It Can be Nearly Impossible to Satisfy Some Courts' Privilege Protection Standards: 
Part II

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In his December 24, 2014 “Privilege Points” release, Tom Spahn discusses strict application of the privilege to in house communications:

Last week's Privilege Point described a federal court's unforgiving approach to a company's effort to retrieve one purportedly privileged document out of 30,000 produced.

One week later, another court took a similarly narrow view of a defendant's privilege claim in Kleen Products LLC v. International Paper, Case No. 10 C 5711, 2014 U.S. Dist. LEXIS 163987 (N.D. Ill. Nov. 12, 2014). Among other things, the court applied the following principles to communications to and from co-defendant RockTenn's General Counsel (who also served as that company's Chief Administrative Officer and Senior Vice President and Secretary): (1) "[w]here a document is prepared for simultaneous review by legal and non-legal personnel and legal and business advice is requested, it is not primarily legal in nature and is therefore not privileged," id. at *12 (quoting a 2013 Northern District of Illinois decision); (2) "although [the General Counsel] is copied on three out of the four emails contained within [one email] chain, he offered no legal advice in response," id. at *14; (3) "[i]t is improper to infer as a blanket matter that any email asking for 'comments' that copies in-house counsel along with several other high level managers automatically is a request for 'legal review.'" Id. at *18-19.

Companies' lawyers should train their clients' employees to articulate the basis for privilege in the body of their communications to and from the lawyers. The lawyers should also familiarize themselves with the privilege standards applied by the court in which they find themselves litigating.