff Watts Guerra LLC.
- Kerry Keating — Staff member of Watts Law Firm LLP (associated with Plaintiff)
- Jason Vanacour — Representative of third-party CornerSight Capital / VPR Funding
- Kevin Perkins — Representative of third-party VPR Ventures / Cornersight Capital

(Letter re *In Camera* Production 1–2.)

5 These materials are exhibits 1–9 of Watts LLC's *in camera* submission.

6 These materials are exhibits 10–17 of Watts LLC's *in camera* submission.

7 This email thread is exhibit 18 of Watts LLC's *in camera* submission.

8 One attachment to this email chain is a draft complaint, protected as attorney work-product. The work product doctrine broadly protects "documents … prepared in anticipation of litigation," N.C. R. Civ. P. 26(b)(3), unlike the attorney–client privilege, which protects "confidential communications," *Dickson v. Rucho*, 366 N.C. 332, 340 (2013) (quoting *In re Miller*, 357 N.C. at 328).

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