

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WINDOWIZARDS, INC., HARVEY	:	CIVIL ACTION
GOODMAN, Partner, and	:	
MOORE STREET ASSOCIATES	:	NO. 13-7444
	:	
	:	
v.	:	
	:	
CHARTER OAK FIRE INSURANCE	:	
COMPANY, Member of Travelers Group	:	
of Insurance Companies	:	

**MEMORANDUM**

DAVID R. STRAWBRIDGE  
UNITED STATES MAGISTRATE JUDGE

MARCH 26, 2015

Presently before the court are the parties' March 2 and 3, 2015 letter briefs regarding a discovery dispute (Doc. Nos. 37 & 38). The plaintiffs are seeking certain documents concerning Charter Oak Fire Insurance Company's ("Charter Oak") engineering expert, Harald Greve, P.E., which Charter Oak contends are protected under Federal Rule of Civil Procedure 26(b)(4). For the reasons that follow, we will compel production of some of the documents in full, compel production of another document partially redacted, and protect the remaining documents from disclosure.

**I. FACTUAL AND PROCEDURAL HISTORY**

This case involves a dispute over property insurance coverage between Charter Oak and the plaintiffs Harvey Goodman, Moore Street Associates, and Windowizards, Inc. ("the Plaintiffs"). The dispute arose from snow damage to the roof trusses in a building occupied by Windowizards and owned by Moore Street Associates. Charter Oak accepted coverage for the snow damage and paid a total of \$366,104 for repairs. However, the Plaintiffs contend that

Charter Oak is liable for additional damage that was uncovered only after partial demolition and repair began.

The current discovery dispute, raised in a March 2, 2015 letter from Plaintiffs' counsel (Doc. No. 37), and responded to in a March 3, 2015 letter from defense counsel (Doc. No. 38), centers upon the Plaintiffs' requests for documents sent between Charter Oak's counsel and Mr. Greve during the litigation. Charter Oak regards the documents as privileged communications between its counsel and its expert, protected under Fed. R. Civ. P. 26(b)(4). We held teleconferences on the issue on March 3 and 20, 2015. Charter Oak has provided us with the privilege log and the documents at issue, which we have reviewed. The privilege log is attached to this memorandum as an exhibit and we will reference the documents by the numbers provided in that log.

## **II. STANDARDS**

Fed. R. Civ. P. 26(b)(4)(B) protects draft expert reports from disclosure "regardless of the form in which the draft is recorded." Rule 26(b)(4)(C) protects most communications between counsel and their expert witnesses. Specifically, Rule 26(b)(4)(C):

protect[s] communications between the party's attorney and any [expert who must provide a report], regardless of the form of the communications, except to the extent that the communications:

- (i) relate to compensation for the expert's study or testimony;
- (ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or
- (iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

These subsections were designed to protect attorney work product, as "draft reports and attorney-expert communications" are "areas most vulnerable to the disclosure of opinion work product." Republic of Ecuador v. Mackay, 742 F.3d 860, 870 (9th Cir. 2014); see also Fed. R.

Civ. P. 26 advisory committee notes to 2010 amendments (providing that the provisions were added “to protect counsel’s work product and ensure that lawyers may interact with retained experts without fear of exposing those communications to searching discovery”). However, “Rules 26(b)(4)(B) and (C) do not impede discovery about the opinions to be offered by the expert or the development, foundation, or basis of those opinions.” Fed. R. Civ. P. 26 advisory committee notes to 2010 amendments. If materials are protected under Rule 26(b)(4), the opposing party may obtain access to them only if it establishes that “it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.” Fed. R. Civ. P. 26(b)(3)(A)(ii).<sup>1</sup>

### **III. DISCUSSION**

With those legal principles in mind, we reach the following conclusions:

**A.** Documents numbered 1, 2, and 3 on the privilege log are emails between defense counsel and Mr. Greve and a cover letter from defense counsel to Mr. Greve. In that these documents identify only “facts or data” provided by defense counsel for Mr. Greve’s consideration, they are discoverable under Rule 26(b)(4)(C)(ii). Charter Oak must provide these documents to the Plaintiffs.

**B.** The documents numbered 4, 7, 9, 10, 11, 13, and 14 on the privilege log are emails or letters between defense counsel and Mr. Greve. After a review of the documents, we conclude that they are communications between counsel and their expert which do not merely: (1) relate to compensation; (2) identify facts or data provided by counsel for the expert’s consideration; or (3) identify assumptions provided by counsel and relied upon by the expert. These documents are therefore protected under Rule 26(b)(4)(C).

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<sup>1</sup> The Plaintiffs have not made this contention. Thus, it will not be discussed further.

C. The document numbered 12 on the privilege log is a letter from defense counsel to Mr. Greve. Paragraphs one and three of the letter reveal information that does not fall under any of the three exceptions for counsel-expert communications listed in Rule 26(b)(4)(C) and are therefore protected from discovery. However, the second paragraph of the letter, listing the documents counsel is enclosing for Mr. Greve's review and incorporation into his report, merely identifies "facts or data" that counsel is providing to Mr. Greve. As a result, Plaintiffs' counsel is entitled to a copy of the letter redacting its first and third paragraphs.

D. The documents numbered 5, 6, and 8 on the privilege log are Plaintiffs' expert reports that have notations on them by Mr. Greve. These handwritten notes appear to be for Mr. Greve's benefit. There is no indication that they are part of a dialog between defense counsel and him. Therefore, they are not protected under Rule 26(b)(4)(C) as "communications between the party's attorney and" the expert. Likewise, Mr. Greve's notes are not protected draft reports under Rule 26(b)(4)(B). See Wenk v. O'Reilly, No. 12-CV-474, 2014 WL 1121920, at \*4 (S.D. Ohio Mar. 20, 2014) (providing that "[d]rafts are protected because . . . the drafting process ordinarily entails communications between the expert and counsel and usually involves feedback from counsel, a process which is likely to include revelation of attorney work product. Notes made independently by an expert do not fall into that category").

Finally, the notes are not generally protected under Federal Rule of Civil Procedure 26(b)(3)(A) as documents "prepared in anticipation of litigation or for trial by or for another party or its representative." The three Circuit Courts to consider the issue have all concluded that an expert retained for use at trial is not a "representative" under this provision and that exclusion of an expert's materials from discovery is governed solely by Rule 26(b)(4). Republic of Ecuador v. Mackay, 742 F.3d 860, 864-71 (9th Cir. 2014) (providing that "[t]here is no indication that the Committee intended to expand Rule 26(b)(3)'s protection for trial preparation

materials to encompass all materials furnished to or provided by testifying experts”); Republic of Ecuador v. Hincbee, 741 F.3d 1185, 1189-92 (11th Cir. 2013) (providing that “neither the text of Rule 26(b)(3)(A) nor its structure, history, and rationale support extending the work-product doctrine to all testifying expert materials”); Republic of Ecuador v. For Issuance of a Subpoena Under 28 U.S.C. Sec. 1782(a), 735 F.3d 1179, 1183-87 (10th Cir. 2013) (providing that “the protections of Rules 26(b)(4)(B) and (C) are the exclusive protections afforded to expert trial-preparation materials”). We agree with the reasoning of these courts and therefore conclude that Charter Oak must produce documents 5, 6, and 8 to the Plaintiffs.

#### **IV. CONCLUSION**

Charter Oak must furnish to the Plaintiffs documents 1, 2, 3, 5, 6, and 8 listed on the attached privilege log. Documents 4, 7, 9, 10, 11, 13, and 14 are privileged under Rule 26(b)(4)(C) and need not be turned over to the Plaintiffs. Finally, the first and third paragraphs of document 12 are privileged under Rule 26(b)(4)(C). However, paragraph two, listing enclosed documents, merely provides “facts or data” for Mr. Greve’s consideration and is not privileged as per Rule 26(b)(4)(C)(ii). Therefore, Charter Oak shall provide to the Plaintiffs an appropriately redacted version of this letter.

An appropriate order follows.



**WINDOWIZARDS, ET AL V. CHARTER OAK INSURANCE COMPANY  
REVISED PRIVILEGE LOG FOR HARALD GREVE'S FILE MATERIALS  
REVISED MARCH 20, 2015**

	DATE	DOCUMENT DESCRIPTION	PRIVILEGE
1.	May 28, 2013 – 11:52 am; 11:58 am, 5:14 pm	Package of e-mails in H. Greve's file between M. McLaughlin and H. Greve regarding attorney work product impressions of case, retaining H. Greve as expert consultant and scheduling date of inspection (4 pages)	Not discoverable pursuant to Rule (26)
2.	May 28, 2013	Duplicate of 11:52 am e-mail from M. McLaughlin to H. Greve regarding attorney work product impressions of case, retaining H. Greve as expert consultant and scheduling date of inspection (1 page)	Not discoverable pursuant to Rule (26)
3.	May 29, 2013	Cover letter from M. McLaughlin to H. Greve regarding expert consultation and enclosing documents (documents previously produced with H. Greve's file) (1 page)	Not discoverable pursuant to Rule (26)
4.	August 29, 2013	E-mail from H. Greve to M. McLaughlin and D. Giordano discussing claim and requesting documents (3 pages)	Not discoverable pursuant to Rule (26)
5.	October 8, 2013 (date on document)	H. Greve's handwritten notes and comments on D. Honig's 10/8/13 report (42 pages)	Not discoverable pursuant to Rule (26)
6.	October 10, 2013 (date on document)	H. Greve's handwritten notes and comments on R. Harrington's 10/10/13 letter with enclosures (74 pages)	Not discoverable pursuant to Rule (26)
7.	January 15, 2014	E-mail from M. McLaughlin to H. Greve with attorney work product evaluation of Plaintiffs' settlement demand and enclosing Plaintiffs' settlement demand (1 page)	Not discoverable pursuant to Rule (26)
8.	February 25, 2014 (date on	H. Greve's handwritten notes and comments on	Not discoverable

EXHIBIT

**WINDOWIZARDS, ET AL V. CHARTER OAK INSURANCE COMPANY  
REVISED PRIVILEGE LOG FOR HARALD GREVE'S FILE MATERIALS  
REVISED MARCH 20, 2015**

	DATE	DOCUMENT DESCRIPTION	PRIVILEGE
		document)	D. Honig's 2/25/14 report (7 pages)
9.	August 29, 2014	E-mail from M. McLaughlin to H. Greve regarding attorney work product evaluation and analysis of claim, and enclosing documents (the documents were produced to Mr. Harrington)(1 page)	pursuant to Rule (26) Not discoverable pursuant to Rule (26)
10.	September 17, 2014	Letter from H. Greve to T. Coleman, Esq. (Butler Pappas) regarding expert consultation (2 copies) (1 page each copy)	Not discoverable pursuant to Rule (26)
11.	October 16, 2014, 4:56 pm and October 20, 2014, 7:31 pm	E-mails between H. Greve and M. McLaughlin, with H. Greve responding to attorney's work product inquiries concerning D. Honig reports (4 pages)	Not discoverable pursuant to Rule (26)
12.	October 31, 2014	Letter from M. McLaughlin to H. Greve concerning H. Greve's expert report and documents to review (the documents were produced to Mr. Harrington (2 pages)	Not discoverable pursuant to Rule (26)
13.	November 25, 2014, 3:22 pm and 3:54 pm	E-mail from M. McLaughlin regarding attorney-work product inquiries, and email response from H. Greve with responses to the inquiries (2 pages)	Not discoverable pursuant to Rule (26)
14.	December 29, 2014 8:51 am, 3:25 pm	E-mails between M. McLaughlin and H. Greve regarding deposition of D. Honig (3 pages)	Not discoverable pursuant to Rule (26)

**HARRINGTON & CALDWELL, P.C.**

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SALLY J. CALDWELL\*  
BARBARA HARRINGTON HLADIK †  
† Of Counsel

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March 2, 2015

The Honorable David R. Strawbridge  
United States District Court for the Eastern  
District of Pennsylvania  
3030 United States Courthouse  
601 Market Street, Independence Mall West  
Philadelphia, PA 19106

Re: Windowizards, Inc. et al v. Charter Oak Fire Ins. Co.  
U.S.D.C. No.: 13-CV-7444  
Our File No.: FC-3003

Dear Judge Strawbridge:

Please be advised that a dispute has arisen which the parties have not been able to amicably resolve.

By way of background, on November 8, 2013 defense counsel wrote and advised that as a result of investigation undertaken by Charter Oak and its consultants there would be "no further coverage afforded under the policy for this claim."

After receipt of that letter the undersigned requested copies of the reports prepared by Travelers' consultants in support of their decision to make no further payment on this claim.

On November 22, 2013 counsel for the defendant responded as follows:

"Your request for reports prepared by Travelers' consultants is premature. We are presently in litigation and disclosures are subject to the Court's scheduling Order. Travelers' consultants, Harald Greve, P.E., DaJon Associated and J.S. Held, Inc. have not yet prepared any reports following commencement of the litigation."

See copy of this letter enclosed.



March 2, 2015

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Subsequently, there were two mediation sessions on March 25, 2014 and October 22, 2014 before Magistrate Judge Carracappa at which defense counsel indicated that they did not have any written report from their engineering expert, Harald Greve, P.E.

Subsequently on December 12, 2014 the defense for the first time produced a report from Harald Greve, P.E. dated December 12, 2014 in support of defendant's decision to make no further payment in this matter. Thereafter, plaintiffs' counsel requested an opportunity to take Mr. Greve's deposition which could not be scheduled, because of Mr. Greve's unavailability, until January 23, 2015 at which time Mr. Greve was requested to bring his complete file.

At the time of the deposition the file was produced minus items that defense counsel removed indicating that in their opinion they were not discoverable and promised to produce a privilege log. In addition, during the deposition plaintiffs' counsel questioned Mr. Greve regarding prior projects he worked on involving wood bowstring trusses that were referred to in his Curriculum Vitae and also an additional bowstring truss project that he was involved in which was not reflected on his Curriculum Vitae involving an ice skating rink which he testified was located near Chester, Pennsylvania.

Following the deposition on January 29, 2015, counsel wrote to defense counsel Richard D. Gable, Jr., Esquire, requesting the privilege log, Mr. Greve's files on the prior wooden bowstring truss projects that he has been involved with and testified about and timesheets. Please see plaintiffs' counsel's letter of January 29, 2015 enclosed herewith.

On February 12, 2015 Attorney McLaughlin, on behalf of the defendant, wrote to the undersigned enclosing a copy of Mr. Greve's file absent items that defense counsel believed were privileged and provided a privileged log. A copy of Mr. McLaughlin's letter of February 12, 2015 and privilege log are enclosed herewith.

On February 13, 2015 plaintiffs' counsel responded by letter to Mr. McLaughlin advising why certain items referred to on the privilege log were indeed discoverable and suggested that defendant submit those items to the Court for an in camera review. Please see enclosed a copy of counsel's letter of February 13, 2015. The undersigned has not received any response to that letter.

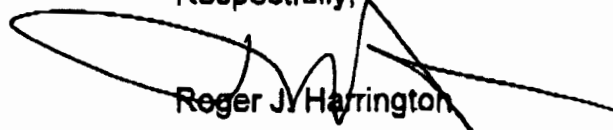
Accordingly, we would request a telephone conference with Your Honor regarding these requests. It should be noted that the defense has represented for more than a year that there were no written reports from Mr. Greve prior to December 12, 2014. However, the privilege log refers to Mr. Greve's letter of September 17, 2014 and his emails of October 20, 2014 and August 29, 2013.

March 2, 2015  
Page 3

In addition, at the deposition, Mr. Greve could not recall the name of the skating rink project that he worked on near Chester, Pennsylvania involving wood bowstring trusses similar to the roof system in the building in question and defense at this point has still not provided the name of that ice skating rink or a copy of that file or a copy of any of the project files Mr. Greve testified about at his deposition or his timesheets.

Thank you for Your Honor's attention in this matter.

Respectfully,



Roger J. Harrington

RJH/rc

Encl.

Sent Via Fax Number: 267-299-5065

CC: Michael J. McLaughlin, Esquire; Richard D. Gable, Jr., Esquire-Via Fax



TAMPA

CHICAGO

CHARLOTTE

PHILADELPHIA

TALLAHASSEE

MOBILE

MIAMI

November 22, 2013

Roger J. Harrington, Esq.  
Harrington & Caldwell, P.C.  
One Penn Center - Suite 1055  
1617 JFK Boulevard  
Philadelphia, PA 19103

Re: *Windowizards, Inc., et al. v. Charter Oak Fire Insurance Company*  
Philadelphia County CCP, February 2013 Term, Civil Action No. 00728  
Our File Number: 0570-1303157

Dear Mr. Harrington:

We write in reply to your letters of November 12 and November 14, 2013. Your request for reports prepared by Travelers' consultants is premature. We are presently in litigation and disclosures are subject to the Court's Scheduling Order. Travelers' consultants, Harald Greve, P.E., DaJon Associates and J.S. Held, Inc. have not yet prepared any reports following commencement of the litigation. Travelers will produce in discovery any reports prepared by these consultants and any other experts retained by Travelers.

As to your November 12, 2013 letter that enclosed proposals from Safeway Services and E & K Construction Services for temporary shoring work, we direct your attention to the below quoted language from our November 8, 2013 letter:

Charter Oak has also reviewed your October 25, 2012 letter, requesting payment for the temporary shoring of the building and the rental of related equipment from John Nolan. As stated above, the payments previously made by Charter Oak were based on the scope of repairs to repair the damage to the building as a result of the February 19, 2011 snow fall. However, those repairs were never made. Further, the newly discovered cracks are not covered by the Policy. Accordingly, Charter Oak has no obligation to pay for shoring. To the extent Window Wizards believes that additional shoring beyond what is already present is necessary given the deteriorated condition

BUTLER PAPPAS WEIHMULLER KATZ CRAIG LLP



Roger J. Harrington, Esq.  
November 22, 2013  
Page 2

of certain of the trusses, then it has an obligation to protect the property from damage pending repairs.

Accordingly Charter Oak will not pay for the costs of shoring and it will not consider payment of the estimates submitted by Safeway Services and E & K Construction Services.

Very truly yours,

BUTLER PAPPAS WEIHMULLER KATZ CRAIG LLP

A handwritten signature in black ink that reads 'Michael J. McLaughlin'. The signature is written in a cursive style.

Michael J. McLaughlin, Esquire  
mmclaughlin@butlerpappas.com

MJM:ab

**HARRINGTON & CALDWELL, P.C.**

ATTORNEYS AND COUNSELORS AT LAW

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SALLY J. CALDWELL\*  
BARBARA HARRINGTON HLADIK †  
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January 29, 2015

Richard D. Gable, Jr., Esquire  
Butler Pappas Weihmuller Katz Craig, LLP  
1818 Market Street  
Suite 2740  
Philadelphia, PA 19103

Re: Windowzards, Inc., et al. v. Charter Oak Fire Ins. Co.  
USDC for EDPA No. 13-cv-7444  
Our File NO. FC-3003

Dear Rich:

Please be reminded of requests made during the deposition of Harald Greve on January 23, 2015, as follows:

1. You advised that you would provide a privilege log identifying items removed from Mr. Greve's file.
2. Mr. Greve was going to check to see if he still had the Eddie Bauer store project and if he does please provide a copy of it.
3. Mr. Greve was going to check to see if he still had the Princeton project file and if he does please provide a copy of it.
4. Mr. Greve was going to check to see if he still had the file for the skating rink project in Chester, Pennsylvania. If he still does please provide a copy of it.



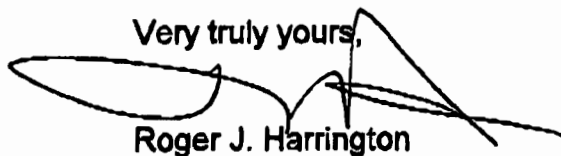
Page 2  
January 29, 2015

5. Mr. Greve described a design plan he created for monitoring trusses for Bunting. Please have Mr. Greve check to see if he still has this plan and if so please provide it.

6. Mr. Greve testified that time sheets on this file are kept electronically. Please provide all the time sheets and invoicing for his work and his firm's work in this matter.

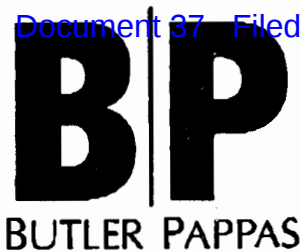
Thank you for your attention to this matter and I look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Roger J. Harrington", with a long horizontal stroke extending to the right.

Roger J. Harrington

RJH/sn  
VIA FAX



TAMPA  
CHICAGO  
CHARLOTTE  
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TALLAHASSEE  
MOBILE  
MIAMI

February 12, 2015

Roger J. Harrington, Esq.  
Harrington & Caldwell, P.C.  
One Penn Center - Suite 1055  
1617 JFK Boulevard  
Philadelphia, PA 19103

Re: *Windowizards, Inc., et al. v. Charter Oak Fire Insurance Company*  
USDC, ED of PA, Civil Action No. 13-cv-7444-EL  
Our File Number: 0570-1303157

Dear Mr. Harrington:

In accordance with the disclosure requirements under F.R.C.P. 26, attached please find the discoverable portions of Harald Greve's file for this matter as presented at his deposition. We also attached a privilege log for the materials withheld as outside the scope of discovery permitted under F.R.C.P. 26.

To the extent that you request Mr. Greve's files for matters other than Windowizards in items numbers 2 through 5 in your letter of January 29, 2015, we fail to see how those files bear any relevance to this matter. Based on our review of F.R.C.P. 26, the requests are outside the scope of permissible expert discovery and are overly broad and irrelevant. Therefore, we are objecting to your requests based upon the reasons stated above. Of course, if you have any basis under the Rules to suggest this information is discoverable,

BUTLER PAPPAS WEIHMULLER KATZ CRAIG LLP



Roger J. Harrington, Esq.  
February 12, 2015  
Page 2

please supply this basis for our review.

We also requested that Mr. Greve produce his time sheets. We will supplement the production and forward them to you upon receipt.

Very Truly Yours,

BUTLER PAPPAS WEIHMULLER KATZ CRAIG LLP

A handwritten signature in black ink, appearing to read 'Michael J. McLaughlin', written in a cursive style.

Michael J. McLaughlin, Esquire  
mmclaughlin@butlerpappas.com

MJM:nao

**WINDOWIZARDS, ET AL V. CHARTER OAK INSURANCE COMPANY  
PRIVILEGE LOG FOR HARALD GREVE'S FILE MATERIALS**

<b>DATE</b>	<b>DOCUMENT DESCRIPTION</b>	<b>PRIVILEGE</b>
October 10, 2013	H. Greve's handwritten notes and comments on R. Harrington's 10/10/13 letter with enclosures	Not discoverable pursuant to Rule (26)
October 8, 2013	H. Greve's handwritten notes and comments on D. Honig's 10/8/13 report	Not discoverable pursuant to Rule (26)
February 25, 2014	H. Greve's handwritten notes and comments on D. Honig's 2/25/14 report	Not discoverable pursuant to Rule (26)
September 17, 2014	Ltr from H. Greve to T. Coleman regarding expert consultation (2 copies)	Not discoverable pursuant to Rule (26)
May 28, 2013	E-mail from M. McLaughlin to H. Greve regarding retention as expert	Not discoverable pursuant to Rule (26)
January 15, 2014	E-mail from M. McLaughlin to H. Greve regarding evaluation of settlement demand	Not discoverable pursuant to Rule (26)
December 29, 2014	E-mail to M. McLaughlin from H. Greve regarding deposition of D. Honig	Not discoverable pursuant to Rule (26)
October 20, 2014	E-mail from H. Greve to M. McLaughlin regarding his evaluation of Honig reports	Not discoverable pursuant to Rule (26)
August 29, 2013	E-mail from H. Greve to M. McLaughlin and D. Giordano discussing claim and requesting documents	Not discoverable pursuant to Rule (26)
October 31, 2014	Ltr from M. McLaughlin to H. Greve regarding evaluation of case and documents to review	Not discoverable pursuant to Rule (26)
May 29, 2013	Ltr from M. McLaughlin to H. Greve regarding expert consultation and case analysis	Not discoverable pursuant to Rule (26)
May 28, 2013	E-mails from M. McLaughlin to H. Greve regarding retention as expert, discussing attorney impressions and upcoming inspection	Not discoverable pursuant to Rule (26)
November 25, 2014	E-mail from M. McLaughlin to H. Greve regarding expert consultation and case analysis	Not discoverable pursuant to Rule (26)
August 29, 2014	E-mail from M. McLaughlin to H. Greve regarding discussions of attorney evaluation and analysis of claim	Not discoverable pursuant to Rule (26)

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HARRINGTON &amp; CALDWELL, P.C.

09/02/2015 16:19 2157311147

**HARRINGTON & CALDWELL, P.C.**

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February 13, 2015

Michael J. McLaughlin, Esquire  
Butler Pappas Weihmuller Katz Craig, LLP  
1818 Market Street  
Suite 2740  
Philadelphia, PA 19103

Re: Windowizards, Inc., et al. v. Charter Oak Fire Ins. Co.  
USDC for EDPA No. 13-cv-7444  
Our File NO. FC-3003

Dear Mr. McLaughlin:

Thank you for your letter of February 12, 2015 with what defendant considers the discoverable portions of Harald Greve's file.

Regarding the privilege log, we respectfully submit that Mr. Greve's handwritten notes dated October 10, 2013, October 8, 2013 and February 25, 2014 are discoverable. We also submit that Mr. Greve's letter of September 17, 2014 and his emails of October 20, 2014 and August 29, 2013 are also discoverable. Are you agreeable to submitting these items to the court for an in camera review? Please advise in that regard.

Also, regarding the request for copies of Mr. Greve's files on other matters involving bowstring trusses about which he testified at deposition, I note that we were not supplied with any report, whatsoever, from Mr. Greve including his C.V. until December 12, 2014, the deadline for defendant's expert reports, which had been extended for a week per your request and by agreement of my office. Thereafter we could not take Mr. Greve's deposition until January 23, 2015 because he was allegedly not available until then. Accordingly, we do not believe our request is untimely.



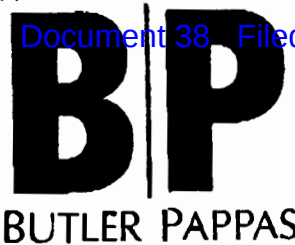
Page 2  
February 13, 2015

Further, please identify the name and address of the skating rink near Chester, Pennsylvania that Mr. Greve testified about at his deposition.

Please accept this letter as our good faith effort to resolve this issue without the Court's intervention. Thank you and I look forward to hearing from you.

Very truly yours,  
  
Roger J. Harrington

RJH/jm  
VIA FAX AND EMAIL



- CHICAGO
- CHARLOTTE
- PHILADELPHIA
- TALLAHASSEE
- MOBILE
- MIAMI

March 3, 2015

**VIA FAX**

The Honorable David R. Strawbridge  
United States District Court For The  
Eastern District Of Pennsylvania  
U.S. Courthouse, Room 3030  
601 Market Street  
Philadelphia, PA 19106

Re: *Windowizards, Inc., et al. v. Charter Oak Fire Insurance Company*  
USDC, ED of PA, Civil Action No. 13-cv-7444-EL  
Our File Number: 0570-1303157

Dear Judge Strawbridge:

Please accept this letter in advance of today's conference call with your Chambers.

By way of background, we provided Mr. Harrington's office with Mr. Greve's file materials, which contained a voluminous number of documents. We withheld the few documents that are not discoverable under F.R.C.P. 26. We attached a privilege log for the materials withheld and explained the basis under Rule 26 for each document identified

The privilege log identifies and describes e-mails and letters exchanged between this office and Mr. Greve during this litigation that are privileged under Rule 26(b)(4)(c). These e-mails and letters are not reports and nothing provided by Mr. Harrington suggests otherwise. Mr. Greve prepared one expert report dated December 12, 2014, which we have produced in discovery. No other reports were prepared.

To the extent that Mr. Harrington requested Mr. Greve's file for projects other than the Windowizards building by letter dated, February 12, 2015, we objected to these requests as outside the scope of permissible expert discovery and as overly broad and irrelevant. In the interest of resolving his request, we asked him to provide any basis under the Rules to suggest this information is discoverable. Mr. Harrington never supplied us with any basis under the Federal Rules.

Finally, Mr. Harrington requested that we provide the name and address of the skating rink near Chester, PA that Mr. Greve mentioned at his deposition. We supplied Mr. Harrington with the name of this rink by letter sent today. It should be noted that this

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skating rink was identified on Mr. Greve's C.V., although Mr. Greve was unsure of this fact at his deposition. We are also working on producing Mr. Greve's time sheets and will send them out by week's end.

Thank you for your consideration and we look forward to speaking with you.

Respectfully,

BUTLER PAPPAS WEIHMULLER KATZ CRAIG LLP

A handwritten signature in black ink, appearing to read 'Michael J. McLaughlin', written over a horizontal line.

Michael J. McLaughlin, Esquire  
mmclaughlin@butlerpappas.com

MJM:mm

cc: Roger J. Harrington, Esquire