

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

VLSI TECHNOLOGY LLC,

*Appellant,*

v.

Nos. 23-2298, 23-2354

PATENT QUALITY ASSURANCE LLC,

*Cross-Appellant,*

INTEL CORPORATION,

*Appellee,*

JOHN A. SQUIRES, Under Secretary of  
Commerce for Intellectual Property  
and Director of the United States  
Patent and Trademark Office,

*Intervenor.*

**PQA'S NON-CONFIDENTIAL RESPONSE TO  
VLSI'S MOTION TO UNSEAL**

**FEDERAL CIRCUIT RULE 25.1(E)(1)(B) STATEMENT**

The material omitted on pages 7–8 and 10 of the non-confidential version of this response concerns, and in context could reveal information about, (1) settlement discussions (pages 7–8) and an anonymous document (page 10), both which the Director ordered to be kept under seal.

**PQA’S RESPONSE TO VLSI’S MOTION TO UNSEAL**

Pursuant to Federal Rule of Appellate Procedure 27(a)(3) and Federal Circuit Rule 27(b), Appellee and Cross-Appellant Patent Quality Assurance, LLC (“PQA”) submits this Response to VLSI Technology LLC’s Confidential Motion to Unseal (ECF No. 169, “Motion”). PQA respectfully requests the Motion be denied in total.

**I. INTRODUCTION**

VLSI asks this Court to unseal information the U.S. Patent and Trademark Office (“PTO”) sealed below and to publish, in this Court’s appellate record, two categories of material that should not be public: (1) an anonymous, unverified submission of unknown provenance containing unsubstantiated, false, and malicious allegations the PTO Director expressly refused to consider; and (2) confidential settlement communications VLSI itself agreed—in writing—to keep confidential. Both categories satisfy long-settled standards for continued sealing. In particular, the presumption of public access to court records yields where the documents play a

minimal role in adjudication, where third-party privacy interests are implicated, where express confidentiality agreements support sealing, and—most pointedly here—where unsealing would convert the appellate record into a “vehicle for improper purposes.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598–99 (1978). Because each of those considerations applies here, VLSI’s motion should be denied.

In addition, in view of VLSI’s request to remove certain redactions from its briefs, PQA respectfully asks the Court to refrain from adopting VLSI’s loaded language as it recites the facts of this case. VLSI repeatedly uses terms like “whistleblower,” “extortion,” and “abuse of process” without properly supporting its uses of those terms. In doing so, VLSI invites this Court to “define [this] case’s context in a manner that imports genuinely disputed factual positions” and thus invites error. *See Tolan v. Cotton*, 572 U.S. 650, 657 (2014). PQA asks this Court to follow the Supreme Court’s admonition that the best recitation is one “drawn with the insight of a disinterested mind.” *U.S. v. El Paso Nat. Gas. Co.*, 376 U.S. 651, 656 (1964).

## **II. THE ANONYMOUS REPORT SHOULD REMAIN SEALED IN THIS RECORD**

This Court has not instructed the parties to eliminate the confidentiality markings on the anonymous report and should not do so on VLSI’s unusual post-argument motion. VLSI’s request serves no valid purpose in this appeal. Instead, VLSI improperly seeks to augment the public record with unverified salacious

accusations to cast PQA and Intel in a bad light. *See Nixon*, 435 U.S. at 598. This use of the Court to cause “the publication of ... defamatory statements” is precisely the situation *Nixon* empowered courts to exercise discretion in maintaining material under seal. *Id.* at 598–99. Moreover, publication in this record of the partially redacted document may lend credence to the allegations whereas the entire document includes details that are provably false and narrative that can be nothing other than fiction. This Court has only been asked to decide whether the Director improperly denied discovery based on the anonymous report and only as a subsidiary issue. Op.Br. at 14. That question may be answered without publishing the defamatory statements of the anonymous report.

### **III. THE CONFIDENTIAL SETTLEMENT STATEMENTS SHOULD REMAIN SEALED**

This Court looks to the law of the regional circuit in analyzing a motion to seal. *See DePuy Synthes Prods., Inc. v. Veterinary Orthopedic Implants, Inc.*, 990 F.3d 1364, 1369 (Fed. Cir. 2021). In the Third Circuit (where the PTO resides), a “part[y] seeking confidentiality must present a strong justification to overcome the presumption of public access.” *Id.* (quoting *In re Avandia Mktg., Sales Pracs. & Prods. Liab. Litig.*, 924 F.3d 662, 672–73 (3d Cir. 2019)). The presumption is rebuttable if the party seeking to seal judicial records carries “the burden of showing that the interest in secrecy outweighs the presumption.” *See Avandia*, 924 F.3d at 672. That party must show (1) that the material is the kind of information that courts

will protect and (2) that disclosure will work a clearly defined and serious injury to the party seeking closure. *Id.*

**A. Settlement Negotiations Are Protected by Courts.**

Settlement communications are the type of material courts will protect. For example, a Pennsylvania district court granted a motion to seal settlement communications under the *Avandia* standard. *See Brand Design Co., Inc. v. Rite Aid Corp.*, No. CV 22-1174, 2024 WL 1164428, at \*13 (E.D. Pa. Mar. 18, 2024) (“[I]t is a time honored principle that settlement discussions generally remain confidential.”). “[D]isclosing the contents of the parties’ prior settlement discussions makes it less likely that these discussions will continue ....” *Id.*

Settlement is broadly favored in federal policy. Federal Rule of Evidence 408 reflects the “public policy favoring the compromise and settlement of disputes.” Fed. R. Evid. 408 (advisory committee note). The Supreme Court has repeatedly emphasized that policy. *See Marek v. Chesny*, 473 U.S. 1, 10 (1985) (the Federal Rules of Civil Procedure express “a clear policy of favoring all settlements”). The Sixth Circuit in *Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 F.3d 976, 980 (6th Cir. 2003), recognized a “a strong public interest in favor of secrecy of matters discussed by parties during settlement negotiations.” The Federal Circuit, while declining to adopt a categorical privilege of settlement communications, has

likewise recognized that confidential settlement communications warrant protection on a case-by-case basis. *In re MSTG, Inc.*, 675 F.3d 1337, 1346–48 (Fed. Cir. 2012).

Public disclosure of settlement communications between adverse parties chills future negotiations. That harm is precisely what Rule 408 is designed to prevent, and it is felt not only by the parties to this case but by parties across the federal system who may, in future cases, decline to engage in candid settlement discussions for fear that their words will become public exhibits. Indeed, VLSI and PQA expressly agreed in writing to engage in their communications only on a confidential basis. *See* Appx09459-63 (terms of confidentiality); Appx09464-65 (VLSI counsel confirming agreement). VLSI does not dispute the agreement’s existence; *VLSI itself* originally designated the communications as “CONFIDENTIAL” under the protective order entered below. Appx02049 (PQA Mot. to Seal) (“VLSI does not dispute the existence of this agreement and even marked documents/communications as CONFIDENTIAL subject to that agreement.”).

This expectation of confidentiality is a fundamental reason these materials are the type protected by courts. *See In re Keeper of Records (Grand Jury Subpoena Addressed to XYZ Corp.)*, 348 F.3d 16, 22–23 (1st Cir. 2003) (“expectation of confidentiality” is the touchstone, and an express written agreement is the strongest evidence of that expectation). While VLSI itself cites *Keeper of Records* as a reason

to unseal the anonymous submission, the same principle works in PQA's favor on the settlement communications: there *was* an express agreement here, and the materials *were* marked confidential by VLSI itself.

**B. Disclosure of Confidential Settlement Communications Will Harm PQA.**

PQA is prejudiced here because it drafted its briefs in this appeal assuming these discussions would remain under seal. As a result, PQA purposefully did not include confidential material in its briefs (1) to ensure public access to the entirety of its arguments and (2) because the specific contents of those discussions have little to no bearing on the issues being decided in this appeal. Unsealing that material now will have the prejudicial effect of making public only VLSI's cherry-picked portions of those discussions, taken out of context to vilify PQA. Had PQA anticipated the unsealing of these confidential settlement discussions, PQA would have quoted gratuitously from the material (as VLSI did) to ensure the public gets both sides of the story, including:

- VLSI initiated the settlement discussions, [REDACTED]  
[REDACTED].
- VLSI fraudulently induced PQA to enter into a Non-Disclosure Agreement that VLSI had no intention of honoring.
- [REDACTED]  
[REDACTED]

- [REDACTED]
- [REDACTED]  
[REDACTED]  
[REDACTED] Of course, when OpenSky suggested something similar, VLSI called this “disturbing conduct” (*OpenSky Indus., LLC v. VLSI Tech. LLC*, IPR2022-00645, Paper 8 at 3 (P.T.A.B. Mar. 2, 2022)),<sup>1</sup> ultimately convincing the Director to award over \$400K in attorneys’ fees to VLSI based on OpenSky’s conduct.

The prejudice to PQA of unsealing the settlement discussions now is real, as it results in public versions of the briefs that tell only VLSI’s side of the story. In effect, VLSI is rewarded for gratuitously including confidential information in its briefs.

#### **IV. PQA DID NOT WAIVE ITS OBJECTIONS AT ORAL ARGUMENT**

VLSI provides an incorrect account of what happened at the May 8 oral argument, suggesting PQA waived any objections to unsealing the information at issue. Mot. at 10-11, 13, 22. The panel’s discussion regarding confidentiality

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<sup>1</sup> Available at [https://ptacts.uspto.gov/ptacts/public-informations/petitions/1549235/download-documents?artifactId=5Gu01A9LEWej24VXx1M00SmuNsFg4b0PbV4V6XFjeQLmtOZAPfl0b\\_c](https://ptacts.uspto.gov/ptacts/public-informations/petitions/1549235/download-documents?artifactId=5Gu01A9LEWej24VXx1M00SmuNsFg4b0PbV4V6XFjeQLmtOZAPfl0b_c).

designations occurred after the OpenSky case (No. 23-2158) was called and before either of PQA's cases were called. VLSI admits this fact. Mot. at 10 n.3. During the argument related to the -2158 appeal, PQA's counsel was not at counsel's table (nor would that have been appropriate). Nobody, including VLSI, sought input from PQA during the discussion about confidentiality. Having no access to the confidential material in the OpenSky case, PQA's counsel believed that the discussion during the OpenSky case related only to that case. When PQA's counsel was present at counsel's table for cases -2298 and -2354, there were no discussions related to any confidentiality designations. Thus, VLSI's suggestion that PQA waived objections is unfounded.

**V. “YOU KEEP USING THAT WORD. I DO NOT THINK IT MEANS WHAT YOU THINK IT MEANS.”**

In the classic film, *The Princess Bride* (1987), a criminal mastermind repeatedly uses the word “inconceivable” when he is unable to thwart the pursuit of a masked man, the Dread Pirate Roberts. His cohort, Inigo Montoya eventually objects: “You keep using that word. I do not think it means what you think it means.” See “The Princess Bride: You keep using that word” (YouTube).<sup>2</sup> Here VLSI repeats loaded terms like mantras in the hope this Court will adopt them in its opinion. VLSI also seeks to unredact references to one or more of these terms in its brief in an effort

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<sup>2</sup> Available at <https://www.youtube.com/watch?v=pSo5HVjbWoe> (last accessed May 29, 2026).

to *publicly* disparage PQA. The Court should question the following terms, as Inigo did in the film.

*First*, VLSI repeatedly uses the term “whistleblower”—a word that appears no less than 62 times in VLSI’s motion and many more in its briefs—to suggest the anonymous *ex parte* submission is somehow a bona fide submission by an insider seeking to correct an injustice. In reality, the document at issue is anonymous. Its author is unknown to PQA, to Intel, to the PTO, to the Senator’s office that transmitted it to the PTO, and to this Court. The document reads not as a report by an insider with personal knowledge (*i.e.*, a true “whistleblower”) but as a 37-page hit-piece and legal brief replete with [REDACTED]

[REDACTED]. Calling this document a “whistleblower report” gives credence to VLSI’s characterization where none is due.

*Second*, VLSI repeatedly uses the term “extort” and “extortion” in its briefs<sup>3</sup> and in its Motion to portray PQA as a criminal actor even though no tribunal has made such a finding. Those terms have a specific legal meaning, which VLSI conveniently never discusses (because the facts here are not extortion).<sup>4</sup> Moreover,

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<sup>3</sup> “Extort” in its various forms is found 25 times in VLSI’s Opening Brief and 52 times in its Reply Brief.

<sup>4</sup> Congress gave any person (including PQA) a right to file an IPR petition. Accepting money to refrain from exercising a right is hardly extortion. For example, a property owner has the right to build on the property. An neighbor’s offer to pay

VLSI conceded at oral argument that it was VLSI that first communicated with PQA and VLSI that first offered money in exchange for PQA dismissing its invalidity challenge to VLSI's patent. No. 23-2298 Oral Arg. 9:27-40 (Court: "So why isn't your client guilty of abuse of process also by offering to pay millions of dollars to settle in this case. In fact, the settlement negotiations were initiated by your client." VLSI Counsel: "That's correct.>"). "Extortion" simply does not fit here.

*Third*, VLSI repeats the term "abuse of process" in its briefs<sup>5</sup> and in its Motion to portray PQA as a bad actor even though (1) the PTO does not maintain that position (*see* PTO Br. at 32 ("the December 2022 Decision . . . did not rely on an abuse-of-process rationale")) and (2) a trial court in Virginia found PQA did not abuse any process. Hearing Tr. at 58:5-8, *VLSI Technology LLC v. Patent Quality Assurance, LLC*, No. CL240001093 (Circuit Court, City of Alexandria) (Aug. 13, 2025) (dismissing abuse of process tort claim because "an abuse of process claim cannot be supported by actions occurring from a forum located outside of the judicial branch of government") (attached as Exhibit 2).

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in exchange for the property owner not building on the property (i.e., not exercising a valid right) is not extortion.

<sup>5</sup> "Abuse of process" is found 20 times in VLSI's Opening Brief and 64 times in its Reply Brief.

PQA respectfully asks this Court to reject VLSI's invitation to unredact or adopt this loaded language which presupposes a conclusion about genuinely disputed issues.

## **VI. CONCLUSION**

For the above reasons, PQA asks this Court to deny VLSI's motion in full.

Dated: May 29, 2026

Respectfully submitted,

/s/ Truman H. Fenton

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FORM 9. Certificate of Interest

Form 9 (p. 1)  
March 2023

**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

**CERTIFICATE OF INTEREST**

**Case Number** 23-2298, 23-2354

**Short Case Caption** VLSI Technology LLC v. Patent Quality Assurance LLC

**Filing Party/Entity** Patent Quality Assurance LLC

**Instructions:**

1. Complete each section of the form and select none or N/A if appropriate.
2. Please enter only one item per box; attach additional pages as needed, and check the box to indicate such pages are attached.
3. In answering Sections 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance.
4. Please do not duplicate entries within Section 5.
5. Counsel must file an amended Certificate of Interest within seven days after any information on this form changes. Fed. Cir. R. 47.4(c).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 05/29/2026

Signature: s/Truman H. Fenton

Name: Truman H. Fenton

## FORM 9. Certificate of Interest

Form 9 (p. 2)  
March 2023

| <b>1. Represented Entities.</b><br>Fed. Cir. R. 47.4(a)(1).                             | <b>2. Real Party in Interest.</b><br>Fed. Cir. R. 47.4(a)(2).                                                                                                                                              | <b>3. Parent Corporations and Stockholders.</b><br>Fed. Cir. R. 47.4(a)(3).                                                                                                                                   |
|-----------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Provide the full names of all entities represented by undersigned counsel in this case. | Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.<br><br><input checked="" type="checkbox"/> None/Not Applicable | Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities.<br><br><input checked="" type="checkbox"/> None/Not Applicable |
| Patent Quality Assurance LLC                                                            |                                                                                                                                                                                                            |                                                                                                                                                                                                               |
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☐ Additional pages attached

## FORM 9. Certificate of Interest

Form 9 (p. 3)  
March 2023

**4. Legal Representatives.** List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

☐ None/Not Applicable

☐ Additional pages attached

|                     |  |  |
|---------------------|--|--|
| Tecuan Flores, SGB  |  |  |
| Clark Oberembt, SGB |  |  |
|                     |  |  |

**5. Related Cases.** Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

☒ Yes (file separate notice; see below)

☐ No

☐ N/A (amicus/movant)

If yes, concurrently file a separate Notice of Related Case Information that complies with Fed. Cir. R. 47.5(b). **Please do not duplicate information.** This separate Notice must only be filed with the first Certificate of Interest or, subsequently, if information changes during the pendency of the appeal. Fed. Cir. R. 47.5(b).

**6. Organizational Victims and Bankruptcy Cases.** Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

☒ None/Not Applicable

☐ Additional pages attached

# Exhibit 2



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# Transcript of Hearing

**Date:** August 13, 2025

**Case:** VLSI Technology LLC -v- Patent Quality Assurance, LLC, et al.

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

Transcript of Hearing  
Conducted on August 13, 2025

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <div>1 V I R G I N I A:<br/>2 IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA<br/>3 -----x<br/>4 VLSI TECHNOLOGY LLC, :<br/>5 PLAINTIFF, :<br/>6 V. : Case No.:<br/>7 PATENT QUALITY ASSURANCE, LLC, : CL240001093<br/>8 ET AL., :<br/>9 DEFENDANTS. :<br/>10 -----x<br/>11<br/>12 HEARING<br/>13 BEFORE THE HONORABLE REBECCA J. WADE<br/>14 Conducted virtually<br/>15 Wednesday, August 13, 2025<br/>16 2:02 p.m.<br/>17<br/>18<br/>19<br/>20 Job No.: 595441<br/>21 Pages: 1 - 77<br/>22 Recorded By: Dimas Bardales</div> | <div>1 A P P E A R A N C E S<br/>2 ON BEHALF OF THE PLAINTIFF, VLSI TECHNOLOGY LLC,:<br/>3 ELLEN D. MARCUS, ESQUIRE<br/>4 HOLMES COSTIN &amp; MARCUS, PLLC<br/>5 908 King Street, Suite 330<br/>6 Alexandria, VA 22314<br/>7 (703) 260-6402<br/>8<br/>9 ON BEHALF OF THE DEFENDANTS, PATENT QUALITY<br/>10 ASSURANCE, LLC, ET AL.,:<br/>11 CRAIG C. REILLY, ESQUIRE<br/>12 THE OFFICE OF CRAIG C. REILLY<br/>13 209 Madison Street, Suite 501<br/>14 Alexandria, VA 22314<br/>15 (703) 549-5354<br/>16<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22</div> |
| <div>1 HEARING,<br/>2 conducted virtually.<br/>3<br/>4<br/>5<br/>6<br/>7<br/>8<br/>9<br/>10<br/>11<br/>12<br/>13<br/>14 Pursuant to Notice, before Dimas Bardales,<br/>15 Notary Public in and for the Commonwealth of<br/>16 Massachusetts.<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22</div>                                                                                                                                                                                                                                  | <div>1 A P P E A R A N C E S<br/>2 (continued)<br/>3<br/>4 ON BEHALF OF THE PLAINTIFF, VLSI TECHNOLOGY LLC:<br/>5 MICHAEL S. SCHACHTER, ESQUIRE<br/>6 STEVEN J. BALLEW, ESQUIRE<br/>7 WILLKIE FARR &amp; GALLAGHER LLP<br/>8 787 7th Avenue<br/>9 New York, NY 10019<br/>10 (212) 728-8000<br/>11<br/>12<br/>13 ALSO PRESENT:<br/>14<br/>15 JOSHUA L. SOLOMON, ESQUIRE - Co-Counsel<br/>16 JOSEPH URADNIK - Tied to the case<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22</div>                                                                           |

Transcript of Hearing  
Conducted on August 13, 2025

|    |                                                    |      |                                                       |
|----|----------------------------------------------------|------|-------------------------------------------------------|
| 1  | C O N T E N T S                                    | 1    | start with the demurrer, I'm -- I'm happy to start    |
| 2  | ARGUMENT                                           | PAGE | 2 there, as well.                                     |
| 3  | By Mr. Reilly                                      | 10   | 3 THE COURT: Ms. Marcus -- or Mr.                     |
| 4  | By Mr. Schachter                                   | 19   | 4 Schachter?                                          |
| 5  |                                                    |      | 5 MS. MARCUS: To answer that, Judge, the              |
| 6  |                                                    |      | 6 only thing I will be covering today is the last     |
| 7  | DECISION                                           | PAGE | 7 motion you mentioned, which is about the            |
| 8  | By the Court                                       | 54   | 8 protective order.                                   |
| 9  |                                                    |      | 9 THE COURT: Oh, okay.                                |
| 10 |                                                    |      | 10 MS. MARCUS: So I -- I'll let Mr.                   |
| 11 | E X H I B I T S                                    |      | 11 Schachter address that question.                   |
| 12 | (None marked)                                      |      | 12 THE COURT: All right.                              |
| 13 |                                                    |      | 13 MR. SCHACHTER: Your Honor, we have --              |
| 14 |                                                    |      | 14 we have no preference or objection to proceeding   |
| 15 |                                                    |      | 15 in any way the Court -- Court prefers.             |
| 16 |                                                    |      | 16 THE COURT: All right. I will tell                  |
| 17 |                                                    |      | 17 you-all before we begin, that I have read the      |
| 18 |                                                    |      | 18 pleadings. It was a kind of anticipating what was  |
| 19 |                                                    |      | 19 coming, there was a reason that I asked for the    |
| 20 |                                                    |      | 20 briefing schedule I did, so we have enough time to |
| 21 |                                                    |      | 21 really go over all of these issues. So I have      |
| 22 |                                                    |      | 22 read all of the pleadings, as well as the cases    |
| 1  | P R O C E E D I N G S                              | 1    | that are cited in your pleadings. Mr. Reilly,         |
| 2  | THE COURT: The Patent Quality                      | 2    | this is -- demurrer is your motion. You can go        |
| 3  | Assurance, LLC, and Joseph Uradnik, CL24001093 --  | 3    | right ahead.                                          |
| 4  | (audio interruption) a plea in bar to Count II, a  | 4    | MR. REILLY: Certainly, Your Honor.                    |
| 5  | special plea under the Noerr-Pennington doctrine,  | 5    | With the fraud claim having been withdrawn, I         |
| 6  | a special plea of federal preemption, a demurrer,  | 6    | think we can just focus on abuse of process.          |
| 7  | and then finally a -- comes on for entry of a      | 7    | THE COURT: Right. Yes, I should have                  |
| 8  | protective order, pursuant to the Court's last     | 8    | mentioned that. Yes. The -- I -- and I think          |
| 9  | order, asking you all to draft competing orders if | 9    | also, there was no reason to hear the plea in bar     |
| 10 | you could not be in agreement.                     | 10   | and statute of limitations because that related to    |
| 11 | It strikes me that the best way to                 | 11   | Count II, which has been withdrawn.                   |
| 12 | proceed would be to take up the demurrer --        | 12   | MR. REILLY: That's correct, Your Honor.               |
| 13 | argument on the demurrer first. Does anyone have   | 13   | THE COURT: Right. And so therefore,                   |
| 14 | an objection to doing it that way?                 | 14   | that -- the plea in bar with statute of               |
| 15 | MR. REILLY: Your Honor, for the --                 | 15   | limitations is moot. But yes, that having been        |
| 16 | Craig Reilly, for the defendants, I'll argue these | 16   | withdrawn, we should focus on Counts I, III, and      |
| 17 | in any order that the Court thinks is appropriate  | 17   | IV.                                                   |
| 18 | and in what level of detail you would like.        | 18   | MR. REILLY: Certainly, Your Honor. The                |
| 19 | Again, we understand we're presenting unusual      | 19   | claim of abuse of process fails on demurrer for       |
| 20 | issues to the Court. I was going to suggest        | 20   | several reasons. The first being that                 |
| 21 | starting with federal preemption and               | 21   | administrative proceedings do not give rise to        |
| 22 | Noerr-Pennington, but if the Court would like to   | 22   | abuse of process claims. We cited two federal         |

Transcript of Hearing  
Conducted on August 13, 2025

15 (57 to 60)

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| <p>1 administrative determinations or proceedings that<br/>2 establish legal rights, duties, or privileges of a<br/>3 party after a hearing, and that embody sufficient<br/>4 attributes of judicial proceedings may generate<br/>5 causes of action for abuse of process.<br/>6 Specifically, the Court found that the<br/>7 administrative proceeding should include at least<br/>8 notice to the parties and interest, the<br/>9 presentation of evidence, and/or testimony under<br/>10 oath, and a timely recorded decision by a duly<br/>11 appointed or elected official.<br/>12 Now, by contrast, the vast majority of<br/>13 jurisdictions decline to recognize abuse of<br/>14 process in nonjudicial proceedings. Although<br/>15 Virginia -- although the Virginia Supreme Court<br/>16 did not specifically address this issue of quasi<br/>17 judicial forums, the language it borrowed from a<br/>18 recent treatise suggests it would likely side with<br/>19 the majority of jurisdictions in this question.<br/>20 In Eubanks v. Thomas, the Court quoted,<br/>21 It is a misuse of power of the Court, an act done<br/>22 in the name of the Court or under its authority.</p> | <p>1 THE COURT: Yeah. Which one was the --<br/>2 was the --<br/>3 MR. REILLY: The fraud claim --<br/>4 THE COURT: -- statutory conspiracy?<br/>5 MR. REILLY: That was -- Count III was<br/>6 statutory conspiracy. Count IV was civil<br/>7 conspiracy.<br/>8 THE COURT: Common law -- okay.<br/>9 MR. REILLY: Count II was the withdrawn<br/>10 fraud claim.<br/>11 THE COURT: Correct. All right. Thank<br/>12 you. Now, as to Counts III and IV, the Court has<br/>13 a -- a different view than Mr. Reilly in the --<br/>14 whether the complaint sufficiently alleged the<br/>15 elements of conspiracy. The Court is of the<br/>16 opinion that at the demurrer stage, the<br/>17 determination regarding the nature of the<br/>18 relationship for PQA and Mr. Uradnik, that's not<br/>19 the appropriate time to make that determination.<br/>20 The Court has a different view of the<br/>21 claim that Mr. Reilly cited that Mr. Uradnik would<br/>22 only reveal himself, wouldn't say who he was,</p>                                                                                                                               |
| <p>1 And they were citing for the modern tort law,<br/>2 liability, and litigation. So in that treatise<br/>3 that the Supreme Court cited, they're talking<br/>4 really about the judicial branch of government.<br/>5 Therefore, this Court concludes that an<br/>6 abuse of process claim cannot be supported by<br/>7 actions occurring from a forum located outside of<br/>8 the judicial branch of government. The Court<br/>9 further notes that with respect to an inter partes<br/>10 review proceeding before PTAB, a federal law<br/>11 provides for sanctions for abuse of process in<br/>12 that proceeding.<br/>13 And this -- for this particular wrong,<br/>14 this Court is of the opinion that Virginia's<br/>15 judicial branch does not offer a supplemental<br/>16 remedy. The Court, seeing no -- based on its<br/>17 ruling -- ability really to improve its pleading,<br/>18 the Court will sustain the demurrer and dismiss<br/>19 the matter with prejudice as to Count I. Now, as<br/>20 to Count -- sorry. Which one was the --<br/>21 MR. REILLY: I can give the Court the<br/>22 numbers if --</p>                                                                  | <p>1 other than what was it -- a representative -- as<br/>2 the authorized representative of PQA. The Court<br/>3 sees that as distinguishable from an admission or<br/>4 an allegation that Mr. Uradnik was, in fact, the<br/>5 authorized representative. So the Court does not<br/>6 find that the Plaintiffs had pled that Mr. Uradnik<br/>7 was an agent.<br/>8 However, as to Count IV, the common law<br/>9 conspiracy, the Court, relying on the case of La<br/>10 Bella Dona Skin Care v. Belle Femme Enterprises,<br/>11 LLC, and that is -- give me just a second --<br/>12 294VA243 from 2017, that common law conspiracy is<br/>13 a mechanism for spreading liability among<br/>14 co-conspirators for damages sustained.<br/>15 So, the Court finds that without<br/>16 pleading that -- the common law conspiracy is not<br/>17 something that can stand on its own without<br/>18 pleading another tort. The Count II having been<br/>19 withdrawn, and the demurrer to Count I having been<br/>20 sustained, the Court will also then sustain the<br/>21 demurrer to Count IV and dismiss Count IV with<br/>22 prejudice.</p> |