

Denver C. Snuffer, Jr. (#3032) denversnuffer@gmail.com

Steven R. Paul (#7423) spaul@nsdplaw.com

Daniel B. Garriott (#9444) dbgarrriott@msn.com

Joshua D. Egan (15593) Joshua.d.egan@gmail.com

NELSON, SNUFFER, DAHLE & POULSEN

10885 South State Street

Sandy, Utah 84070

Telephone: (801) 576-1400

Facsimile: (801) 576-1960

Attorneys for Glenda Johnson

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RAPOWER-3, LLC, INTERNATIONAL
AUTOMATED SYSTEMS, INC., LTBI,
LLC, R. GREGORY SHEPARD, and
NELDON JOHNSON,

Defendants.

Civil No. 2:15-cv-00828-DN-EJF

**MOTION FOR PROTECTIVE ORDER:
SPOUSAL PRIVILEGE**

Judge David Nuffer

Glenda Johnson moves for a Protective Order to reset the deposition scheduled for February 20, and to define the permitted scope of inquiry, as follows:

1. Glenda Johnson is not a party, and does not have possession or control over any documents of any Defendant in the above case. She has never been an officer, director, manager or in control over any of the Defendants in the above case. Her knowledge, to the extent she has any about any of the Defendants, is wholly derived from conversations between her and her husband. Therefore, her testimony would be spousal-communication and privileged.

2. Glenda Johnson has no possession or control over any documents belonging to any Defendant.
3. Because she has no information apart from what she obtained from her husband and he does not agree to waive the spousal immunity, she cannot be required to testify in this matter.

ARGUMENT:

ONE SPOUSE CANNOT BE REQUIRED TO TESTIFY AGAINST THE OTHER

Glenda Johnson cannot testify or provide documents to be used against her spouse. Article 1 Section 12 of the Utah Constitution specifically provides that a husband cannot be compelled to testify against his wife and a wife cannot be compelled to testify against her husband. The spousal privilege under federal law is explained in *Trammel v. United States*, 445 U.S. 40, 51 (1980):

“It is essential to remember that the *Hawkins*¹ privilege is not needed to protect information privately disclosed between husband and wife in the confidence of the marital relationship -- once described by this Court as ‘the best solace of human existence.’”

Those confidences are privileged under the independent rule protecting confidential marital communications.² Federal courts have indicated that only the marital communications privilege applies in civil proceedings.³ In contrast, it is typically applied in criminal proceedings. The United States initiated this action originally as a criminal investigation and later as a civil action. Although the criminal case was dismissed prior to the filing of the current action, the threat of

¹ [Hawkins v. United States](#), 358 U.S. 74 (1958).

² [Blau v. United States](#), 340 U. S. 332, 333-34 (1951).

³ See [L-3 Communs. Corp. v. Jaxon Eng'g & Maint., Inc.](#), Civil Action No. 10-cv-02868-MSK-KMT, 2014 U.S. Dist. LEXIS 4364, at *20 (D. Colo. Jan. 12, 2014) (citing [S.E.C. v. Lavin](#), 111 F.3d 921, 925, 324 U.S. App. D.C. 162 (D.C. Cir. 1997)).

criminal prosecution remains. Further, the Receiver in this case has already alleged and argued in two filings with this Court that perhaps IAS should be de-listed and investigated for securities violations by the SEC. Despite the nature of this matter being designated as civil, the information sought will most assuredly be used to support the criminal and security investigations that have been repeatedly suggested by the Receiver.

The other spousal-communication privilege belongs to Glenda Johnson, “the witness-spouse alone has a privilege to refuse to testify adversely; the witness may be neither compelled to testify nor foreclosed from testifying. This modification -- vesting the privilege in the witness-spouse -- furthers the important public interest in marital harmony without unduly burdening legitimate law enforcement needs.”⁴ Like her spouse, she elects to invoke the privilege and declines to provide any testimony involving communications with her spouse.

Everything she knows is derived exclusively from communications with her spouse. She did not learn or obtain any information independent from communications with her spouse. We are at a loss to know how best to advise this client and therefore ask for guidance from the Court on this request for a Protective Order.

DATED this 19st day of February, 2019.

NELSON SNUFFER DAHLE & POULSEN

/s/ Denver C. Snuffer, Jr.
Denver C. Snuffer, Jr.
Steven R. Paul
Attorneys for Defendants

⁴ *Trammel v. United States*, 445 U.S 40, 53 (1980).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **MOTION TO QUASH SUBPOENA FOR PRODUCTION OF DOCUMENTS** was sent to counsel for the United States in the manner described below.

Erin Healy Gallagher
Erin R. Hines
US Dept. of Justice
P.O. Box 7238
Ben Franklin Station
Washington, DC 20044
Attorneys for USA

Sent via:
 Mail
 Hand Delivery
 Email: erin.healygallagher@usdoj.gov
erin.r.hines@usdoj.gov
 Electronic Service via Utah Court's e-filing program

Wayne Klein, Receiver
P.O. Box 1836
Salt Lake City, Utah 84110

Sent via:
 Mail
 Hand Delivery
 Email: wklein@kleinutah.com
 Electronic Service via Utah Court's e-filing program

Jonathan O. Hafen
Joseph M.R. Covey
PARR BROWN GEE & LOVELESS
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Attorneys for Receiver

Sent via:
 Mail
 Hand Delivery
 Email: jhafen@parrbrown.com
jcovey@parrbrown.com
 Electronic Service via Utah Court's e-filing program

/s/ Steven R. Paul
Attorneys for Defendants