STATE OF RHODE ISLAND

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: October 28, 2026)

SUZANNE MERRIAM, ***Plaintiff*,**	:	
v.	:	**C.A. No. WC-2020-0016**
JOHN C. MERRIAM AND CHARLOTTE MERRIAM COLE, ***Defendants*.**	:	

DECISION

TAFT-CARTER, J. Before this Court for decision is Defendants John C. Merriam (John) and Charlotte Merriam Cole's (Charlotte) (collectively, Defendants) Motion to Compel and Strike Objections (Defs.' Mot. to Compel), Plaintiff Suzanne Merriam's (Plaintiff) Motion *in Limine* to Exclude Attorney-Client Privilege Communications and Settlement Communications (Pl.'s Mot. *in Lim*.), Defendants' Motion to Enforce Settlement Agreement (Defs.' Mot. to Enforce), and Plaintiff's Renewed Petition for Order of Sale and for the Appointment of a Commissioner Pursuant to [G.L. 1956] § 34-15-16 (Pl.'s March 2026 Pet.).[1] (*See* Defs.' Mot. to Compel 1; Pl.'s Mot. *in Lim*. 1; Defs.' Mot. to Enforce 1; Pl.'s March 2026 Pet. 1.) Jurisdiction is pursuant to G.L. 1956 §§ 8-2-14 and 34-15-16; Rule 26(b) of the Superior Court Rules of Civil Procedure.

I

Facts and Travel

The parties to this action are co-owners of real property located at 73 Fire Lane 3 #B, South Kingstown, Rhode Island 02879 (the Property). (*See* Defs.' Mot. to Enforce 1.)

[1] This case involves an inter-family dispute; because several litigants share the same last name, first names will be used when necessary to avoid confusion.

Defendants are siblings and Plaintiff is the widow of Defendants' brother, George Merriam, III (George). (*See* Joint Ex. 1 (Martha's Deed), at 1; *see also* Joint Ex. 2 (George's Last Will and Testament), at 2.)

In June 2007, Martha Merriam (Martha) conveyed the Property to her children, John, Charlotte, and George. (*See* Martha's Deed 1.) George died in 2013. (*See* Joint Ex. 3 (Certificate of Devise or Descent), at 1.) Plaintiff inherited George's interest in the Property. *See id.*; *see also* George's Last Will and Testament 3. Since that time, there has been an ongoing conflict between the cotenants regarding the management and use of the Property as well as allocation of expenses. (*See* Pl.'s March 2026 Pet. Ex. A (Pl.'s Aff.) ¶ 9.)

Plaintiff filed a Petition for Order of Sale and for the Appointment of a Commissioner on August 17, 2020. (Pl.'s Aug. 2020 Pet.) On September 18, 2020, Defendants objected. (Defs.' Opp'n to Pl.'s Aug. 2020 Pet.) Shortly after, the parties engaged in negotiations to resolve the issue without court intervention. (*See* Defs.' Mot to Enforce 2; *see also id.*, Ex. A (Settlement Negotiations), at 15.) These motions arise from a purported settlement of the case.

On November 23, 2020, Defendants offered Plaintiff the sum of $315,000 to purchase her one-third interest in the Property. (*See* Settlement Negotiations 8.) The proposal, according to Defendants, acknowledged the property value less $75,000 of expenses incurred by Defendants. *See id.* After this, discussions began between counsel resulting in the September 28, 2021 counteroffer sent to Defendants' counsel by Plaintiff's counsel. *See id.* at 1-7. The e-mail stated:

> "My client will accept $340,000 as a buyout of her interest in the property, on the condition that the next quarterly tax bill, which is due, based on my information, on November 1st, be paid by your clients. Our clients were using a rotation and I believe . . . Suzanne was responsible for the next payment. So, my client will accept payment of $340,000 and that your clients are responsible for all future tax bills, including the November 1st quarterly bill." *Id.* at 1-2.

On October 3, 2021, Defendants' counsel responded: "We have an agreement. My clients are in the process of meeting with banks regarding a mortgage/refinance option to free up the cash. I'll be in touch on timeline. In the meantime, do you want us to prepare a settlement agreement?"[2] *Id.* at 1.

Over the next few months, counsel communicated about financing and closing timelines. *See id*. at 17. On December 21, 2021, Plaintiff's counsel was informed that Defendants were approved for financing and a closing was expected to occur before December 31, 2021. *See id.* at 17, 19. On January 26, 2022, Defendants' counsel confirmed that the funds were received and that he was going to prepare a Settlement Agreement and Mutual Release. *See id.* at 18; *see also* Joint Ex. 7 (Closing Disclosure); Joint Ex. 8 (Settlement Agreement).

Defendants' counsel then sent Plaintiff's counsel a document entitled "Settlement Agreement and Mutual Release," saying "take a look and let me know if all set. If so, have her sign and I'll get the counter signature and her check." *Id.* at 23 (Feb. 1, 2022 E-mail); *see also* Settlement Agreement 1. Shortly thereafter, Plaintiff's counsel e-mailed Defendants' counsel: "my client mailed me original signed copies on Friday. So I should be receiving them any day and I will forward to you. Thanks."[3] (Settlement Negotiations 23.) Communications then broke down between counsel. *See id.* at 20-22. Over the next few months, there were various e-mail communications. *See id.* On September 18, 2023, Plaintiff's counsel e-mailed Defendants' counsel the following: "My client was never in agreement with the previous settlement proposal

[2] Upon review of the settlement negotiations, it does not appear that Plaintiff or Defendants were copied on any of the e-mail correspondences. (*See generally* Settlement Negotiations.)

[3] To date, neither party has presented a copy of the Settlement Agreement and Mutual Release that was signed by Plaintiff.

as I previously communicated this to you. Our plan is to file the Petition for Partition with the Court and expect to do so this week." *Id.* at 25.

Subsequently, Plaintiff filed a second Petition for Order of Sale and Appointment of a Commissioner on November 2, 2023 (Pl.'s Nov. 2023 Pet.), to which Defendants objected on November 24, 2023. (*See* Pl.'s Nov. 2023 Pet.; Defs.' Obj. to Pl.'s Nov. 2023 Pet.) Defendants then filed a Motion to Enforce Settlement Agreement on July 2, 2024, to which Plaintiff objected on September 23, 2024. (*See* Defs.' Mot. to Enforce; *see also* Pl.'s Obj. to Defs.' Mot. to Enforce.) This Court heard oral arguments on the matter on November 14, 2024 and rendered its decision on November 27, 2024. (*See* Docket; *see also* Defs.' Mot. to Compel Ex. 1 (Mot. to Enforce Decision), at 1.)

In that decision, this Court examined the binding effect of the settlement negotiations and determined that the statute of frauds barred Defendants' Motion to Enforce Settlement Agreement. (*See* Mot. to Enforce Decision 10.) This Court concluded that the twenty-five pages of e-mail correspondences between Defendants' and Plaintiff's counsels evidenced a writing sufficient to satisfy the statute of frauds. *See id.* at 9-10. However, "[w]ithout evidence demonstrating that Plaintiff actually or apparently authorized her counsel to enter into a settlement agreement, there is an issue of genuine material fact as to whether the purported settlement agreement is signed by the party to be charged therewith[.]" *Id.* at 10. As such, Defendants' motion was denied. *See id.* at 15.

On October 30, 2025, Defendants conducted a videoconference deposition of Plaintiff. (*See generally* Joint Ex. 5 (Pl.'s Dep. Tr.).) During the deposition, Plaintiff testified that in 2021 she was aware of the settlement negotiations, and perhaps aware of the offer, but did not

authorize counsel to settle the case on her behalf. *See* Pl.'s Dep. Tr. 13:20-24, Oct. 30, 2025; *see also id.* at 47:17-21; 50:24-51:1; 56:14-25.

Following Plaintiff's deposition, Defendants propounded a second request for production of documents. (*See generally* Defs.' Mot. to Compel Ex. 7 (Defs.' Req.).) Defendants requested the following:

> "1. Produce all documents, records, receipts, invoices, statements, checks, ledgers, bank statements, or other material reflecting any and all payments made relating to the property from 2020 to the present, including but not limited to:
>
> " a. Property taxes;
>
> " b. Repairs, maintenance, or improvements;
>
> " c. Insurance premiums;
>
> "d. Utilities or other carrying costs.
>
> "2. Produce all emails, correspondence, or written communications in your possession, custody, or control that Plaintiff sent to any person authorizing the settlement of this case in 2021, including but not limited to communications with Thomas Carter and includes any drafts, forwarded copies, and attachments. This request is not seeking communications in which you seek or receive legal advice from your attorneys, merely communications whereby you directed or authorized the settlement of this case or settlement negotiations." *Id.* at 1-2.

Plaintiff objected to both requests, however, only the second request is the subject matter of this motion. (*See generally* Defs.' Mot. to Compel, Ex. 8 (Pl.'s Resp.).) In her objection to Request 2, Plaintiff asserted that the communications are protected by the attorney-client privilege and work-product doctrine. *See id.* at 4-5.

Defendants filed a Motion to Compel and Strike Objections on June 25, 2026, to which Plaintiff objected on August 11, 2026. (*See* Docket; *see also* Defs.' Mot. to Compel; Pl.'s Mem. in Supp. of Obj. to Defs.' Mot. to Compel (Pl.'s Obj. to Defs.' Mot. to Compel).) Plaintiff filed a Motion *in Limine* to Exclude Attorney-Client Privilege Communications and Settlement

Communications on September 22, 2026, to which Defendants objected on September 28, 2026. (*See* Docket; *see also* Pl.'s Mot. *in Lim*.; Defs.' Obj. to Pl.'s Mot. *in Lim*.)

On September 30, 2026, the Property was appraised by Sweeney Real Estate & Appraisal. (*See* Joint Ex. 6 (Appraisal Report), at 1.) Based on "the exterior inspection, public records, documents supplied for the assignment, and market data considered relevant to the effective date," the Property, as of September 26, 2026, was appraised at $2,850,000. *Id.* at 2. Moreover, on October 2, 2026, the parties stipulated and agreed that the Property "cannot by right be divided, or any particular lot, portion, or track thereof be subdivided." (Joint Ex. 4 (Stipulation), at 1 (citing § 34-15-16).)

On March 19, 2026, Plaintiff filed a Renewed Petition for Order of Sale and for Appointment of a Commissioner Pursuant to . . . § 34-15-16, to which Defendants objected on July 29, 2026. (*See* Docket; *see also* Pl.'s March 2026 Pet.; Defs.' Obj. to Pl.'s March 2026 Pet.)

II

Analysis

A

Motion to Compel and Strike Objections

1

Standard of Review

In Rhode Island, "discovery rules are liberal and have been construed to 'promote broad discovery.'" *DeCurtis v. Visconti, Boren & Campell, Ltd.*, 152 A.3d 413, 421 (R.I. 2017) (quoting *Henderson v. Newport County Regional Young Men's Christian Association*, 966 A.2d 1242, 1246 (R.I. 2009)). As a result, "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action[.]" Super. R.

Civ. P. 26(b)(1). Moreover, "[t]he court is bound . . . to give the concept of relevancy, as it applies to discovery purposes, a liberal application[.]" *Borland v. Dunn*, 113 R.I. 337, 341, 321 A.2d 96, 99 (1974).

While Rhode Island discovery is broad, "the imposition of an unreasonable burden is an abuse of the discovery process and will not be tolerated." *Eleazer v. Ted Reed Thermal, Inc.*, No. C.A. 87-624, 1989 WL 1110555, at *1 (R.I. Super. Jan. 27, 1989). Moreover, courts are not "free-standing investigative bodies whose coercive power may be brought to bear at will" against private individuals and entities. *Houston Business Journal, Inc. v. Office of Comptroller of Currency, U.S. Department of Treasury*, 86 F.3d 1208, 1213 (D.C. Cir. 1996). Rather, they are called to "facilitate" and aid in the resolution of justiciable actions brought before them. *See id.*

Finally, "'in granting or denying discovery motions, a Superior Court justice has broad discretion[.]'" *Estate of Chen v. Lingting Ye*, 208 A.3d 1168, 1172 (R.I. 2019) (quoting *State v. Lead Industries Association, Inc.*, 64 A.3d 1183, 1191 (R.I. 2013)). This discretion extends to motions to compel. *Colvin v. Lekas*, 731 A.2d 718, 720 (R.I. 1999) (citing *Corvese v. Medco Containment Services, Inc.*, 687 A.2d 880, 881 (R.I. 1997)).

2

Attorney-Client Privilege

Defendants argue that the documents requested are subject to discovery and that Plaintiff's refusal to produce the documents on the grounds of attorney-client privilege and work product is improper because the privilege does not apply and, to the extent that it does, Plaintiff waived its protections from disclosure. (*See* Defs.' Mot. to Compel 10-11; *see also id.* at 15; *id.* at 18.) Plaintiff, on the other hand, argues that the e-mails and documents requested by

Defendants are protected by the attorney-client privilege and that Defendants offered no evidence of waiver or any applicable exception. (*See* Pl.'s Obj. to Defs.' Mot. to Compel 7.)

"'The general rule is that communications made by a client to his attorney for the purpose of seeking professional advice, as well as the responses by the attorney to such inquiries, are privileged communications not subject to disclosure.'" *Callahan v. Nystedt*, 641 A.2d 58, 61 (R.I. 1994) (quoting *State v. von Bulow*, 475 A.2d 995, 1004 (R.I. 1984)). "The privilege must be narrowly construed because it limits the full disclosure of the truth." *Id.* (citing *von Bulow*, 475 A.2d at 1006). A party asserting the attorney-client privilege must establish the following:

> "'(1) the asserted holder of the privilege is or sought to become a client; (2) the person to whom the communication was made (a) is [the] member of a bar of a court, or his subordinate 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 not (d) for the purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by the client.'" *DeCurtis*, 152 A.3d at 423 (quoting *von Bulow*, 475 A.2d at 1004-05).

Here, there is no dispute that Plaintiff was a client of counsel, a licensed member of the bar acting in his professional capacity. Furthermore, the e-mail communications concerned ongoing settlement communications. Such discussions would necessarily include issues of fact and likelihood of success as well as strategy relating to the case. This clearly would include legal advice or services relating to the Property and not to commit a crime or tort. *See DeCurtis*, 152 A.3d at 423.

Furthermore, Plaintiff testified that she relied on counsel's advice when making settlement decisions. (*See* Pl.'s Dep. Tr. 57:1-2, Oct. 30, 2025.) Therefore, the underlying communications between Plaintiff and counsel indicate her clear intention to obtain legal

opinions. *See von Bulow*, 475 A.2d at 1005 (finding that an attorney-client relationship existed where family members retained an attorney to obtain a legal opinion as to whether the defendant engaged in criminal activity). The issue relevant here is whether Plaintiff waived the attorney-client privilege regarding her communications with counsel.

i

Explicit Waiver

Defendants argue that even if the attorney-client privilege does apply to the documents requested, Plaintiff waived that privilege when she willingly and expressly testified as to things she told her attorneys to do and the nature of their relationship. (*See* Defs.' Mot. to Compel 17-18.) Plaintiff contends that she merely acknowledged that legal advice was provided, which does not destroy the confidentiality of the underlying communications. (*See* Pl.'s Obj. to Defs.' Mot. to Compel 8.) She asserts that Defendants' request exceeds the scope of her testimony because she only recalled agreeing to settle the case and did not mention the substance of her communications with counsel. *See id.* at 9.

"The attorney-client privilege is a personal privilege [that] only the client can implicitly or explicitly assert or waive[.]" *DeCurtis*, 152 A.3d at 423 (internal citations omitted). A client explicitly waives the attorney-client privilege where they disclose a confidential communication to a third party. *See von Bulow*, 475 A.2d at 1005-06 (finding that turning over a written summary, photocopies, and medical records to the police constituted an explicit waiver of the attorney-client privilege). Moreover, disclosure of, or the assertion about, the subject matter of a communication may effect a waiver of the attorney-client privilege. *See id.* at 1007.

Here, Defendants do not assert that Plaintiff disclosed confidential communications to a third party; rather, Defendants maintain that Plaintiff waived the privilege through testimony

elicited at her October 30, 2025 deposition. (Defs.' Mot. to Compel 15.) Defendants assert that she waived her privilege during the following colloquy:

> "Q. So if Mr. Carter's representing that [you signed a document] to me, he's not making an accurate representation?
> "A. He's making a fine representation." (Pl.'s Dep. Tr. 27:4-7, Oct. 30, 2025.)
>
> "Q. Did you tell Mr. Carter that you signed it?
> "A. I don't recall." *Id.* at 29:22-23.
>
> "Q. Were you ever made aware that it was your offer of 340,000 that they accepted?
> "A. It may have been through my attorney.
> "Q. Okay. Did you make that offer?
> "A. Through my attorney, if I made it." *Id.* at 47:17-21.
>
> "Q. (By Mr. Mancini) Suzanne, to your knowledge as you see this document, do you believe this document was signed?
> "A. If I was told to sign it, I signed it.
> "Q. Okay. And --
> "A. But I probably did." *Id.* at 48:23-49:3.
>
> "Q. Okay. But my question to you, did you authorize -- to your knowledge, did you authorize anyone to settle this case on your behalf?
> "A. No.
> "Q. I have nothing further.
> "A. I mean, I made an attempt to settle the case, but clearly it wasn't going to be settled." *Id.* at 51:5-11.
>
> "Q. Do you see where it says, 'From: Thomas Carter'? . . .
> "A. Yes.
> "Q. Right?
> "A. Yes. At the time I may have accepted it, but I did not accept it subsequently. I mean, there are many time frame differences and events that occurred between the writing of these notes and emails and life as it happened." *Id.* at 53:23-54:7.
>
> "Q. But what more would -- I'm asking you, what more would you want to discuss?
> "A. I don't know. It was a process that went on between the attorneys and the clients, and sometimes I was included, and sometimes I was not. Isn't that what representation is called?" *Id.* at 55:6-11.

> "Q. You're not claiming that Mr. Carter went rogue here, correct?
> "A. I'm not saying that at all." *Id.* at 55:15-17.
>
> "Q. (By Mr. Hemond) She said – she said the attorneys were in charge of the process.
> "A. I agreed with whatever they advised me to do." *Id.* at 56:23-25.

During the colloquy, Plaintiff did not disclose the substance of her conversations with her counsel. She merely acknowledged that advice was given and that she relied upon that advice. *See id.* at 56:23-25. This alone is insufficient to explicitly waive the privilege. *See Mortgage Guarantee & Title Co. v. Cunha*, 745 A.2d 156, 160 (R.I. 2000). Therefore, Defendants have failed to demonstrate that there was an explicit waiver of the attorney-client privilege.

ii

Implicit Waiver

Defendants next assert that Plaintiff's statement that counsel lacked the authority to settle the action constituted an implicit waiver of the attorney-client privilege. (*See* Defs.' Mot. to Compel 20.) Moreover, Defendants argue that Plaintiff's oral arguments during the Motion to Enforce Settlement hearing, as well as this Court's subsequent decision, placed the question of settlement authority in issue, creating an implicit waiver of the attorney-client privilege. *See id.* at 18-19. Plaintiff argues that she did not disclose, rely upon, or affirmatively place at issue the substance of any privileged communications with counsel. (*See* Pl.'s Obj. to Defs.' Mot. to Compel 11.)

An implicit waiver of the attorney-client privilege occurs when the "'contents of the legal advice is integral to the outcome of the legal claims of the action.'" *Mortgage Guarantee & Title*, 745 A.2d at 159 (quoting *Metropolitan Life Insurance Co. v. Aetna Casualty & Surety Co.*, 730 A.2d 51, 60 (Conn. 1999)).

> "[T]he contents of the communication is integral to the outcome of the litigation in situations where a party specifically pleads, as an element of the claim, his or her reliance on an attorney's advice, or voluntarily testifies regarding portions of the actual advice contained in the communication, or places in issue the nature of the attorney-client relationship during the course of the litigation." *Id.*

The determination of whether an implicit waiver of the attorney-client privilege has occurred in a particular case "turns on whether the actual content of the attorney-client communication has been placed in issue such that the information is actually required for the truthful resolution of the issues raised in the controversy." *Id.* at 160. Such a waiver is accepted stringently because "'[i]f admitting that one relied on legal advice in making a legal decision put the communications relating to the advice at issue, such advice would be at issue whenever the legal decision was litigated[.]'" *Id*. (quoting *Metropolitan Life Insurance Co.*, 730 A.2d at 61).

Here, Request 2 concerns communications Plaintiff sent to any person authorizing the settlement of this case in 2021. (*See* Defs.' Req 1-2.) Any communication with respect to settlement is not an integral element to the outcome of the legal claims asserted. The documents requested clearly do not relate to an element of this partition action. While sustaining Plaintiff's objection hampers Defendants' goal to settle this matter, the reason posited for disclosure does not "[outweigh] the potential chilling of essential communications." *Metropolitan Life Insurance Co.*, 730 A.2d at 60. Furthermore, Plaintiff's deposition testimony resolves the question of whether counsel had authority to settle the case. Plaintiff testified at her deposition that while her attorney had authority to negotiate on her behalf, he had no authority to settle the case. (*See* Pl.'s Dep. Tr. 50:24-51:1; 56:23-25, Oct. 30, 2025; *see also Mortgage Guarantee & Title*, 745 A.2d at 160.)

After a review of the deposition testimony, it is clear that Plaintiff did not disclose the substance of any communication between herself and counsel. In light of the deposition

testimony, this Court concludes that Defendants have not demonstrated an implicit waiver of the attorney-client privilege.

iii

Privilege Log

Defendants argue that because Plaintiff failed to provide a privilege log after asserting the attorney-client privilege, the privilege should be deemed waived and Plaintiff should be sanctioned for her failure to comply with the request. (*See* Defs.' Mot. to Compel 23.) Plaintiff asserts that because the communications were clearly attorney-client communications and the attorney-client relationship was not legitimately disputed, Plaintiff's assertion of the privilege was sufficient. (*See* Pl.'s Obj. to Defs.' Mot. to Compel 14.)

A party withholding discovery materials "must provide sufficient information, usually in the form of a privilege log, to enable the other party to evaluate the applicability of protection." *Lead Industries Association, Inc.*, 64 A.3d at 1197. Rule 26(b)(5) provides that

> "[w]hen a party withholds information otherwise discoverable under these rules by claiming that it is privileged . . ., the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection." Super. R. Civ. P. 26(b)(5).

"[I]f a party withholding material fails to adequately state the reasons for an objection, he or she may be held to have waived the objections, including those based on privilege." *Lead Industries Association, Inc.*, 64 A.3d at 1197 (citing Super. R. Civ. P. 37(d)). "Minor procedural violations, good-faith attempts at compliance, and other such mitigating circumstances militate against finding waiver." *Id.*

Here, the failure to keep a privilege log is not fatal to Plaintiff's asserted privilege. Plaintiff objected to Defendants' request on the grounds that communications in which parties conveyed settlement authority were confidential attorney-client communications. (*See* Pl.'s Resp. 4; *see also von Bulow*, 475 A.2d at 1005 ("the privilege normally protects a client from having to disclose even the subject matter of confidential communications with his attorney").) Moreover, Plaintiff's counsel made similar objections during Plaintiff's deposition. (*See* Pl.'s Dep. Tr. 14:2-5, 20:11-18, Oct. 30, 2025.) Thus, by adequately stating the reasons for her objection to disclosing attorney-client communications, Plaintiff did not waive her attorney-client privilege.

3

Work-Product Doctrine

Defendants contend that the documents sought are not protected by the work-product doctrine because the request does not seek mental impressions, conclusions, opinions, or legal theories, but factual work product that is subject to disclosure. (*See* Defs.' Mot. to Compel 21.) Plaintiff asserts that Defendants' request targets written communications protected by the attorney-client privilege, not work-product by an attorney. (*See* Pl.'s Obj. to Defs.' Mot. to Compel 12.)

To determine whether the work-product doctrine is applicable, "courts focus on whether, 'in light of the nature of the document or tangible material and the facts of the case, the document can be said to have been prepared or obtained because of the prospect of litigation[.]'" *DeCurtis*, 152 A.3d at 427 (quoting *Cabral v. Arruda*, 556 A.2d 47, 49 (R.I. 1989)). Opinion work product containing the legal theories of an attorney is afforded absolute immunity from discovery. *See id.* Factual work product – *any* material gathered in anticipation of litigation – is subject to disclosure when '"the party seeking discovery demonstrates a substantial need for the

materials and that it cannot obtain the substantial equivalent without undue hardship.'" *Id.* at 428 (quoting *Henderson*, 966 A.2d at 1248). Here, the request's focus is to obtain documents protected by the attorney-client privilege. (*See generally* Defs.' Req.)

Furthermore, the agreement was not finalized. Our Supreme Court has recognized that agreements, once finalized, belong to the parties and are subject to discovery. *See DeCurtis*, 152 A.3d at 428. Here, the communications concerning counsel's authority to resolve this case occurred during the course of litigation. Defendants seek documents in their quest to enforce an agreement that was not finalized. Any communication between Plaintiff and counsel concerning his authority to settle the case falls squarely within opinion work product. *See id.* at 427; *see also* Pl.'s Dep. Tr. 57:1-2, Oct. 30, 2025. Thus, the communications are further protected by the work-product doctrine.

B

Motion *in Limine*

1

Standard of Review

"A motion *in limine* is 'widely recognized as a salutary device to avoid the impact of unfairly prejudicial evidence upon the jury and to save a significant amount of time at the trial.'" *Owens v. Silvia*, 838 A.2d 881, 889 (R.I. 2003) (quoting *BHG, Inc. v. F.A.F., Inc.*, 784 A.2d 884, 886 (R.I. 2001)). "It is well settled that 'decisions about the admissibility of evidence on relevancy grounds are left to the sound discretion of the trial justice.'" *State v. Cook*, 782 A.2d 653, 654 (R.I. 2001) (quoting *State v. Botelho*, 753 A.2d 343, 350 (R.I. 2000)). The trial court's decision on whether to grant or deny a motion *in limine*, based on its propriety, is discretionary. *See Ferguson v. Marshall Contractors, Inc.*, 745 A.2d 147, 151 (R.I. 2000).

2

Attorney-Client Privilege

Plaintiff asserts that any reference or inquiry into attorney-client privileged communications between her and her counsel must be excluded. (*See* Pl.'s Mot. *in Lim*. 3.) Moreover, Plaintiff contends that because she did not voluntarily reveal the substance of her communications or act inconsistently with preserving their confidentiality, she did not waive the attorney-client privilege. *See id.* at 4. Defendants assert that the attorney-client privilege does not shield the communications related to a party's authorization of her lawyer to act on his client's behalf when the existence of that authority is a central question to a dispute. (*See* Defs.' Obj. to Pl.'s Mot. *in Lim*. 5.) Defendants alternatively argue that if the privilege does apply, Plaintiff waived it during her deposition testimony. *See id.* at 6.

This Court has determined that the communications between Plaintiff and her counsel are protected by the attorney-client privilege. Furthermore, Plaintiff did not waive the privilege. This conclusion is dispositive with respect to Plaintiff's motion *in limine*. Therefore, Plaintiff's motion *in limine* is granted.

3

Relevance

Plaintiff avers that, even if the attorney-client privilege does not protect from disclosure of her communications with counsel, the evidence is irrelevant. (*See* Pl.'s Mot. *in Lim*. 5.) Plaintiff argues that because the Settlement Agreement and Mutual Release was never executed the statute of frauds is not satisfied. *See id.* at 6. Defendants assert that documents are relevant because the Court's sole factual question regarding the Motion to Enforce Settlement Agreement

is "whether there was proof that Attorney Carter was acting with authority to settle the case." (Defs.' Obj. to Pl.'s Mot. *in Lim*. 11.)

"'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." R.I. R. Evid. 401. "Evidence which is not relevant is not admissible." R.I. R. Evid. 402.

The requested communications indicating whether Plaintiff authorized counsel to settle this matter would have the tendency to make counsel's authority more or less probable. *See* R.I. R. Evid. 401. However, because the evidence is subject to the attorney-client privilege, and because Defendants deposed Plaintive relative to authority, the communications are irrelevant.

4

Settlement Communications

Next, Plaintiff contends that Defendants must be excluded from introducing or referring to evidence concerning settlement communications between counsel because such evidence is prohibited under Rule 408 of the Rhode Island Rules of Evidence. (*See* Pl.'s Mot. *in Lim*. 7; *see also* R.I. R. Evid. 408.) Defendants argue that the settlement negotiations are being offered to prove the existence of a contract between the parties and prevent fraud upon the court, and not to prove the questions in the underlying partition case. (*See* Defs.' Obj. to Pl.'s Mot. *in Lim*. 18.)

Rule 408 of the Rhode Island Rules of Evidence provides that:

> "Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount." R.I. R. Evid. 408.

"This rule also does not require exclusion when the evidence is offered for another purpose[.]" *Id.* As such, "'unless evidence of a settlement is relevant to some issue, other than the quantum of damages, a trial justice is instructed to bar the admission of such evidence[.]'" *Noonan v. Sambandam*, 296 A.3d 670, 675 (R.I. 2023) (quoting *Votolato v. Merandi*, 747 A.2d 455, 462 (R.I. 2000)).

Here, Defendants seek to introduce the settlement negotiations to demonstrate the executed agreement between the parties. (*See* Defs.' Obj. to Pl.'s Mot. *in Lim*. 18.) For the reasons stated *supra*, the evidence is inadmissible.

C

Motion to Enforce Settlement Agreement

1

Standard of Review

A trial court "has the inherent power to supervise and enforce settlement agreements entered into by parties to an action pending before it." *Tremblay v. Ameriprise Financial Services, Inc.*, No. 14-542S, 2017 WL 3278951, at *2 (D.R.I. 2017) (citing *Dankese v. Defense Logistics Agency*, 693 F.2d 13, 16 (1st Cir. 1982)). "We treat settlement agreements as we would any other contract, binding the parties to the terms of their bargain and permitting signatories of settlement agreements to seek court assistance in enforcing those agreements when another party has reneged." *Furtado v. Goncalves*, 63 A.3d 533, 538 (R.I. 2013) (citing *Homar, Inc. v. North Farm Associates*, 445 A.2d 288, 290 (R.I. 1982)). "'In order to enforce the agreement, the court must find that the parties have agreed on all material terms of the settlement.'" *Rossi v. AC & S, Inc.*, No. 96-1295, 96-1103, 2001 WL 1097791, at *1 (R.I. Super. Sep. 12, 2001) (quoting

Graley v. Yellow Freight System, Inc., 221 F.2d 1334 (6th Cir. 2000)). Moreover, general contract law applies in construing purported settlement agreements. *See Furtado*, 63 A.3d at 538.

"All agreements of parties or attorneys touching the business of the court shall be in writing, unless orally made or assented to by them in the presence of the court when disposing of such business, or they will be considered of no validity." Super. R. Prac. 1.4. "[T]he writing itself must be an integration of the actual settlement and be agreed to by all parties involved. A court cannot compel parties to abide by an alleged settlement when the parties are not in agreement about its terms." *E.W.H. & Associates v. Swift*, 618 A.2d 1287, 1289 (R.I. 1993).

2

Statute of Frauds

Plaintiff contends that this matter is governed by the statute of frauds, the requirements of which have not been met because there is no agreement in writing signed by the Plaintiff to sell her interest in the real property. (*See* Pl.'s Obj. to Defs.' Mot. to Enforce 1.) Defendants assert that the e-mail exchanges between Defendants' counsel and Plaintiff's counsel evidence "that not only did the Parties agree on all material terms of the settlement, but that the Plaintiff signed the release mailed to Plaintiff's counsel on or about February 15, 2022."[4] (Defs.' Reply Brief in Supp. of Their Mot. to Enforce Settlement Agreement (Defs.' Reply in Supp. Mot. to Enforce), at 2.)

When a purported settlement agreement relates to the sale of land, Rhode Island's statute of frauds governs. *See* G.L. 1956 § 9-1-4. The statute "must be strictly construed and strictly

[4] Defendants argued, in the alternative, that the agreement was enforceable under the part performance exception. This Court considered this argument at the November 14, 2024 hearing and determined that part performance was not met because "Defendants have only shown continued possession and minor, impermanent improvements to the property[.]" (Mot. to Enforce Decision 14.)

applied[.]" *Brochu v. Santis*, 939 A.2d 449, 453 (R.I. 2008). The statute of frauds imposes two requirements on the party seeking to enforce the disputed agreement. *See* § 9-1-4(7). The agreement "shall be in writing" and "signed by the party to be charged therewith, or by some other person by him or her thereunto lawfully authorized." *Id.*

This Court has previously found that the twenty-five pages of e-mail correspondences between counsel sufficiently satisfied the writing requirement of the statute of frauds. (*See* Mot. to Enforce Decision 7-8.) The question now before this Court is whether the e-mail correspondences satisfy the signature requirement of the statute of frauds.

i

Signature Requirement

"[T]he existence of a signature in the abstract is not the relevant question in assessing compliance with the statute of frauds." *1100 North Main LLC v. Shoreby Hill Properties*, 348 A.3d 799, 804 (R.I. 2026). Instead, this Court must look "to the written note or memorandum at issue . . . to determine whether it contains a signature from 'the party to be charged.'" *Id.* (quoting § 9-1-4(7)). Here, there is no question that the memoranda – the Settlement Agreement and Mutual Release and the e-mail correspondences between counsel – do not contain a signature from Plaintiff. (*See generally* Settlement Negotiations; *see also* Pl.'s Dep. Tr. 27:3, Oct. 30, 2025; Settlement Agreement 12.)

"Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties conduct." G.L. 1956 § 42-127.1-5(b). Moreover, when contemplating electronic signatures, § 42-127.1-7 provides:

> "(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

> "(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
>
> ". . .
>
> "(d) If a law requires a signature, an electronic signature satisfies the law." Section 42-127.1-5.

An electronic signature is defined as "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." Section 42-127.1-2(8).

While not addressed in Rhode Island, other states and federal jurisdictions have contemplated the issue of whether an e-mail signature satisfies the statute of frauds. In *Waddle v. Elrod*, 367 S.W.3d 217 (Tenn. 2012), the Supreme Court of Tennessee found that an attorney's typed name at the end of an e-mail constituted an electronic signature. *Waddle*, 367 S.W.3d at 229. In finding that the attorney was an authorized agent of his client for the purposes of entering into a settlement, the court found that e-mail correspondence negotiating a settlement satisfied the statute of frauds. *Id.*; *see also Charles Bich and Bruno Bich Trust v. WW3 LLC*, 130 F.4th 623, 631 (7th Cir. 2025); *Lamle v. Mattel, Inc.*, 394 F.3d 1355, 1362 (Fed. Cir. 2005) (interpreting California law).

The purported settlement agreement spans over the course of twenty-five pages of e-mail correspondences in which counsel utilized electronic signatures. (*See* Settlement Negotiations 3, 4-5.) Given the continued communications over e-mail, the circumstances clearly indicate an intention to negotiate through electronic means. *See* § 42-127.1-5. Moreover, the electronic signature would sufficiently satisfy the statute of frauds if there is authority to enter into an agreement, which there is not. *See Waddle*, 367 S.W.3d at 229.

ii

Authority

"'[T]he power to settle lawsuits rests not with the attorneys but with the clients who are parties to the suit[.]'" *McBurney v. Roszkowski*, 875 A.2d 428, 437 (R.I. 2005) (quoting *Parrillo v. Chalk*, 681 A.2d 916, 919 (R.I. 1996)). As such, "an attorney has no authority to settle a case on behalf of a client unless the client has authorized the attorney to do so." *Parrillo*, 681 A.2d at 919. Importantly, "the mere engagement of an attorney does not ipso facto imply authority to compromise his client's case." *Cohen v. Goldman*, 85 R.I. 434, 438-39, 132 A.2d 414, 416 (1957). Moreover, "[f]or an agent's signature to satisfy the statute of frauds, the agent must have actual or ostensible authority to sign the writing and must act pursuant thereto in order to bind his or her principal." *UXB Sand & Gravel, Inc. v. Rosenfeld Concrete Corp.*, 641 A.2d 75, 79 n.1 (R.I. 1994) (citing 72 Am. Jur. 2d *Statute of Frauds* § 379 (1974)).

"It is the conduct of the client and not that of the attorney which must be considered in determining whether apparent authority exists[.]" *Cohen*, 85 R.I. at 439, 132 A.2d at 417 (citing *Ferro Concrete Construction Co. v. United States*, 112 F.2d 488, 488 (1st Cir. 1940)). "[T]o create this authority, the principal (that is, the client) must manifest to the third party (that is, the opposing party and/or its counsel) that he or she 'consents to have the act done on his [or her] behalf by the person purporting to act for him [or her.]'" *Parrillo*, 681 A.2d at 919 (quoting Restatement (Second) *Agency* § 27 (1958); *Cohen*, 85 R.I. at 439, 132 A.2d at 417). Moreover, "[t]o form a binding contract, a party's objective intent to be bound is a necessary precondition to acceptance." *1100 North Main LLC*, 348 A.3d at 804 (citing *Smith v. Boyd*, 553 A.2d 131, 133 (R.I. 1989)).

When asked if she ever authorized anyone to settle this case on her behalf, Plaintiff testified, "[n]o, I did not." (Pl.'s Dep. Tr. 50:24-51:1, Oct. 30, 2025.) Additionally, there is no evidence that Plaintiff was copied on the correspondences pertaining to settlement negotiations. (*See generally* Settlement Negotiations.) After counsel's purported settlement offer on September 28, 2021, he was asked: "[D]o you want us to prepare a settlement agreement?" (Settlement Negotiations 1.) When sending the Settlement Agreement and Mutual Release, Defendants' counsel told him to "take a look and let me know if all set. If so, have her sign and I'll get the counter signature and her check." *Id.* at 23. Given that Defendants' counsel required further approval from Plaintiff regarding the Settlement Agreement and Mutual Release, any purported settlement on September 28, 2021 did not indicate an objective intent to be bound. *See 1100 North Main LLC*, 348 A.3d at 804 ("We cannot conclude that a statement that a seller's attorney will forward a writing to the seller for signature manifests an objective intent to bind that seller.").

As such, Defendants have failed to present Plaintiff's signature, or a signature of Plaintiff's authorized agent, sufficient to satisfy the statute of frauds. For that reason, the statute of frauds bars Defendants' Motion to Enforce Settlement Agreement.

3

Promissory Estoppel

Defendants alternatively assert that Plaintiff is precluded from avoiding enforcement of the terms of the purported settlement under the doctrine of promissory estoppel. (*See* Defs.' Mot. to Enforce 10.) Plaintiff argues that Defendants' assertion is precluded by the statute of frauds. (*See* Pl.'s Obj. to Defs.' Mot. to Enforce 8.)

"To establish promissory estoppel, there must be:

> "1. A clear and unambiguous promise;
>
> "2. Reasonable and justifiable reliance upon the promise; and
>
> "3. Detriment to the promisee, caused by his or her reliance on the promise." *Filippi v. Filippi*, 818 A.2d 608, 626 (R.I. 2003) (citing *Nilavar v. Osborn*, 711 N.E.2d 726, 736 (Ohio App. 1998)).

Our Supreme Court has consistently held that "'any attempt to apply the doctrine of promissory estoppel to real estate . . . agreements so as to take them out of the statute would, in the absence of fraud, defeat the very purpose for which clause Sixth [of the Statute of Frauds] was enacted, specifically, protection against the assertion of unfounded claims.'" *Loffredo v. Shapiro*, 274 A.3d 782, 792 (R.I. 2022) (quoting *Brochu*, 939 A.2d at 453-54).

This Court has determined that the statute of frauds bars Defendants' Motion to Enforce. This conclusion is dispositive with respect to Defendants' assertion of promissory estoppel. Therefore, Defendants' Motion to Enforce is denied.

D

Petition for Partition

1

Partition by Sale

In Rhode Island, actions for partition are governed by statute. *Bianchini v. Bianchini*, 76 R.I. 30, 33, 68 A.2d 59, 61 (1949). Section 34-15-1 provides in pertinent part that "[a]ll . . . tenants in common, who now are or hereafter may be actually seised or possessed of any estate of inheritance in any lands, tenements or hereditaments . . . in their own right . . . may be compelled to make partition between them of those lands . . . by civil action." Section 34-15-1. Thus, tenants in common have an absolute right to seek partition pursuant to § 34-15-1. *See id.*; *Updike v. Adams*, 22 R.I. 432, 434-35, 48 A. 384, 385 (1901). Upon an action for partition

brought pursuant to § 34-15-1, this Court is statutorily authorized to order a partition in kind or by sale pursuant to § 34-15-16. *See* § 34-15-16; *Bianchini*, 76 R.I. at 34, 68 A.2d at 61-62. Section 34-15-16 provides that

> "[i]n an action for partition, the superior court may, in its discretion, upon motion of any party to the action, order the whole premises sought to be divided, or any particular lot, portion, or tract thereof or the interest of the plaintiff or plaintiffs or of the defendant or defendants in the whole premises, or in any particular lot, portion, or tract thereof, to be sold, either at public auction or by private contract, under the direction of the court, by the commissioner or commissioners appointed to divide or sell the same; provided, that if the sale is made by private contract, it shall not be made for less than the sum fixed by the court in its decree authorizing the sale by private contract." Section 34-15-16.

Therefore, § 34-15-16 authorizes this Court to adjudicate the instant dispute. *See id.* Moreover, the General Assembly drafted § 34-15-16 with the intent to

> "provide in the first instance for the partition of realty by metes and bounds giving to each owner therein [their] fair and equitable portion of the same, but in the event of its not being practicable to make such a division, and in that event only, the court may in its discretion order a sale of the property and a division of the proceeds." *Lannon v. Lannon*, 40 R.I. 60, 62, 99 A. 819, 820 (1917).

Here, the parties have stipulated that the Property cannot be divided, or any particular lot, portion, or track thereof be subdivided. (*See* Stipulation 1.) The Property is presently owned by three parties. (*See* Martha's Deed 1; *see also* Certificate of Devise or Descent 1.) Moreover, the three-lot Minor Subdivision Analysis by Pimental Consulting Inc. stated, "this Consultant does not envision any path to a three (3), or more, lot subdivision." (Stipulation 10.) Thus, partition by metes and bounds is impracticable. *See Lannon*, 40 R.I. at 62, 99 A. at 820. Therefore, this Court orders that a partition by sale is the best method to partition the Property pursuant to § 34-15-16. *See* § 34-15-16.

2

Right of First Refusal

Defendants assert that if this Court grants Plaintiff's Petition, the Court should allow Defendants a right of first refusal because the Property has sentimental value to Defendants. (*See* Defs.' Obj. to Pl.'s March 2026 Pet. 16.) Moreover, Defendants argue that if this Court grants them a right of first refusal, it should hold that Defendants may exercise their right by paying Plaintiff the fair market value of the Property. *See id.* at 19-20.

When a party has no particular attachment to a property to be partitioned by sale, the court may afford the other party the right of first refusal to purchase said property at fair market value. *See Nani v. Vanasse*, No. PC/05-995, 2006 WL 8089630, at *7 (R.I. Super. Feb. 23, 2006); *see also Flori v. Bolster*, No. PC/03-6151, 2006 WL 1073423, at *7 (R.I. Super. Apr. 18, 2006). Defendants aver and Plaintiff agrees that "the Property has sentimental value to Defendants since it has been their family's seasonal residence for numerous years and Plaintiff has no similar feeling of attachment[.]" (Defs.' Obj. to Pl.'s March 2026 Pet. 16.) Moreover, while Plaintiff visited the Property frequently with George, she has not visited "at all" following his death. (*See* Pl.'s Dep. Tr. 8:14-22, Oct. 30, 2025; *see also* Settlement Negotiations 8-9.) Given Defendants' attachment to the Property, this Court grants Defendants a right of first refusal to purchase the Property at fair market value as determined by a licensed Rhode Island appraiser. *See Nani*, 2006 WL 8089630, at *7.

IV

Conclusion

For the reasons stated herein, Defendants' Motion to Compel and Strike Objections is **DENIED**. Plaintiff's Motion *in Limine* to Exclude Attorney-Client Privilege Communications

and Settlement Communications is **GRANTED**. Defendants' Motion to Enforce Settlement Agreement is **DENIED**. Plaintiff's Petition for Order of Sale and for the Appointment of a Commissioner Pursuant to R.I. Gen. Laws § 34-15-16 is **GRANTED** and Defendants shall be given the right of first refusal to purchase the Property at fair market value. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Suzanne Merriam v. John C. Merriam and Charlotte Merriam Cole**
CASE NO:	**WC-2020-0016**
COURT:	**Washington County Superior Court**
DATE DECISION FILED:	**November 28, 2026**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**
ATTORNEYS:	
For Plaintiff:	**John O. Mancini, Esq.** **Thomas P. Carter, Esq.**
For Defendant:	**Nicholas J. Hemond, Esq.**