

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

Jessica S. Cook, et al.,)	CASE NO. 6:19-cv-03285-TLW
)	
Plaintiffs,)	
v.)	
)	
South Carolina Public Service Authority, an)	
Agency of the State of South Carolina (also)	
known as Santee Cooper), et al.,)	
)	
Defendants.)	
)	

NON-PARTY KEVIN MARSH’S MOTION FOR PROTECTIVE ORDER

During a deposition taken by Plaintiffs and Defendant South Carolina Public Service Authority (“Santee Cooper”) on November 21, 2019, non-party Kevin Marsh invoked, on the advice of counsel, his constitutional right against self-incrimination. Local Rule 30.04(C) requires that counsel “allowing [a client] to refuse to answer a [deposition] question” on the basis of “a privilege” move for a protective order to prevent waiver of the privilege and to preclude any attempt to re-open the deposition. While it is not clear whether Local Rule 30.04(c) is triggered by the invocation of Fifth Amendment rights--there is no doubt that a Local Rule cannot limit Mr. Marsh’s Fifth Amendment rights—he makes this motion in an abundance of caution under Local Rule 30.04(c), as well as Rules 26(c) and 30(d) of the Federal Rules of Civil Procedure, (i) to preserve his invocation of his right against self-incrimination under the Fifth Amendment of the United States Constitution and Article I, Section 12 of the South Carolina Constitution, and (ii) to foreclose any attempt to reconvene the deposition.

Mr. Marsh's invocation of his right against self-incrimination was proper and should be protected by this Court. The Fifth Amendment "assure[s] that an individual is not compelled to produce evidence which later may be used against him as an accused in a criminal action." *U.S. v. Sharp*, 920 F.2d 1167, 1169 (4th Cir. 1990). So does Article I, Section 12 of the South Carolina Constitution. And the right against self-incrimination applies broadly "not only to evidence which may directly support a criminal conviction, but to 'information which would furnish a link in the chain of evidence that could lead to prosecution, as well as evidence which an individual reasonably believes could be used against him in a criminal prosecution.'" *Id.* (quoting *Hoffman v. U.S.*, 341 U.S. 479, 486 (1951)). Mr. Marsh invoked his constitutional rights in response to questions that would have elicited precisely the types of testimony described by the Fourth Circuit in *Sharp*: the questions went to issues that are the subject of the U.S. Department of Justice's ongoing criminal investigation into the construction and abandonment of the nuclear reactors at V.C. Summer or would have elicited testimony providing a link in the chain of inculpatory evidence. The information sought by those questions could thus be a link in the government's theory of criminal liability.

As Mr. Marsh testified, he invoked his privilege on the advice of the undersigned counsel—counsel who also represent Mr. Marsh in the criminal investigation. Any further inquiry into his invocation of his Fifth Amendment rights would thus implicate the thoughts and impressions of Mr. Marsh's criminal counsel and communications protected by the attorney-client privilege. Because Mr. Marsh was entitled to invoke his right against self-incrimination and refuse to answer the questions posed by Plaintiffs and Santee Cooper, he respectfully requests that the Court grant his motion to preserve his invocation of that right and to preclude any attempt to reconvene his

deposition. Counsel certifies that counsel for the parties were notified of this motion. No position has been expressed by any party.

This the 2nd day of December, 2019.

Respectfully submitted,

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/s/ Derk Van Raalte

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