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Offit Kurman Secures Third Circuit Reversal in Significant Case on Attorney-Client Privilege

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Offit Kurman attorney Larry Holmes achieved a significant victory in a case involving the testamentary exception to attorney-client privilege. The case, which raised important questions regarding the scope of privilege in contract disputes, saw the Third Circuit Court of Appeals reverse a district court ruling that ordered the production of privileged communications between Offit Kurman's client and his counsel.

The case arose from a lawsuit brought by the son of the late wife of Offit Kurman's client concerning the inheritance of her share of a co-op apartment in Washington, D.C. The district court initially ordered that emails between the husband and his attorney should be disclosed due to the application of the testamentary exception. This exception typically allows the release of a decedent's communications with their attorney in the context of a will contest where the decedent's intent is at issue. However, in this case, the district court made two crucial deviations from established law:

1. The court applied the testamentary exception in a contract case, not a will contest.
2. The court ordered the disclosure of communications between the living husband and the attorney who represented the couple for their joint estate planning, even though the communications at issue occurred after the decedent's death.

The Third Circuit reversed the district court's decision, reaffirming the foundational principle of attorney-client privilege and rejecting the improper application of the testamentary exception in this case.

"The Third Circuit remains a place where lawyers and clients can talk freely and feel confident that their conversations remain cloaked in privilege," said Larry Holmes, principal and practice group leader of Offit Kurman's Commercial Litigation (North) Practice Group.

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