

NOTE: This order is nonprecedential.

## United States Court of Appeals for the Federal Circuit

MISCELLANEOUS DOCKET NO. 830

IN RE SEAGATE TECHNOLOGY, LLC,

Petitioner.

ON PETITION FOR WRIT OF MANDAMUS

Before MICHEL, Chief Judge, NEWMAN, MAYER, LOURIE, RADER, SCHALL, BRYSON, GAJARSA, LINN, DYK, PROST, and MOORE, Circuit Judges.

PER CURIAM.

### ORDER

This petition for writ of mandamus, having been reviewed by the Motions Panel, was thereafter referred to the circuit judges who are in regular active service and authorized to request a poll on whether to hear this matter en banc. A poll was requested, taken, and the court has decided sua sponte that the petition is appropriate for en banc consideration,

IT IS ORDERED THAT:

The parties are invited to address the following questions:

- (1) Should a party's assertion of the advice of counsel defense to willful infringement extend waiver of the attorney-client privilege to communications with that party's trial counsel? See In re EchoStar Commc'n Corp., 448 F.3d 1294 (Fed. Cir. 2006).
- (2) What is the effect of any such waiver on work-product immunity?
- (3) Given the impact of the statutory duty of care standard announced in Underwater Devices, Inc. v. Morrison-Knudsen Co., 717 F.2d 1380 (Fed. Cir.

1983), on the issue of waiver of attorney-client privilege, should this court reconsider the decision in Underwater Devices and the duty of care standard itself?

This petition will be heard en banc on the basis of the new briefs addressing, inter alia, the issues set forth above. An original and thirty copies of all briefs shall be filed, and two copies served on opposing counsel. The Petitioner shall file a brief within thirty days from the date of the filing of this order. The brief from the Respondent is due thirty days thereafter; and any reply brief from the Petitioner is due ten days thereafter. Briefs shall adhere to the type-volume limitations set forth in Federal Rule of Appellate Procedure 32 and Federal Circuit Rule 32.

Motions to file an amicus brief and to file a reply brief are denied as moot. The motion to vacate the temporary stay issued by this court is denied. MAYER, Circuit Judge, would grant the motion.

Briefs of amici curiae will be entertained in accordance with Federal Rule of Appellate Procedure 29 and Federal Circuit Rule 29. Scheduling of oral argument, if any, will be resolved at a later date.

FOR THE COURT

January 26, 2007  
Date

/s/ Jan Horbaly  
Jan Horbaly  
Clerk

cc: Brian E. Ferguson, Esq.  
Debra Brown Steinberg, Esq.  
Alison M. Tucher, Esq.  
U.S.D.C. SD/NY, Clerk  
U.S.D.C. SD/NY, Judge