

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

DEVON IT, INC., et al,	:	CIVIL ACTION
	:	
Plaintiffs,	:	NO. 10-2899
	:	
v.	:	
	:	
IBM CORP., et al,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 27th day of September 2012, upon consideration of the Joint Motion for Protective Order and to Quash the Third-Party Subpoenas to Burford Group LLC, Glenavy Capital LLC, and Litigation Risk Solutions LLC filed by Plaintiffs and third-parties Burford Group LLC, Glenavy Capital LLC, and Litigation Risk Solutions LLC, (Doc. No. 109), Defendants’ Opposition to the Motion (Doc. No. 116), and the Reply in Support of the Motion, the arguments made by counsel for the parties at the March 8, 2012 hearing, it is **ORDERED**¹

¹Plaintiffs’ have filed a Joint Motion for a Protective Order and to Quash Third-Party Subpoenas to Burford Group LLC, Glenavy Capital LLC, and Litigation Risk Solutions LLC (Doc. No. 109). Defendants have opposed the Motion (Doc. No. 116). A hearing was held on the Motion on March 8, 2012.

Burford Group LLC is an outside consultant staffed by attorneys who evaluate a case to determine the feasibility of advancing financing to a party pursuing a claim which is expensive to litigate. Burford’s indirect owners are Glenavy Capital LLC and Litigation Risk Solutions LLC. They are passive holding companies and have no direct relationship with Devon Plaintiffs (hereafter “Devon”) and apparently no involvement with this case other than through Burford.

As part of the evaluation process, Devon shared confidential information with Burford, including legal memoranda, drafts of pleadings, motions, and briefs, and other filings on behalf of Devon. Documents selected by counsel for Devon were also sent. Finally, the documents sent to Burford include communications and comments on draft agreements regarding the terms of potential financing. The documents were provided to Burford under the terms of a March 2010 Confidentiality, Common Interest and Non-Disclosure Agreement between Burford and Devon. In March 2011, a funding agreement was executed between a wholly owned subsidiary of Burford, Driftwood Investments, Ltd. and Devon.

The subpoenas issued by Defendant IMB to the three entities essentially seek five (5)

that the Motion (Doc. No. 109) is **GRANTED**.

BY THE COURT:

/s/ Joel H. Slomsky
JOEL H. SLOMSKY, J.

categories of documents: (1) all communications between Burford and Devon, including all communications with any in-house or outside counsel of Devon; (2) all documents relating to Devon's activities, business, and financial condition; (3) all documents relating to any actual or potential investment by Burford in Devon's litigation against Defendants; (4) all documents relating to this lawsuit between Devon and Defendants; and (5) all documents relating to Devon's relationship with Defendants.

It is quite evident that the subpoenas seek the production of documents that were prepared by counsel for Devon in anticipation of and during litigation and are protected by the work-product doctrine. Litigation strategy, matters concerning merits of claims and defenses and damages would be revealed if the documents were produced. The matters directly involve the mental impressions of counsel and are protected from disclosure as work-product. Moreover, the production of the items subpoenaed would intrude upon attorney-client privilege under the "common-interest" doctrine. The "common-interest" doctrine protects communications between parties with a shared common interest in litigation strategy. Thompson v. Glenmede Trust Co., No. 92-5233, 1995 WL 752443, *4 (E.D. Pa. Dec. 19, 1995). Here, Burford and Devon now have a common interest in the successful outcome of the litigation which otherwise Devon may not have been able to pursue without the financial assistance of Burford. The documents turned over to Burford were done so under a Confidentiality, Common Interest and Non-Disclosure Agreement. "Common Interest Material" were specifically described in the Agreement in paragraph 1 as ". . . any Confidential Information that is the work product of qualified legal advisors and/or attorney work product, protected by the attorney-client privilege or any similar privilege in any jurisdiction . . ." Given these controlled conditions, there was no waiver of the attorney-client privilege or the work product doctrine and the Joint Motion of Plaintiffs will be granted.