

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

**JASON LAVEGLIA,**

*Plaintiff*

v.

**TD BANK, N.A.,**

*Defendant*

**Case No. 2:19-cv-01917-JDW**

**ORDER**

**AND NOW**, this 16<sup>th</sup> day of January, 2020, upon consideration of Defendant's Motion for Reconsideration (ECF No. 48), the Court notes as follows:

1. The attorney client privilege applies to communications, including communications from counsel and to counsel. It does not, however, apply to facts. *See Upjohn Co. v. United States*, 449 U.S. 383, 395 (1981).

2. "While documents may be protected from disclosure in discovery because they contain confidential communications that are privileged, that protection may be inapplicable to facts incorporated in the communication." *Rhone-Poulenc Rorer Inc. v. Home Indem. Co.*, 32 F.3d 851, 862 (3d Cir. 1994). Moreover, while a communication concerning facts is subject to the privilege, a mere recitation of the facts is not necessarily privileged even if it is transmitted to counsel. *See Sampson v. School Dist. of Lancaster*, 262 F.R.D. 469, 478 (E.D.Pa. 2008).

3. TD Bank's Staff Selection Worksheets contain substantial factual information that, standing alone, is not subject to the attorney-client privilege. However, after a careful re-review of the Staff Selection Worksheets *in camera*, the Court notes that multiple columns include more than just factual information. They include narrative explanations of the decision to retain or not

retain certain employees. TD Bank has shown that the SSWs were prepared for in-house counsel's review. Thus, the narrative information is a narrative that TD Bank employees are providing for counsel's consumption so that counsel could then render legal advice. Moreover, the Court concludes, after re-reviewing the SSWs, that the factual information in the SSWs is not easily divorced from the narrative information that is provided.

4. Because the SSWs contain more than just factual information, the Court concludes that they are, in fact, subject to the attorney-client privilege.

Therefore, in light of the foregoing, it is **ORDERED** that Defendant's Motion for Reconsideration (ECF No. 48) is **GRANTED**.

It is **FURTHER ORDERED** that the Portion of the Court's prior Order (ECF No. 45) requiring production of the Staff Selection Worksheets is **VACATED**.

It is **FURTHER ORDERED** that Defendant's Motion for Temporary Stay of the Court's Order Pending Resolution of its Motion for Reconsideration is **DENIED AS MOOT**.

**BY THE COURT:**

/s/ Joshua D. Wolson  
JOSHUA D. WOLSON, J.