



member of a bar of a court and (b) in connection with this communication is acting as a lawyer; (3) the communication relates to a fact of which the attorney was informed (a) by his client (b) without the presence of strangers (c) for the purpose of securing primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceeding, and (d) not for the purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by the client.

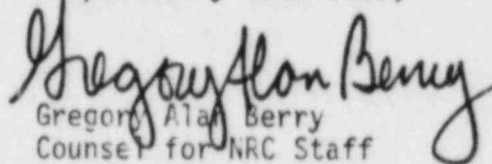
In re LTV Securities Litigation, 89 F.R.D. 595, 600 (N.D. Texas, 1981); United States v. United Shoe Machinery Corp., 89 F. Supp. 357, 358-59 (D. Mass 1950); see 8 J. Wigmore, Evidence, § 2292 (McNaughton rev. 1961). The burden of establishing the existence of the attorney-client privilege rests with the party asserting the privilege. In Re Grand Jury Investigation No. 83-2-35, 723 F.2d 497 (7th Cir. 1983); F.T.C. v. Shaffner, 626 F.2d 32 (6th Cir 1980). Although a party asserting the privilege need not detail the contents of the communication, he is required to provide sufficient information from which the decisionmaker could conclude that the communication was between a client and an attorney acting in his professional capacity; related to legal matters; and that privilege is invoked by the client. Id. at 37. The Staff is persuaded that counsel for OBC has made this showing. Mr. Lipinsky's communications with Messrs. Reynolds and Watkins related to taking of Mr. Lipinsky's deposition by NRC investigators, clearly a legal matter. Lipinsky Affidavit, § 2. Second, Messrs. Reynolds and Watkins were retained in their professional capacity by OBC to represent Mr. Lipsinsky in connection with that legal matter.

Id. ¶ 3. <sup>2/</sup> Finally, the privilege has been invoked by its holder, Mr. Lipinsky. Id. ¶ 5. In view of these considerations and also because there is no indication that the subject communications were intended to further tortious or criminal conduct or that the privilege has been waived, the Staff has elected not to contest Mr. Lipinsky's invocation of the attorney-client privilege with respect to the withheld documents.

### III. Conclusion

For the reasons stated in this Response, the attorney-client privilege invoked by counsel for O.B. Cannon & Son, Inc. on Mr. Lipinsky's behalf should be upheld.

Respectfully submitted,

  
Gregory Alan Berry  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 14th day of November 1984

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<sup>2/</sup> The Staff notes that Mr. Lipinsky's assertion that he "considered Messrs. Reynolds and Watkins as [his] attorneys in dealing with the NRC deposition matter," Lipinsky Affidavit, ¶ 3, is corroborated by his diary notes for November 29, 1983 ("Explained to F. Hawkins that NSR [Nicholas S. Reynolds] represents JjL [Joseph J. Lipinsky] on this item.")



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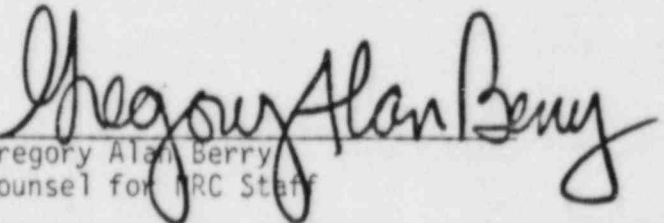
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