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UNDERSTANDING COMMON-INTEREST DOCTRINE

The common-interest doctrine protects communications made between attorneys when their clients share a common legal interest. It is an exception to the general rule that privileged information shared with third parties generally waives the privilege. In this article, the authors discuss the doctrine and the various requirements and issues that it raises, citing numerous (and sometimes conflicting) cases.

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The attorney-client privilege protects communications between attorneys and their clients, and the work-product doctrine protects documents prepared by or for attorneys in anticipation of litigation. Privileged information shared with third parties generally waives the privilege. The common-interest doctrine is an exception to this rule. Under it, the disclosure of otherwise privileged information to one or more third parties represented by separate counsel may not result in a waiver if those parties share a common legal interest.

COMMON-INTEREST DOCTRINE GENERALLY

As an initial matter, it is important to note that the common-interest doctrine is not a free-standing privilege. Rather, it is an exception to the general rule that disclosure of privileged communications or work-product to a third-party constitutes a waiver of privilege.¹ As such, application of the common-interest

¹ *Shamis v. Ambassador Factors, Corp.*, 34 F. Supp. 2d 879, 893 (S.D.N.Y. 1999) (“The ‘common-interest’ rule is a limited exception to the general rule that the attorney-client privilege is

doctrine requires an underlying attorney-client or work-product privilege.²

The common-interest doctrine protects communications made between attorneys when their respective clients share “a common legal interest.”³ Courts have generally upheld common-interest privilege claims even where communications are made in the absence of attorneys, so long as the communications are otherwise privileged.⁴

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waived when a protected communication is disclosed to a third party outside the attorney-client relationship.”).

² *Sokol v. Wyeth*, No. 07 Civ. 8442, 2008 WL 3166662, at *5 (S.D.N.Y. Aug. 4, 2008) (“If a communication is not protected by the attorney-client privilege or the attorney work-product doctrine, the common-interest privilege does not apply.”).

³ *In re Teleglobe Commc’ns*, 493 F.3d 345, 364 (3d Cir. 2007).

⁴ *See, e.g., Gucci Am., Inc. v. Gucci*, No. 07 Civ. 6820, 2009 WL 8531026, at *1 (S.D.N.Y. Dec. 15, 2008) (noting that where

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