

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Lamb v. Sun Life Assurance Company of
Canada,*
2025 BCSC 2172

Date: 20251103
Docket: S233711
Registry: Vancouver

Between:

Dale Keith Lamb and DKL Financial Services Inc.

Plaintiffs

And

**Sun Life Assurance Company of Canada, and in French, Sun Life du Canada,
Compagnie D'Assurance-Vie, Sun Life Financial Distributors (Canada) Inc.,
and in French, Distribution Financière Sun Life (Canada) Inc.,
and Sun Life Financial Investment Services (Canada) Inc.,
and in French, Placements Financière Sun Life (Canada) Inc.**

Defendants/Plaintiffs by Counterclaim

And

**Dale Keith Lamb, DKL Financial Services Inc.,
and Assante Financial Management Ltd., and
in French, Gestion Financière Assante Ltée.**

Defendants by way of Counterclaim

Before: The Honourable Madam Justice Morellato

Reasons for Judgment

Counsel for the Plaintiffs/Defendants by way
of Counterclaim, Dale Keith Lamb and DKL
Financial Services Inc.:

D.P. Church, K.C.
E. Dolinsky

Counsel for the Defendants/Plaintiffs by
Counterclaim:

A. Cocks
J. Ruttle

Counsel for the Defendant by way of
Counterclaim, Assante Financial
Management Ltd.:

A.H. Sabur
Y. Gao

Place and Dates of Hearing:

Vancouver, B.C.
October 1-2, 2025

Place and Date of Judgment:

Vancouver, B.C.
November 3, 2025

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I. INTRODUCTION

[1] On October 1 and 2, 2025, I heard two applications brought by Sun Life Assurance Company of Canada (“Sun Life”) wherein it sought: 1) an order to permit further amendments to the Further Amended Counterclaim; and 2) an order for further disclosure of documents by Mr. Dale Lamb and DKL Financial Services Inc. (“DKL”).

[2] As the trial of this matter is currently scheduled to begin on February 9, 2026, and as Sun Life has been attempting to be heard by the court on the issue of amending its counterclaim since the Spring of this year, I rendered my ruling from the bench, at the end of two extended hearing days on October 2, 2025, with reasons to follow. These are those Reasons. Essentially, I allowed some of the further amendments to Sun Life’s Amended Counterclaim and some of the additional disclosure sought by Sun Life.

II. BACKGROUND FACTS

[3] The plaintiff, Mr. Lamb, is a life insurance agent and investment advisor. He operates his business through DKL Financial Services Inc. (together, “DKL Parties”). Until July 2020, the DKL Parties sold life insurance and financial products, in an exclusively contractual basis, on behalf of Sun Life. The relationship between Sun Life and the plaintiffs was governed by two advisor agreements. The first agreement applied to insurance products, and the second agreement applied to mutual fund products (together, the “Advisor Agreements”).

[4] Each of the Advisor Agreements included terms such as:

- a) the DKL Parties were authorized to act as agents of Sun Life for the purposes of:
 - i) marketing investment funds and insurance products to the public;
 - ii) soliciting and obtaining applications for insurance products from potential clients;
 - iii) soliciting clients to open mutual fund accounts;

- b) all of the clients would be the exclusive clients of Sun Life, not the DKL Parties;
- c) the DKL Parties were authorized on behalf of Sun Life to provide “services”, including providing advice, to clients in respect of insurance products and mutual funds;
- d) all information with respect to clients would be confidential and would be the exclusive property of Sun Life;
- e) the DKL Parties were prohibited from disclosing or using any confidential information or data relating to any clients other than on behalf of Sun Life;
- f) the DKL Parties would act in the best interests of Sun Life and its clients;
- g) upon termination of the Advisor Agreements, Mr. Lamb and DKL were required to cease providing any “services” to the clients of Sun Life;
- h) the DKL Parties agreed that, for a period of two years following termination of the Advisor Agreements, they:
 - i) would not solicit business from any of the clients of Sun Life; or
 - ii) provide “services” in competition with Sun Life.

[5] The Advisor Agreements also provided for the quantum of commissions that would be paid if the Advisor Agreements were terminated. In particular, there was an incentive program contained in a provision called “commissions on release” (“CORe”). Pursuant to the provisions of CORe in the Advisor Agreements, upon termination:

- a) all of the clients “serviced” by the advisor would be released by the departing advisor and assigned to a new Sun Life advisor;
- b) the eligible departing advisor would receive a monthly commission payment for a period of 10 years. Those continuing payments are conditional upon compliance with certain conditions; and
- c) of primary importance for this action, the Advisor Agreements state that the continuation of CORe payments is conditional upon the departing advisor forsaking work for competitors of Sun Life.

[6] On July 2, 2020, the DKL Parties gave notice of their termination of the two Advisor Agreements to Sun Life. That notice became effective July 16, 2020.

[7] Sun Life asserts that, in September 2020, it became aware that the DKL Parties had breached the compliance requirements of the Advisor Agreements by providing “services” on behalf of Assante Financial Management Ltd. (“Assante”). Sun Life terminated the CORE commission payments to the plaintiffs that month.

[8] The DKL Parties filed their Notice of Civil Claim against Sun Life for the non-payment of their CORE commission payments on October 13, 2020. Sun Life filed its response to civil claim and its counterclaim on November 6, 2020.

[9] Sun Life’s counterclaim named the plaintiffs as well as Assante, alleging that:

- a) based upon the Advisor Agreements, the DKL Parties owed various obligations and duties to Sun Life including fiduciary, contractual, confidentiality, and exclusivity duties;
- b) both before and after departing from Sun Life, the DKL Parties breached their various duties and obligations;
- c) Assante induced the DKL Parties to breach those duties and obligations; and
- d) Assante knowingly participated, and assisted, in the DKL Parties’ breaches of fiduciary duties.

[10] In the original counterclaim, Sun Life sought various forms of relief, including the following:

- a) As against the DKL Parties:
 - i) a declaration that they breached the Advisor Agreements;
 - ii) a permanent injunction preventing them from breaching the Advisor Agreements or using any confidential information;
 - iii) the return of all confidential information;
 - iv) disgorgement of profits from the breach of the Advisor Agreements; and
 - v) damages (claimed under various heads such as breach of contract and breach of fiduciary duty);
- b) As against Assante:
 - i) damages for inducing breach of contract;

- ii) damages for knowing participation or assistance in breaches of fiduciary duty; and
- iii) an accounting of all proceeds from the knowing assistance in breach of fiduciary duty.

[11] On November 13, 2020, the DKL Parties delivered a demand for further and better particulars. Sun Life responded on December 4, 2020.

[12] On December 18, 2020, the DKL Parties file a reply to Sun Life's response to civil claim, and a response to counterclaim. Assante filed its response to counterclaim on February 17, 2021.

[13] By letter dated April 22, 2022, Assante sought disclosure of Sun Life's documents relating to Sun Life's claim for, and calculations of, damages. Sun Life did not respond to that demand almost a year later in March 2023.

[14] Sun Life then filed an Amended Counterclaim on March 9, 2023. In that Amended Counterclaim, Sun Life continued to seek 1) a declaration that DKL Parties breached the Advisor Agreements; and 2) a permanent order requiring the opposing parties to deliver all confidential information to Sun Life. Further, Sun Life removed all claims for damages and sought:

- a) a declaration that Assante induced the DKL Parties to breach the Advisor Agreements;
- b) disgorgement of profits from the DKL Parties relating to breaches of the Advisor Agreement; and
- c) an accounting of all proceeds received by, and disgorgement of, any profits made by Assante in respect of both "inducing breach of contract" and the "knowing assistance" in the breaches by the DKL Parties of their various duties and obligations towards Sun Life.

[15] Having removed various claims for damages, Sun Life took the position that it would not be providing further documents relating to its damages claim because it was no longer claiming any pecuniary damages.

[16] In November 2023, Assante brought an application seeking to strike or dismiss Sun Life’s counterclaim against it. Justice Ross, in his Reasons for Judgment indexed at 2024 BCSC 243, dismissed Assante’s application, concluding that the “knowing assistance” claim by Sun Life against Assante was not bound to fail and that there was a genuine issue to be tried.

[17] It is notable that in the course of his Reasons for Judgment, Justice Ross addresses Assante’s submission that Sun Life had failed to provided any evidence of either pecuniary loss, or any other sort of damage such as loss of reputation, such that there was no evidence of a constituent element of tort and, therefore, no genuine issue to be tried. In this regard, Justice Ross reasons:

[68] In answer to this submission, Sun Life argues that Assante confuses the concepts of “damage” and “damages”. Sun Life submits that it no longer seeks pecuniary “damages” against Assante, but it continues to plead that it suffered “injury” or “damage” by Assante’s actions.

[69] In that respect, Sun Life notes that damages for “inducing breach” are at large, and may include, for example, loss of reputation. Hence, the assessment of such damages is for the trial judge. Sun Life relies upon the guidance provided in *Burns v. Sharan Sohi et al.*, 2012 ONSC 2414 ...

[70] Further, Sun Life notes, in accordance with the discussion above, that it is entitled to seek disgorgement from Assante (again, relying upon *Atlantic Lottery*). A plaintiff who elects to pursue disgorgement is precluded from pursuing a claim for damages (*Sateri* at para. 674). Hence, the law would preclude Sun Life from adducing evidence of pecuniary damages.

[18] Accordingly, Sun Life argued before Justice Ross that it had elected to pursue disgorgement rather than pecuniary damages and indeed, amended its counterclaim to reflect that election. However, it now takes the position, that it is not bound by its previous amendment to delete its claim for damages and to rely solely on the remedy of disgorgement. That is, Sun Life now seeks, more than two and a half years after removing its claims for damages, to reinstate its previous claims for non-pecuniary damages, by way of further amendments.

III. SUN LIFE’S APPLICATION TO FURTHER AMEND ITS AMENDED COUNTERCLAIM

[19] Specifically, Sun Life seeks to further amend its Amended Counterclaim under Rule 6-1(1)(b)(i) of the *Supreme Court Civil Rules* [*Rules*] as follows:

- a) to expressly plead Sun Life’s reliance on the professional ethical obligations the DKL Parties had under the Advisor Agreements;
- b) to plead material facts about newly discovered misconduct described;
- c) to add a claim that the DKL Parties and Assante’s conduct constitutes civil conspiracy;
- d) to reinstate its claims for damages for pecuniary loss; and
- e) to add a claim for punitive damages.

[20] The DKL Parties and Assante do not take issue with Sun Life making further amendments in relation to item “a”, which concerns Sun Life’s reliance on professional ethical obligations under the Advisor Agreements. Nor do they take issue with further amendments relating item “e”, which concerns Sun Life’s claim for punitive damages. The DKL Parties and Assante do, however, take issue each of the other further amendments; that is, they oppose and amendments relating to items “b”, “c” and “d”.

[21] The parties agree the law establishes a low threshold for leave applications to amend pleadings: see, for example, *Liu v. Canada Life Assurance Co.*, 2025 BCSC 240; *McNaughton v. Baker* (1988), 25 B.C.L.R. (2d) 17 at p. 27 (C.A.); *Coburn and Watson’s Metropolitan Home v. Bank of America Corporation*, 2016 BCSC 2021 at paras. 24 and 26; aff’d 2017 BCCA 202; *Wiggins v. HMTQ*, 2007 BCSC 1644 at para.17.

[22] Having considered the submissions of all the parties in light of the record before me, I am satisfied, on balance, that Sun Life ought to be granted leave to amend its pleadings in regard to the claim of civil conspiracy (that is, item “c”) as well as those pecuniary damages that may flow specifically therefrom. Sun Life’s

proposed pleading regarding the tort of civil conspiracy discloses a reasonable cause of action.

[23] In addition, I agree with the DKL Parties and Assante that leave should also be granted to Sun Life with regard to item “a”, concerning Sun Life’s reliance on professional ethical obligations under the Advisor Agreements and item “e”, which concerns Sun Life’s claim for punitive damages “a”.

[24] Sun Life’s proposed amendments relating to item “b”, concerning material facts about newly discovered alleged misconduct, are also allowed. Paragraphs 17 to 26 of Sun Life proposed amendments to its Amended Counterclaim embody material facts that relate not only to the claims of civil conspiracy but also the issue of punitive damages, dishonesty, and the plaintiffs’ and Assante’s ethical breaches. Accordingly, I find it is just and convenient to permit these amendments as well.

[25] Essentially, I am satisfied that permitting these amendments will better ensure that all the issues between the parties are tried, addressed and resolved and, further, that all material facts, causes of actions and appropriate forms of relief available to the parties, are put before this court. Amendments should be permitted as are necessary to determine the real question in issue between the parties: *Chouinard v. O’Connor*, 2011 BCCA 121 at para. 13. Sun Life’s proposed pleading regarding the tort of civil conspiracy meets this criterion and discloses a reasonable cause of action.

[26] I am also of the view that it would be just and convenient for these amendments to be permitted to account for the “evolutionary quality” of this particular litigation and to also allow the pleadings to fairly adapt to changing circumstances. In this case, those changing circumstances have included continuing production and disclosure of documents by all parties, the continued recent amendment of pleadings by the plaintiffs and Sun Life, as well as continuing discoveries, all of which are currently ongoing.

[27] In reaching the decision I have in granting Sun Life leave to amend its Amended Counterclaim to include the claim of civil conspiracy against the plaintiffs and Assante, I have considered the extent of delay in bringing this application, the reason for the delay, the degree and nature of the prejudice caused by delay, as well as the degree of connection between the existing claims and the proposed new claim: see *Taylor v. Blenz The Canadian Coffee Company Ltd.*, 2019 BCSC 906 at para 78.

[28] I am satisfied that Sun Life brought this application in a timely way, soon after having retained new counsel and as a result of newly disclosed documents, previously claimed as privileged by the plaintiffs and the defendants, which were in fact not privileged. As well, I am not able, based on the very limited materials before me, to make a proper determination that any claim, including the claim of civil conspiracy, is no longer actionable. Indeed, the delay to date is, to a significant degree, a result of the continued non-disclosure of documents by the parties that ought to have been disclosed in the first instance. Nevertheless, I expressly reserve the rights of any party to address the limitation issue at trial if necessary.

[29] However, while I find it is just and convenient to grant leave to Sun Life to amend its counterclaim in this specific way, I am not of the view that it is fair, just or convenient for Sun Life to reinstate its claims for damages writ large, in respect to its other claims against the DKL Parties and Assante as Sun Life also proposes.

[30] I find it is neither just, convenient or in the interests of justice to grant Sun Life leave to resurrect its pleadings relating to pecuniary damages which it had previously abandoned, by permitting their re-instatement at this stage of the litigation. Sun Life chose to remove its claim for pecuniary damages in its Amended Counterclaim in March 2023. Over two years have elapsed since then, during which pre-trial preparation has continued based on that amendment. Further, Sun Life's choice to amend its pleadings in this manner in 2023 was the subject of a previous hearing before Justice Ross, and a decision in this case was made in light of Sun Life's choice to remove its claim of pecuniary damages. In addition, there is a pending

trial date set in the next few months. Sun Life argues that the DKL Parties and Assante would not be detrimentally affected by reinstatement of these pleadings: *Allnorth Consultants Limited v. Tercon Construction Ltd.*, 2010 BCCA 570 at para. 23. I disagree. Sun Life’s choice to amend its pleadings in 2023 guided the course of litigation, pre-trial preparation and strategic decision-making for over two years. It now proposes to change course yet again by resurrecting previous pleading it once abandoned. In the context of this high-stakes litigation, I find the DKL Parties and Assante would suffer detriment in regard to the efficient and proper preparation of their case if these amendments were granted. Permitting such amendments is not in accordance with the proper administrative of justice and will not be permitted.

[31] On the issues of merger, the plaintiffs and Assante retain the right to raise this issue before the trial judge. I am not persuaded on the limited and evolving record before me that I am able to make a fulsome, informed or fair assessment of these issues.

IV. SUN LIFE’S APPLICATION FOR FURTHER PRODUCTION

[32] Sun Life seeks further document production, under Rule 7-1(10), (11) and (13) from both the DKL Parties and Assante.

[33] The additional factual context underlying this disclosure issue may be briefly summarized as follows.

[34] Sun Life asserts that the DKL Parties and Assante have not made full disclosure in the first instance in this litigation. It argues that many relevant documents were withheld, including on an unmeritorious claim of privilege.

[35] On September 7, 2023, after seeking further disclosure, Sun Life brought a disclosure application against both the DKL Parties and Assante. Sun Life sought relevant communications from the DKL Parties’ personal emails accounts that had not been disclosed, including privileged documents. On the eve of this application, Sun Life and Assante reached an agreement regarding the documents Assante would disclose, including formerly privileged documents. Sun Life adjourned the

relief sought against Assante and proceeded with its application against the DKL Parties.

[36] On February 14, 2024, in his Reasons for Judgment indexed at 2024 BCSC 201, Justice Ross ordered the DKL Parties to disclose all records, including text messages, notes, spreadsheets, agreements, annotated agreements, and emails in relation to the issues in dispute to Sun Life. On April 18, 2024, the DKL Parties provided an Amended List of Documents.

[37] On April 22, 2024, Sun Life wrote to the DKL Parties indicating that the DKL Parties' Amended List of Documents was incomplete, deficient, and in breach of Justice Ross' order. Sun Life also advised Assante that it had not disclosed documents pursuant to the agreement the parties had reached in advance of Sun Life's document application.

[38] On May 21, 2024, the DKL Parties delivered an "Amended" Amended List of Documents. This list included a number of documents that the DKL Parties had previously withheld as privileged; these were documents Sun Life was seeing for the first time.

[39] On September 6, 2024, Assante provided a Second Amended List of Documents. This list included a number of documents that Assante had previously withheld as privileged. Sun Life also saw these documents for the first time after this disclosure. These documents newly disclosed by the DKL Parties and Assante in 2024 are referred to collectively below as the "Newly Disclosed Documents".

A. Sun Life's Existing Document Demands

[40] Sun Life asserts that in its March 19, 2025 letter, it reiterated its long-outstanding requests that the DKL Parties produce:

- a) meeting notes recorded by any member of the DKL Financial Group, between July 16, 2023 and November 10, 2023, including meeting notes relating to a meeting, discussion, or communication with a client that was formerly serviced by the DKL Parties at Sun Life, related to the provision of financial advisory services, the sale of mutual funds, or the sale of

insurance policies, including, without limitation, any communications that reference an insurance policy, annuity contract, or segregated fund, whether an existing policy, contract, or segregated fund, or a new policy, contract, or segregated fund;

- b) communications, including e-mails and text messages, whether sent or received from a personal account/device or a business account/device, between July 2, 2023 and November 10, 2023 between any member of the DKL Financial Group, and any a client that was formerly serviced by the DKL Parties at Sun Life, related to the provision of financial advisory services, the sale of mutual funds, or the sale of insurance policies, including, without limitation, any communications that reference an insurance policy, annuity contract, or segregated fund, whether an existing policy, contract, or segregated fund, or a new policy, contract, or segregated fund; and
- c) records regarding the payment of the incentive loan and the calculation of the actual incentive loan entitlement as contemplated in the letter offer dated March 5, 2020.

[41] Sun Life clarifies that it was recently alerted that former counsel made a typographical error in the dates for the first two document requests in the preceding paragraph. Instead of the start dates for the two requests (at items “a” and “b” set out above) being July 16, 2023 and July 2, 2023, they were supposed to be July 16, 2020 and July 2, 2020, respectively. The relevance of July 2, 2020 and July 16, 2020 is that these documents relate to the start and end of the DKL Parties’ notice period with Sun Life. The end date of each request, November 10, 2023, is correct; that date represents the first time Sun Life’s former counsel made their document demand.

[42] Sun Life also asserts that documents disclosed to date have revealed further details of the agreements, pleaded at paragraphs 18 and 19 of the Amended Counterclaim, that the DKL Parties and Assante entered prior to the termination of the Advisor Agreements. A crucial detail, Sun Life argues, is that on March 20, 2020, Assante offered the DKL Parties an incentive loan, the amount of which was based on the amount of assets managed by the DKL Parties (“Incentive Loan”).

[43] Accordingly, Sun Life seeks documents showing how the Incentive Loan was calculated as these are directly relevant to Sun Life’s claim that the DKL Parties’

agreement with Assante was premised on the DKL Parties bringing a book of business to Assante, comprised entirely of Sun Life clients. This is related to Sun Life's claim that the plaintiffs solicited Sun Life clients and shared confidential information to move their business to Assante. These records, submits Sun Life, are also relevant to the remedy of disgorgement that Sun Life is seeking in this case. Sun Life takes the position that there is a direct causal link between the calculation and payment of the Incentive Loan and the solicitation of Sun Life clients.

[44] Sun Life asserts that the DKL Parties have disclosed no further documents in response to the above requests. In a letter dated April 4, 2025, the DKL Parties, took the position that none of the above categories of documents were relevant. The DKL Parties also noted that an earlier, May 21, 2024, letter addressed these outstanding requests. However, asserts Sun Life, that letter makes no mention of these three categories of documents.

[45] In the case of Assante, Sun Life, in its March 19, 2025 letter, reiterated outstanding demands for:

- a) text messages with DKL and/or former Sun Life clients;
- b) client lists received by Assante from DKL (including other copies of the April 2020 list but also other client lists);
- c) emails with Sun Life clients regarding moving to Assante and setting up meetings with DKL and any notes thereof; and
- d) any further emails between Assante and the DKL Parties' Gmail or other personal accounts from Assante.

[46] Assante has delivered no further documents in response to Sun Life's March 19, 2025 demand. With respect to the above categories, Assante stated in a letter dated April 11, 2025 (which referenced an earlier, September 6, 2024, letter), that Assante had disclosed "all text messages with Mr. Lamb", and that it had located no records responsive to categories (b) to (d) noted above.

B. Sun Life's New Document Demands

[47] In its March 19, 2025 letter, Sun Life issued new demands that the DKL Parties and Assante produce the following categories of documents:

- a) communications, including emails and text messages, whether sent or received from a personal account/device or a business account/device, between December 17, 2019 to present, between Dale Lamb, Taryn Kuiack, or any other representative of the DKL Parties, and Steve Georgiou, related in any way to Sun Life, including, without limitation, Mr. Lamb and DKL's exit from Sun Life;
- b) all recordings that Dale Lamb, Taryn Kuiack, or any other representative of the DKL Parties made of conversations with any representative of Sun Life from between December 17, 2019 to July 2, 2020, and, in the case of Assante, any that were forwarded to and received by Assante; and
- c) communications, including emails and text messages, internally at Assante in which Assante's representatives discuss the confidential and/or privileged information received from the DKL Parties related to a client that was formerly serviced by the DKL Parties at Sun Life.

[48] In response to the above demands, the DKL Parties listed eight audio recordings in an Amended List of Documents dated June 30, 2025. However, the DKL Parties assert litigation privilege and/or solicitor-client privilege over all eight of these newly listed documents.

[49] Sun Life underscores that the party claiming privilege has the onus of proving privilege and, further, that litigation privilege only protects documents made for the dominant purpose of litigation: see *Gardner v. Viridis Energy Inc.*, 2013 BCSC 580 [*Gardner*], at para 20. Sun Life accepts that the four recordings that are described as involving legal counsel (i.e., 4.376, 4.378, 4.379 and 4.380) are protected by solicitor-client privilege. However, Sun Life asserts that the remaining four audio recordings appear not to involve legal counsel; Sun Life disputes litigation privilege over these documents. Sun Life argues that litigation could not reasonably have been contemplated before Sun Life canceled the CORe payments, which is the basis of this litigation. Further, Sun Life emphasizes that all eight audio recording were made before the Advisor Agreements were even terminated. It is also significant in my view that these recordings are between the DKL Parties and their

inside source at Sun Life and other Sun Life employees. For example, included in these recordings is a phone call with the DKL Parties' inside source, which the DKL Parties then sent to Assante on January 7, 2020. Sun Life asserts that these Newly Disclosed Documents demonstrate that the DKL Parties communicated with an inside source about Sun Life and exchanged confidential and privileged internal Sun Life information.

[50] The DKL Parties assert that the scope of production sought by Sun Life is overreaching. They rely on the reasons in *Marsh Canada Limited v. BFL Canada Insurance Services Inc.*, 2014 BCSC 1171 [*Marsh Canada*] at para. 66, where the court held that in assessing a document production request, a court is to apply the proportionality principle in Rule 1-3(2). Further, the court should attempt to balance the burden of producing additional documents against their materiality and probative value: see also *Natural Trade Ltd. v. MYL Trading Ltd.*, 2019 BCSC 1368 [*Natural Trade*], para. 26. As well, the DKL Parties maintain privilege over the audio recording sought by Sun Life on the basis that these documents were produced in contemplation of litigation.

[51] Sun Life presently seeks a specific order regarding the following outstanding disclosure request from Assante:

1. communications, including emails and text messages, internally at Assante in which Assante's representatives discuss the confidential and/or privileged information received from the DKL Parties related to a client that was formerly serviced by the DKL Parties at Sun Life;
2. text messages with DKL and/or former Sun Life clients;
3. client lists received by Assante from DKL (including other copies of the April 2020 list but also other client lists);
4. emails with Sun Life clients regarding moving to Assante and setting up meetings with DKL and any notes thereof;
5. any further emails between Assante and the DKL Parties' Gmail or other personal accounts from Assante; and

6. records regarding the payment of the Incentive Loan, and the calculation of the actual Incentive Loan entitlement as contemplated in the letter offer dated March 5, 2020.

[52] Assante submits that with regard to items 1-5, its client has searched their records as requested and has no further documents to disclose. Assante confirms it has already advised Sun Life that it has reviewed the document request and has already disclosed all relevant documentation relating to the requests relating to items 1-5. Assante relies on the decision of Justice Mayer in *Tophay Leo Farms v. Wu*, 2023 BCSC 992, at paras. 47-49 [*Tophay*], where the court found that once counsel seeks disclosure of documents from their client in the course of pre-trial disclosure and the client advises the documents in question do not exist, a further order from the court for disclosure is not warranted. In this case, Assante submits that its client has searched for Sun Life’s requested documents and has advised counsel that there is no further disclosure to be made beyond what has already been disclosed.

[53] Item 6 of Sun Life’s disclosure request, relating to the Incentive Loan issue and its calculation, has not been agreed to by Assante. Assante submits that its disclosure to date on the Incentive Loan issue “provides everything they need to know” for purposes of Sun Life’s disgorgement claim. Sun Life, however, requests further disclosure to better understand how Assante’s Incentive Loan benefit to the DKL Parties works and is applied.

V. DISCUSSION AND RULING

[54] I largely agree with the submissions of Sun Life that a further disclosure order is warranted in regard to the DKL Parties and Assante, although I do not support disclosure to the present day.

[55] Sun Life’s demands for further production were clear, detailed, and compliant with the *Rules*. I am satisfied that the relevant and probative value of the undisclosed documents is evident: they could prove or disprove material facts that relate to Sun Life’s defence and counterclaim allegations.

[56] The documents sought from the DKL Parties relate to communications or solicitation of clients away from Sun Life to Assante, including the sharing of confidential information. Considering the entirety of the record before me, I am satisfied that further disclosure is necessary to ensure Sun Life can properly advance its counterclaim and prepare its defence. I am satisfied that for the most part, the current production orders sought by Sun Life are not only linked to Sun Life's pleadings but are focused on the issues between the parties: see *Merit Interior Designs (Duncan) Ltd. v. Kapila*, 2023 BCSC 1528, at para. 76.

[57] While I am satisfied that the disclosure orders sought are not a fishing expedition, I am mindful that they must not be overly broad in scope. Accordingly, having regard to the pleadings in Sun Life's Amended Response to Civil Claim and its Further Amended Counterclaim including the most recent amendments herein, I am of the view that the proportionality principle would be offended if the disclosure orders extended to the present day, particularly in light of the fact that the DKL Parties' non-compete agreement was limited to two years following the termination of the Advisor Agreements: see *Marsh Canada* at para. 66; *Natural Trade* at para. 26; and *Cabezas v. British Columbia (Ministry of Transportation and Infrastructure)*, 2015 BCSC 449.

[58] I am satisfied that the audio recordings identified and sought by Sun Life ought to be disclosed. I note that Sun Life has conceded that documents listed as 4.376, 4.378, 4.379 and 4.380 are privileged, and accordingly, these documents are not subject to this disclosure order. However, I have concluded the other audio recordings must be disclosed (i.e., documents listed as 4.377, 4.381, 4.382 and 4.383). I agree with Sun Life that the disclosure of these other audio recordings is necessary as they relate to Sun Life's allegations about the DKL Parties' breach of confidentiality and other contractual duties. Moreover, I find the DKL Parties have not met their onus of establishing these other audio recordings are subject to solicitor-client privilege or litigation privilege.

[59] In *Keefer Laundry Ltd. v. Pellerin Milnor Corp.*, 2006 BCSC 1180, at para. 5, Madam Justice Gray described three categories of lawyer-client privilege: 1) "Legal Advice Privilege", regarding documents that embody or reflect confidential communications between lawyer and client relating to legal advice; 2) "Litigation Privilege", meaning documents prepared for the dominant purpose of preparing for ongoing or reasonably anticipated litigation; and 3) "Lawyer's Brief Privilege", meaning documents embodying the lawyer's work product, including notes and information or reports collected to prepare for litigation or to give legal advice: see also *Gardner* at para. 15.

[60] The law is clear that the party asserting privilege bears the onus of establishing that privilege: *Hamalainen (Committee of) v. Sippola* (1991), 62 B.C.L.R. (2d) 254 (C.A.).

[61] As regards legal advice privilege, the party claiming it must establish that privilege, document by document, and show that each document is a communication between lawyer and client that involves seeking or giving legal advice and is intended to be confidential by the parties: *Solosky v. Canada*, [1980] 1 S.C.R. 821. Further, lawyer-client privilege only protects communications arising from the lawyer-client relationship: *Keefer Laundry*, at para. 63. Having carefully considered the matter and the able submissions of counsel, I find that neither the DKL Parties or Assante has met their legal onus of establishing solicitor-client privilege, or that the recordings in question are part of a lawyer's brief.

[62] As noted, I am also not persuaded that the audio recordings in question are subject to litigation privilege. Litigation privilege protects documents made for the dominant purpose of preparing for ongoing or reasonably contemplated litigation: *Gardner* at para. 20; *Hodgkinson v. Simms* (1988), 33 B.C.L.R. (2d) 129 at 136 (C.A.). However, the party asserting litigation privilege must establish for each document for which such privilege is claimed that: 1) litigation was ongoing or reasonably contemplated at the time the document was created; and 2) the dominant purpose of creating the document was to prepare for that litigation: *Dos*

Santos (Committee of) v. Sun Life Assurance Co. of Canada (2005), 40 B.C.L.R. (4th) 245, at paras. 43-44, (C.A.).

[63] Again, having reviewed the record before me and counsel for the DKL Parties and Assante's submissions, I find that onus of establishing litigation privilege has also not been met. Rather, I find counsel for Sun Life's submission persuasive in this regard.

[64] As regards those documents that must be disclosed by Assante, I accept counsel for Sun Life's submission that further disclosure is necessary regarding Assante's Incentive Loan benefit in order for Sun Life to better understand how it is calculated and applied. Further documents must be disclosed with this purpose in mind.

[65] However, in regard to the other categories of documents sought by Sun Life from Assante, I found reasons of Justice Mayer in *Tophay* instructive. Assante has conducted a search of the documents requested and has reported nothing further to disclose. I am satisfied on the materials before me that Assante has fulfilled its disclosure of documents with regard to items 1-5, set out earlier in these Reasons.

[66] At the hearing to settle the order, the DKL Parties expressed some concern that the disclosure order sought with respect to Mr. Steve Giorgio not violate solicitor-client or litigation privilege. Of course, privileged documents are exempted from this order.

VI. DISPOSITION

[67] In light of these reasons, and with the benefit of further submissions from all counsel at the hearing on October 31, 2025 to settle the terms of this order, I order as follows:

1. Sun Life is granted leave to amend its counterclaim to add the tort of civil conspiracy and related damages.
2. Within 30 days of this Order, or such other time period that the parties agree or as further ordered by the court, the DKL Parties will deliver to counsel for

Sun Life copies of documents, and an amended list of documents reflecting the following:

- (a) meeting notes recorded by any member of the DKL Parties, from between July 16, 2020 to July 16, 2022, including meeting notes relating to a meeting, discussion, or communication with a client that was formerly serviced by the DKL Parties at Sun Life and who remained at Sun Life as of July 16, 2020, related to the transfer or solicitation of such client's business away from Sun Life to the DKL Parties in regard to the provision of financial advisory services, the sale of mutual funds, or the sale of insurance policies, including any communications that reference the transfer of an insurance policy, annuity contract, or segregated fund, whether an existing policy, contract, or segregated fund, or a new policy, contract, or segregated fund;
 - (b) communications, including e-mails and text messages, whether sent or received from a personal account/device or a business account/device, from July 16, 2020 to July 16, 2022, between any member of the DKL Parties and any client that was formerly serviced by the DKL Parties at Sun Life and who remained at Sun Life as of July 16, 2020, related to the transfer or solicitation of such client's business away from Sun Life to the DKL Parties in regard to the provision of financial advisory services, the sale of mutual funds, or the sale of insurance policies, including any communications that reference the transfer of an insurance policy, annuity contract, or segregated fund, whether an existing policy, contract, or segregated fund, or a new policy, contract, or segregated fund;
 - (c) communications, including emails and text messages, whether sent or received from a personal account/device or a business account/device, between December 17, 2019 and July 16, 2022, between Dale Lamb, Taryn Kuiack, or any other representative of the DKL Parties, and Steve Georgiou, related to Mr. Lamb's and DKL's exit from Sun Life; and
 - (d) all recordings that Dale Lamb, Taryn Kuiack, or any other representative of the DKL Parties made of conversations with any representative of Sun Life from between December 17, 2019 to July 2, 2020, including, without limitation, documents number 4.377, 4.381, 4.382 and 4.383 listed in the DKL Parties' Amended List of Documents dated June 30, 2025.
3. Within 30 days of this Order, or such other time period that the parties agree, or as further ordered by the court, Assante will deliver to counsel for Sun Life copies of all records regarding the payment of the incentive loan and the

calculation of the actual incentive loan entitlement as contemplated in the letter offer dated March 5, 2020, with an amended list of documents reflecting the same.

4. This order shall not preclude the DKL Parties or Assante from seeking the dismissal of Sun Life's conspiracy claim at trial based on the doctrine of merger and/or the application of the limitation period.
5. Costs of this application will be in the cause.
6. This Order may be signed electronically and in counterpart.

"Morellato J."