

**SAINT REGIS MOHAWK TRIBAL COURT  
IN AND FOR THE SAINT REGIS MOHAWK TRIBE**

In the Matter of White  
Deceased.

Petitioner - Objectant  
Named Executor

)  
) Case. No.: 17-CIV-00008  
)

) **ORDER TO REOPEN HEARING**  
) **ON OBJECTANT ALLEGATION**  
) **OF DECEDENT'S LACK OF**  
) **CAPACITY & UNDUE INFLUENCE**  
)

**Factual and Procedural Background**

The decedent, White never married and has He died on and was predeceased by a brother. The medical records entered into evidence by the Petitioner – Objectant and brother to the decedent, indicates the decedent had been suffering from numerous ailments for a number of years and had been admitted to the The first time the decedent was admitted in After he was discharged, he was offered care services offered by the however, it is alleged he refused care from family and the He was again admitted to the stated he visited his brother/decedent at the and it was clear he was not happy there. The decedent was discharged in At this time, became his caretaker and lived with the decedent in his home at on the Saint Regis Mohawk Indian Reservation.

the decedent, executed a will appointing as the named Executor and sole beneficiary. The will was executed in Franklin County in the State of New York and was signed by the decedent. The will was witnessed and signed by and includes an attached witness Affidavit. The Affidavit is notarized by Furthermore, the Affidavit includes a stamp indicating that the original and the copy had been compared by and been found to be a true and complete copy of the original.

Petitioner-Objectant, filed an Intestate Probate Petition. a status conference was held at the Court. filed with the Court a document that outlined his arguments and attached was a medical document, an invoice from and on the Will and attached Witness Affidavit. The Court sent a notice to and on a status conference was held at the Court.

On the Court granted the Petitioner-Objectant, application and subpoenaed medical documents from the that are

related to the physical and mental health of the decedent. Due to confusion at the Records Office at the [REDACTED] the Court had to again subpoena the records on [REDACTED]

A hearing on the Last Will and Testament of [REDACTED] was scheduled for [REDACTED] however, to ensure the Petitioner-Objectant, [REDACTED] had adequate time to review the 800+ pages of records received from [REDACTED] the Court rescheduled the hearing for [REDACTED]. On [REDACTED] [REDACTED] contacted the Court and asked to reschedule the matter stating she has work obligations. The Court denied her request.

On [REDACTED] the Court had a hearing on the Last Will and Testament of [REDACTED] and the allegations of lack of capacity and undue influence raised by [REDACTED] [REDACTED] were in attendance and self-represented.

As a preliminary matter, [REDACTED] expressed to the Court that she would like to have an attorney present. Furthermore, she stated her husband had spoken to an attorney that agreed to take her case. Prior to the hearing and at this time, the Court has not received a Notice of Appearance from an Attorney on [REDACTED] behalf. [REDACTED] objected and argued she had enough time to prepare and hire an attorney. Ultimately, the Court denied her request based on the fact that she had ample time to hire an attorney.

The Court heard testimony from: [REDACTED] the Petitioner-Objectant; [REDACTED] named Executor; [REDACTED] decedent's brother; and [REDACTED] decedent's brother.

### **Jurisdiction**

The Tribal Court has original jurisdiction over cases, matters, or controversies arising under the laws, ordinances, regulations, customs and judicial decisions of the Tribe. The Court possesses civil jurisdiction over disputes arising in, connected with, or substantially affecting Mohawk Indian Country.<sup>1</sup> Given that the resolution of a person's estate is a civil issue that substantially affects Mohawk Indian Country and there is no Saint Regis Mohawk Tribe law limiting the Court's jurisdiction, the Court assumes jurisdiction to resolve and probate this Estate.

### **Applicable Law**

The present matter involves a deceased tribal member's estate. At the time the case was filed the Saint Regis Mohawk Tribe Probate Law (SRMT Probate Law) was not enacted. The Intestate Probate Petition, filed by the Petitioner-Objectant [REDACTED] was filed on [REDACTED]. The Probate Law was enacted on August 16, 2017. The SRMT Probate Law contains no provision to allow for retroactive application. Therefore, it cannot be applied to the instant matter, however, in instances deemed appropriate and necessary, the Court will use it as guidance to the present matter. As previously stated, the issues presented center on the execution

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<sup>1</sup> SRMT Civil Code § II. A.

of a will, the SRMT LL&LDO contains provisions regarding requirements for an execution of a valid will and the division of estates. Thus, the Court will apply the SRMT LL&LDO to the present matter.

### DISCUSSION

In the instant case, the decedent, [REDACTED] executed a Will on [REDACTED]. The Will named [REDACTED] as Executor and she is also the sole beneficiary. The Petitioner-Objectant, [REDACTED] is challenging the Will based on the arguments the decedent lacked the capacity to execute a will and undue influence. To support his argument of lack of capacity [REDACTED] entered into evidence medical records to show the decedent had been diagnosed with dementia prior to executing the will. In opposition, [REDACTED] contends that she cared for the decedent [REDACTED]. She provided the Court with Affidavits from [REDACTED] that attest she was the decedent's caregiver.

In the instant case, the issues presented to the Court are: (1) whether the decedent possessed a sound mind, or in other words had testamentary capacity, at the time, he executed the [REDACTED] and (2) whether [REDACTED] the named Executor, unduly influenced the decedent to execute the will.

### Analysis

The SRMT LL&LDO provides in relevant part to the Court with the criteria for the required competence to execute a will. Specifically, Section V. B. 2. states, "[a]ny person eighteen (18) years of age or a minor lawfully married and of sound mind may make a Will. 'Sound mind' generally means someone who has not been deemed incompetent in a prior legal proceeding."<sup>2</sup> In applying this section of the LL&LDO, this Court stated in *Estate of Swamp*, "[a] person making a will must be of sound mind; he must understand what he is doing; must understand the contents of the will; and must intend to be making a will for the distribution of his property."<sup>3</sup> Furthermore, a person making a will must not be unduly influenced or coerced in any way making a will.<sup>4</sup> The Court will take up each issue and start with the required competency to execute a will.

#### *Sound Mind and Competency*

The SRMT LL&LDO states that a person must be of eighteen (18) years of age and be of sound mind.<sup>5</sup> Sound mind is not defined within the text of the SRMT LL&LDO, however, this Court stated in *Estate of Swamp*, a person making a will must understand what he is doing, must understand the contents of the will, and must intend to be making a will for the distribution of his property.<sup>6</sup> In *Estate of Swamp*, this Court was provided testimony from close friends of the decedent, a nurse, and a paralegal that helped the decedent prepare and execute his will. Further,

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<sup>2</sup> SRMT LL&LDO § V. B. 2.

<sup>3</sup> *Estate of Swamp*, 16-CIV-00012, 10-11 (Aug. 17, 2017).

<sup>4</sup> *Id.* at 11.

<sup>5</sup> SRMT LL&LDO § V. B. 2.

<sup>6</sup> *Estate of Swamp*, 16-CIV at 10 – 11.

this Court was provided with the medical records of the decedent in that matter. The Court primarily focused its analysis on the capacity of the decedent at the time he executed his will by assessing the testimony provided by the paralegal. The Court noted the absence of proof in regards to the lack of the decedent's competence at the time he conferred with the paralegal or at any time of the execution of his last will and testament.<sup>7</sup> This demonstrates that it is critical for the Court to have evidence that provides insight into the decedent's capacity at the time the will was executed.

In the instant case, the Petitioner-Objector, [REDACTED] has provided the Court with medical evidence demonstrating he was diagnosed with dementia prior to the execution of the will, however, this does not help the Court reach a decision as to the capacity of the decedent *at the time* of the signing of the will. Under the circumstances, there is simply no evidence provided to help the Court reach a determination on the issue of capacity. Due to the ultimate decision to reopen the hearing, the Court will continue in its analysis and not reach a final decision on the issue of sound mind/testamentary capacity.

The Court notes that the only case it has for guidance that was decided on similar facts and issues raised is the *Estate of Swamp*. The issue of sound mind/testamentary capacity is a complex matter that has been extensively addressed by other jurisdictions, including New York Courts.<sup>8</sup> The SRMT LL&LDO provides the Court with the formal requirements for the execution and attestation of wills. Similar to the SRMT LL&LDO, the New York Consolidated Laws Estates Powers and Trusts (EPTL), Section 3-1.1 requires a person executing a will to be eighteen years of age or over and of sound mind and memory.<sup>9</sup> Similarly as the SRMT LL&LDO, the New York EPTL does not define what constitutes "sound mind and memory." Rather, this has been defined by the New York Courts. The New York Courts "have looked at whether the decedent understood the nature and consequences of executing a will; whether the decedent knew the nature and extent of the property he/she was disposing of; and whether he/she

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<sup>7</sup> *Estate of Swamp*, 16-CIV at 13.

<sup>8</sup> The Court notes the SRMT Civil Code allows for the application of New York State law to be applied in instances there is no other controlling principle of Mohawk Law, the application of the New York State law is consistent with principles of sovereignty, self-government, and self-determination, and the application is in the overall interest of justice and fairness to the parties. *SRMT Civil Code § V. B. (i) – (iii)*. New York law does not automatically apply to this Court, it must be requested and the Court applies the aforementioned analysis. *Cook v. Cook*, 13-CIV-00006, 7-9 (Feb. 5, 2014). In the instant case, the Objectant-Petitioner requested this Court to apply New York Courts' case law to the present matter, not New York written law or procedure. The SRMT Civil Code is silent as to the application of New York or other Courts' case law. In *Estate of Swamp*, this Court applied a two-part test established in *Landgraf v. USI Film Products* to a probate matter before this Court. This Court noted that the *Landgraf* decision is not binding on this Court, but looked to it for guidance because this Court's case law is silent. The Court applied the analysis established by the United States Supreme Court and noted its application is consistent with the principles of tribal sovereignty, self-government, and self-determination as it ensures the Court is respectful of legislative intent. See *Estate of Swamp*, 16-CIV-00017 (Jan. 31, 2018). In the instant case, the Objectant-Petitioner cited to New York case law in his arguments and this Court's case law is silent. Furthermore, the application of the standard and burden of proof ensures the protection of tribal members' estates and protects the ability of tribal members to freely dispose of their property, thus the Court will look to New York Courts' case law in this decision.

<sup>9</sup> New York Consolidated Laws, Estates, Powers and Trusts Law – EPT § 3-1.1 Who may make wills of, and exercise testamentary powers of appointment over property.

knew those would be considered the natural objects of his/her relations with them.”<sup>10</sup> The New York Courts have applied this standard in assessing witnesses’ testimony related to the decedent’s capacity in executing the will.<sup>11</sup> Analogous to this Court’s decision in *Estate of Swamp*, the New York Courts’ decisions demonstrate that it is a critical part of the analysis to have evidence that demonstrates the decedent’s capacity at the time the will was executed. Furthermore, the New York Courts assess whether the decedent “knew those would be considered the natural objects of his/her relations with them.” In general, New York Courts have assessed whether the decedent showed signs of knowing who could be an heir of their property and their relations with them.<sup>12</sup> Further, the New York case law demonstrates that the burden is on the proponent, the person wanting the Court to probate the will, to offer evidence to the Court.<sup>13</sup> In the instant case, the named Executor and Proponent of the will, [REDACTED] has not provided any evidence to the Court.

Although New York case law is not binding on the Court, the Court will use its analysis and case law to help guide the Court in the instant case, where the Court’s analysis is silent in *Estate of Swamp*. At this point, the Court turns to the issue of undue influence raised by the Petitioner-Objectant [REDACTED]

#### *Undue Influence*

As previously indicated in this Court’s decision, a person making a will must not be unduly influenced or coerced in any way making a will. The SRMT LL&LDO and other written tribal laws do not provide the Court with a definition of what actions constitute undue influence. In instances where there is no tribal law to guide the Court in determining what constitutes undue influence, the Court has the authority to look elsewhere, including other jurisdictions as may be appropriate.<sup>14</sup> For guidance the Court looked to New York Consolidated Laws Estates Powers and Trusts (EPTL).<sup>15</sup> As previously stated, the New York EPTL sets out the formal requirements for the execution and attestation of wills, however, the New York EPTL does not define “undue influence.” Rather, similar to sound mind/testamentary capacity the Courts have established the standard to assess allegations of undue influence. Unlike, the previous issue raised by the allegation of lack of capacity, this Court has not in previous cases, resolved an issue involving an

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<sup>10</sup> See *Estate of John G. Alibrandi*, 104 A.D.3d 1175 (2013).

<sup>11</sup> In the matter of the *Estate of John G. Alibrandi*, the Court heard testimony from the two witnesses to the will’s execution, decedent’s longtime attorney, and a paralegal with the attorney’s law firm. The Surrogate Court looks to “(1) whether he understood the nature and consequences of executing a will; (2) whether he knew the nature and extent of the property he was disposing of; and (3) whether he knew those who would be considered the natural objects of his relations with them.” *Estate of John G. Alibrandi*, 104 A.D. at 1175.

<sup>12</sup> In the matter of the *Estate of John G. Alibrandi*, the Court stated “. . . the [d]ecedent did not include objectant, a child of decedent’s predeceased daughter, in the will because he “had already made a gift to her.” Indeed, Objectant confirmed that she had “borrowed” money from decedent in the past. Further, Objectant testified that there was a breakdown in her relationship with decedent approximately one year before he executed the will. Thus, the record reflects that decedent “knew those who would be considered the natural objects of his bounty and his relations with them.” *Estate of John G. Alibrandi*, 104 A.D. at 1177.

<sup>13</sup> *Id.*

<sup>14</sup> SRMT Civil Code § V. A. 1-6.

<sup>15</sup> The Court notes it applied the same approach in *Estate of Swamp. Estate of Swamp*, 16-CIV-00012, 10-11 (Aug. 17, 2017).

allegation of undue influence.<sup>16</sup> The Court will apply the same approach as it did in addressing the lack of capacity, it will look to New York case law for guidance.

New York Courts have established that the burden of proof to establish undue influence remains on the party who is asserting the allegation.<sup>17</sup> Furthermore, in order to deny a will for probate, based on undue influence, an Objectant, the person raising the allegation, must establish that, “the influence exercised amounted to a moral coercion, which restrained independent action and destroyed free agency, or which, by importunity which could not be resisted, constrained the testator to do that which was against his/her free will and desire.”<sup>18</sup> The focus of undue influence is on a third party and whether this person imposed their own desires upon the testator.

During the hearing, the Petitioner-Objectant, [REDACTED] contended that due to [REDACTED] alleged confidential relationship, by and through her authority as Power of Attorney, she has a burden to demonstrate that she did not influence the decedent. At this point, the Court must decide whether this portion of the analysis should be added. Similar to sound mind/capacity and undue influence the Court has no guidance from written tribal law. Furthermore, this Court has never addressed this argument in its cases. For guidance the Court looked to New York Consolidated Laws Estates Powers and Trusts (EPTL). The New York EPTL does not include this analysis in its law. Rather, this analysis has been developed by the New York Courts. The Court notes other jurisdictions have adopted such analysis.<sup>19</sup> New York case law dictates that in the event that there is a “confidential relationship” between the alleged influencer and there were other “suspicious circumstances” present the person in the confidential relationship must explain the circumstances surrounding the relationship between him/her and the decedent.<sup>20</sup> Similar to the Court’s decision to adopt the analysis and tests used in regards to capacity and undue influence the Court will use this analysis to resolve this matter. The question becomes, did [REDACTED] have a “confidential relationship” with the decedent?

A confidential relationship is defined as “one that is of such a character as to render it certain that [the parties] do not deal on terms of equality.”<sup>21</sup> Furthermore, it is such inequality that may occur from either one party’s superior knowledge of the matter derived from a fiduciary relation, or from an overmastering influence or from the other’s weakness, dependence, or trust justifiable reposed.<sup>22</sup> In the instant case, it is alleged she was given Power of Attorney authority and exercised control over the decedent’s dealings. The Petitioner-Objectant, [REDACTED] contended she was given such authority, however, he did not provide any documentation stating she had such authority. The Court notes that the named Executor [REDACTED] did not object to the allegation in the Court. The record indicates to the Court that she was a live in caretaker to the decedent and the decedent was suffering from ailments including dementia. It is clear that she

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<sup>16</sup> The Court notes a claim of undue influence was raised in *Estate of Swamp*, however, there was no evidence submitted to support the allegation. Therefore, the Court did not have to assess the claim. *Estate of Swamp*, 16-CIV at 13. *Estate of Swamp*, 16-CIV-00012, 13 (Aug. 17, 2017).

<sup>17</sup> See generally, *Estate of Steven Makitra*, 1581 101 A.D. 3d 1579 (2012).

<sup>18</sup> See generally, *Estate of John G. Alibrandi*, 104 A.D.3d 1175, 1177 (2013).

<sup>19</sup> See generally, *In re Albert Staico, Jr.* 143 A.3d 983 (Pa. Super. Ct. Feb. 29, 2016).

<sup>20</sup> See generally, *Matter of Neenan*, 35 A.D.3d. 475 (2006).

<sup>21</sup> *Matter of Audrey Bonczyk et al. v. Tina Williams*, 119, 1125 A.D.3d 1124 (July 10, 2014).

<sup>22</sup> *Id.* at 1126.

lived with him and assumed the role as his caretaker. Thus, the Court finds an existing confidential relationship between the decedent and [REDACTED] and she now has the burden to explain the circumstances of the relationship.<sup>23</sup>

The New York Courts analysis dictates that there is additional component to the undue influence analysis. In order to establish undue influence the Objectant must identify the claimed acts constituting the influence and the times and places when and where such acts occurred.<sup>24</sup> New York case law demonstrates that the concept of undue influence does not readily lend itself to precise definition or description, however, the case law provides this Court with guideposts in order to guide the Court in assessing claims of undue influence. Similar to its decision to utilize New York case law for addressing the issue of sound mind/capacity, the Court will adopt the analysis used by the New York Courts to determine whether the [REDACTED] the named Executor, unduly influenced the decedent.

The Petitioner-Objectant, [REDACTED] testified that [REDACTED] had Power of Attorney authority and exercised control over the decedent's healthcare and his personal dealings. He testified that [REDACTED] forced his/decedent's sister, [REDACTED] out of the decedent's house. As previously stated, [REDACTED] provided the Court with medical records. It can be implied that [REDACTED] is alleging due to his brother/decedent's poor health he was vulnerable and could be easily taken advantage of by [REDACTED]. Even though this Court has found a confidential relationship the evidence submitted by the Petitioner-Objectant it still does not give the Court sufficient evidence in order to address the question of undue influence. The Petitioner-Objectant has not provided evidence of specific instances where [REDACTED] unduly influenced or coerced the decedent. And, the named Executor, [REDACTED] did not provide the Court with an explanation of their confidential relationship. The Court has no evidence to assess whether the named Executor, [REDACTED] influence "exercised amounted to a moral coercion, which restrained independent action and destroyed free agency, or which, by importunity which could not be resisted, constrained the testator to do that which was against his/her free will and desire."<sup>25</sup> Therefore, the Court does not reach a final decision on the issue of undue influence. At this point, the Court cannot justifiably reach either issue raised by the Petitioner-Objectant [REDACTED] with the evidence before it.

In another matter, *Sharrow v. Sharrow*, the Court reopened a case in order to allow an opportunity for the Complainant to provide the necessary evidence in order for the Court to make a determination as to whether a will was validly created and executed in accordance with tribal law. The Court was cognizant of the fact that the process of proving a will is not made readily apparent by tribal law. The same is true in the instant case. None of the aforementioned analysis is readily apparent in the SRMT LL&LDO. Furthermore, for the majority of the issues raised, this is a case of first instance and, as a result, the Court does not have case law on point. Therefore, the parties would not even have case law to look to in order to understand how the Court might address the issues raised. In order to ensure that the parties' cases are fairly heard,

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<sup>23</sup> *Matter of Neenan*, 35 A.D.3d. at 477.

<sup>24</sup> *Id.*

<sup>25</sup> *Estate of John G. Alibrandi*, 104 A.D.3d 1175, 1177 (2013).

the Court reopens the hearing in order to provide both parties the opportunity to provide the Court with any additional evidence.<sup>26</sup>

The Court is cognizant that both parties are self-represented and this case presents a complex legal analysis, therefore, the Court provides the following evidentiary guidelines to the parties:<sup>27</sup>

1. The named Executor [REDACTED] must demonstrate that the decedent understood what he was doing; understood the contents of the will; and intended to be making a will for the distribution of his property.<sup>28</sup>
  - a. The focus, as demonstrated in *Estate of Swamp*, is on the decedent's state of mind at the time of executing the will.
2. The Petitioner-Objectant, [REDACTED] must establish that, "the influence exercised amounted to a moral coercion, which restrained independent action and destroyed free agency, or which, by importunity which could not be resisted, constrained the testator to do that which was against his/her free will and desire."<sup>29</sup>
  - a. The Petitioner-Objectant, [REDACTED] must identify instances of due influence and the times where such acts occurred.<sup>30</sup>
3. The Proponent of the Will/the named Executor, [REDACTED] must explain the circumstances surrounding the relationship between her and the decedent.

The Court notes each party was self-represented at the [REDACTED] hearing. At this time, either party at this time may choose to hire an attorney to represent them for the duration of this case, however, the attorney must currently be or become a member of the Saint Regis Mohawk Tribal Bar and file a Notice of Appearance with the Court prior to the date of the hearing.

### ORDER TO REOPEN HEARING

It is hereby ADJUDGED, ORDERED, AND DECREED that:

1. A confidential relationship existed between the decedent, [REDACTED]

<sup>26</sup> The Court notes redacted versions of this Court's probate case law is available upon request.

<sup>27</sup> The Court notes it has provided framework for its legal analysis in previous cases to self-represented parties. Chief Judge Peter J. Herne wrote a letter addressing a question posed by a party regarding summary judgment and provided the requirements for the motion. See *Sample Lumber v. Arrow White*, 12-CIV-00007, available at, [http://www.srmt-nsn.gov/uploads/site\\_files/Sample\\_Lumber\\_v\\_White\\_12-CIV-00007.pdf](http://www.srmt-nsn.gov/uploads/site_files/Sample_Lumber_v_White_12-CIV-00007.pdf).

<sup>28</sup> *Estate of Swamp*, 16-CIV-00012, 10-11 (Aug. 17, 2017).

<sup>29</sup> See generally, *Estate of John G. Alibrandi*, 104 A.D.3d 1175, 1177 (2013).

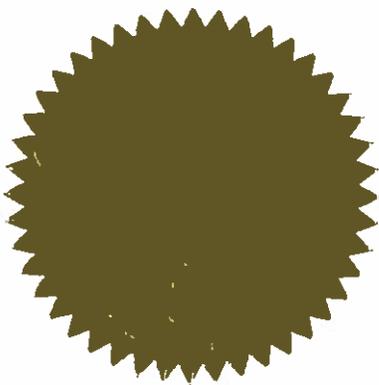
<sup>30</sup> *Id.*

2. The Court makes no final finding as to the allegations of lack of capacity and undue influence.
3. [REDACTED] the named Executor, is **ORDERED** to submit to the Court all documentation involving her authority as Power of Attorney no later than by **March 16, 2018**.
4. The Court will subpoena [REDACTED] witness to Will; [REDACTED] witness to Will; and [REDACTED] Notary. [REDACTED] must provide the Court with the address of [REDACTED] by **February 16, 2018**.
5. The Petitioner-Objectant, [REDACTED] is **ORDERED** to submit to the Court all the remaining medical records and documentation in his possession that were obtained by and through the Court's subpoena, [REDACTED] no later than by **March 16, 2018**.<sup>31</sup>
6. The Petitioner-Objectant, [REDACTED] and the named Executor of the Will dated [REDACTED] are **ORDERED** to appear on **March 27, 2018 at 1:00 p.m.** for a proceeding on the allegation of the decedent's capacity and undue influence. The Petitioner-Objectant, [REDACTED] and the named Executor [REDACTED] may admit additional written documentation or ask additional witnesses to testify.

Signed by my hand this 12<sup>th</sup> day of February, 2018.



Carrie E. Garrow, Chief Judge  
Saint Regis Mohawk Tribal Court



<sup>31</sup> The Court notes it requested “[c]opies of the medical records of former [REDACTED] This will specifically include discharge records for [REDACTED] records relating to diagnoses of dementia for [REDACTED] health conditions as of [REDACTED] and any other requested information by the Petitioner [REDACTED] (Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action to [REDACTED])”