
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff(s)

Case No: 09-cv-3332 MJD/FLN

v.

TREVOR COOK d/b/a CROWN
FOREX, LLC, PATRICK KILEY d/b/a
CROWN FOREX, LLC, UNIVERSAL
BROKERAGE FX and UNIVERSAL
BROKERAGE FX DIVERSIFIED, OXFORD
GLOBAL PARTNERS, LLC, OXFORD
GLOBAL ADVISORS, LLC, UNIVERAL
BROKERAGE FX ADVISORS, LLC f/k/a
UBS DIVERSIFIED FX ADVISORS, LLC,
UNIVERSAL BROKERAGE FX
GROWTH, L.P. f/k/a UBS DIVERSIFIED FX
GROWTH L.P., UNIVERSAL BROKERAGE
FX MANAGEMENT, LLC f/k/a UBS
DIVERSIFIED FX MANAGEMENT, LLC
and UBS DIVERSIFIED GROWTH, LLC,

Defendant(s)

R.J. ZAYED,

Receiver.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Case No: 09-cv-3333 MJD/FLN

Plaintiff(s)

v.

TREVOR G. COOK,
PATRICK J. KILEY,
UBS DIVERSIFIED GROWTH, LLC,
UNIVERSAL BROKERAGE FX
MANAGEMENT, LLC,
OXFORD GLOBAL ADVISORS, LLC,
and OXFORD GLOBAL PARTNERS, LLC,

Defendants

and

BASEL GROUP, LLC,
CROWN FOREX, LLC,
MARKET SHOT, LLC,
PFG COIN AND BULLION,
OXFORD DEVELOPERS, S.A.,
OXFORD FX GROWTH, L.P.,
OXFORD GLOBAL MANAGED
FUTURES FUND, L.P., UBS DIVERSIFIED
FX ADVISORS, LLC, UBS DIVERSIFIED
FX GROWTH, L.P., UBS DIVERSIFIED
FX MANAGEMENT, LLC, CLIFFORD
BERG, and ELLEN BERG,

Relief Defendants.

R.J. ZAYED,

Receiver.

RECEIVER’S MEMORANDUM OF LAW IN OPPOSITION TO THE RESPONDENTS’ MOTION TO COMPEL AND STAY PROCEEDINGS

The Receiver brought this action against Respondents almost nine months ago. Since that time Respondents have sought delay at every turn. With their present motion, Respondents seek to delay this case once again; this time they launch a broad, unfocused attack on this Court’s Summary Proceedings and Scheduling Orders and the Federal Rules of Civil Procedure. As the Receiver understands the Respondents’ motion, the Respondents ask the Court (1) to stay proceedings indefinitely until and unless third party Clifford Berg agrees to testify in support of their case, (2) to compel production of interview “transcripts” from the Receiver’s interviews of the Respondents and Clifford Berg—despite the established fact that no such interview transcripts exist—and to stay their own depositions until the Receiver produces such interview transcripts, and (3) to compel the Receiver and/or the Mauzy firm to produce unredacted transcripts of the Trevor Cook interviews conducted by the Receiver and the SEC.¹

¹ Although the Respondents ostensibly move the Court for an order compelling the Mauzy firm to produce documents pursuant to the Respondents’ November 17, 2010 subpoena, their memorandum and conduct suggest that the Cook interview transcripts—in the possession of both the Mauzy firm and the Receiver—are the crux of their demand. Specifically, at the April 7, 2011 meet and confer, counsel for Respondents did not mention the Mauzy subpoena. Rather, the discussion was limited to the Cook interview transcripts that the Receiver produced to the Respondents in redacted form. Moreover the Receiver sent Objections to the production of certain documents in the Mauzy firm’s possession to the Respondents on February 7, 2011, as required by Magistrate Judge Noel’s December 22, 2010 Order. The Receiver subsequently sent a follow up letter to counsel for Respondents to coordinate logistics for review of the unobjectionable documents in the Mauzy firm’s possession. (Declaration of Peter Kohlhepp in Support of Receiver’s Opposition to the Respondents’ Motion to Compel and Stay Proceedings, ¶ 3, Ex. 2

Each of these demands is without merit. The Respondents move to stay this action indefinitely, but fail to cite case law or facts that support a stay in these circumstances. The Respondents move for a protective order forbidding their own depositions until “transcripts” if the Receiver’s interviews with them are produced, but they ignore the fact that no such transcripts exist and that the Receiver has already produced all non-privileged notes from those interviews. Finally, the Respondents move to compel production of the Cook interview transcripts but ignore the fact that all portions of the Cook interview transcripts that relate to the Respondents have already been produced. The remaining portions of the transcripts contain information that is utterly unrelated to the claims or defenses in this case and thus outside the bounds of Federal Rule of Civil Procedure 26.

Respondents’ dilatory tactics seek an indefinite detour from the merits of this case and constitute an affront to this Court’s Orders, the Federal Rules of Civil Procedure, and the orderly administration of justice. Their motions should accordingly be denied in their entirety.

(Apr. 18, 2011) (“Kohlhepp Decl.”).) Counsel for Respondents never replied to this letter. Nor have the Respondents put the Appendices to the Receiver’s February 7, 2011 letter, in which the Receiver logs his Objections to producing specific documents, before the Court. The Receiver maintains his Objections to producing all of the documents identified in his February 7, 2011 letter and the accompanying Appendices A and B. (*See id.* ¶ 2, Ex. 1.)

I. ARGUMENT

The Respondents' memorandum—though filled with misguided attempts to fabricate baseless and offensive distractions—fails on the facts and the law.

1. The Court Should Not Stay This Action On Account of Clifford Berg.

Respondents first seek to stay this proceeding until the U.S. Attorney decides that Berg is no longer a target of investigation, arguing that they cannot prepare their defense of this action without Berg's testimony. (Lender Respondents' Memorandum in Support of Motion to Compel and Stay Proceedings, No. 09-cv-3333 ("SEC" case), Document No. 742, at 1 (Apr. 12, 2011) (hereafter, "Respondents' Brief").) Respondents' argument fails as a matter of law. The Respondents have not cited any authority to support the proposition that a civil action should be stayed on grounds that an unindicted third party witness has stated that he would plead the Fifth Amendment in response to questions at a deposition or at trial.² The law does not allow the Respondents to bring civil litigation to a halt merely because a third party witness has indicated that he may not provide substantive answers that could help them mount their defense.

At best, in the Eighth Circuit a stay may be available to a civil defendant who has also been indicted in an interrelated criminal proceeding. *Koester v. American Republic*

² The only case the Respondents cite where a court has stayed civil proceedings in view of parallel criminal proceedings concerned a situation where the moving party was both (1) a defendant in the civil lawsuit, and (2) already indicted in parallel criminal proceedings. *Am. Express Bus. Fin. Corp. v. RW Prof'l Leasing Servs. Corp.*, 225 F. Supp. 2d 263, 265 (E.D.N.Y. 2002). The court expressly relied on the fact that the civil case defendants "have already been indicted, and both have invoked their Fifth Amendment privileges." *Id.*

Invs., 11 F.3d 818, 823 (8th Cir. 1993) (“[T]o warrant a stay, defendant must make a strong showing either that the two proceedings are so interrelated that he cannot protect himself at the civil trial by selectively invoking his Fifth Amendment privilege, or that the two trials will so overlap that effective defense of both is impossible.”) (affirming district court’s denial of stay). But those are not the circumstances here. The Respondents have not suggested that they are subject to actual or potential criminal charges. And neither the Respondents nor Mr. Berg are in danger of being forced into the “uncomfortable position” of having to defend themselves in parallel civil and criminal actions.

Because Mr. Berg is neither a party to this civil action nor indicted in any parallel criminal proceeding, there is no basis in fact or law to stay this action. But even if the ill-fitting cases cited by Respondents were somehow applied, Respondents’ motion still fails. This Court looks to six factors when determining whether to exercise its discretion to grant the “extraordinary remedy” of a stay in the situation where a defendant may have to choose between exercising his Fifth Amendment rights and testifying to defend himself in a civil matter: “1) the extent to which the issues in the criminal case overlap with those presented in the civil case; 2) the status of the case, including whether the defendants have been indicted; 3) the private interests of the plaintiffs in proceeding expeditiously weighed against the prejudice to plaintiffs caused by the delay; 4) the private interests of and burden on the defendants; 5) the interests of the courts; and 6) the public interest.” *SEC v. Brown*, No. 06-1213, 2007 U.S. Dist. LEXIS 86278, at *3 (D. Minn. Nov. 21, 2007).

First, the issues in this case do not overlap with a criminal case. By Respondents' own admission, they are not subject to a criminal investigation, much less a criminal case. Although Mr. Berg is not even a party to this action, and therefore his status is irrelevant, it is worth noting that no criminal charges have even been filed against him, either. *Brown*, 2007 U.S. Dist. LEXIS 86278, at *4 ("The lack of an indictment deprives the Court of the most reliable method of assessing the overlap between the criminal and civil matters, and also suggests that it remains uncertain whether defendant Brown will ever actually face criminal charges.").

Second, even if Mr. Berg's situation were relevant here, there are no criminal charges for the Court to weigh. This fact weighs strongly against granting a stay in such circumstances. "Pre-indictment requests for a stay of civil proceedings are generally denied." *Fidelity Nat'l Title Ins. Co. v. National Title Resources Corp.*, 980 F. Supp. 1022, 1025 (D. Minn. 1997) (denying motion to stay); *see also In re CFS-Related Secs. Fraud Litig.*, 256 F. Supp. 2d 1227, 1237 (N.D. Okla. 2003) ("Courts have generally declined to impose a stay in the civil proceedings where a defendant is under criminal investigation, but has not yet been indicted."). A pre-indictment stay is generally inappropriate because it is potentially indefinite in duration. *E.g. Fidelity*, 980 F. Supp. at 1024 (denying motion to stay, citing the potential for indefinite delay); *United States ex rel. Shank v. Lewis Enters.*, No. 04-CV-4105-JPG, 2006 U.S. Dist. LEXIS 22065, at *8-9 (S.D. Ill. Apr. 21, 2006). Again, although completely beside the point of law, it is not clear when, if ever, Mr. Berg will be indicted. The stay the Respondents seek would be not only indefinite, but potentially infinite in duration.

Third, the third, fifth, and sixth *Brown* factors strongly disfavor a stay, as the Receiver, the Court, and the public each have a compelling interest in this civil action proceeding expeditiously. The Receiver has filed this action to recover over \$6.3 million in Receivership funds that were fraudulently transferred to Respondents by an insider at a time when other investors' pleas to withdraw their money were ignored. The money that is recovered from this lawsuit will be distributed to all of the victims of this Ponzi scheme, not just the connected few. Defrauded investors, and the public as a whole, have a tremendous interest in ensuring that a few investors in a Ponzi scheme do not profit to the detriment of all others. *Brown*, 2007 U.S. Dist. LEXIS 86278, at *4 (noting that the public has an interest in prompt return of misappropriated investment funds). Protracted litigation also decreases the assets available to compensate the defrauded investors. Not only is litigation expensive, it also increases the chances that the fraudulent transfers are being dissipated by Respondents. Respondents have refused to answer interrogatories asking for an accounting of where the fraudulently transferred funds are being held today. If they are dissipating or attempting to hide those funds, passage of time threatens to make judgment more costly to collect if, for example, transactions need to be investigated and unwound and assets need to be seized and sold. Moreover, Respondents themselves are better served by an efficient resolution of this case. A delay in judgment will only increase costs of litigation; it will not decrease what they owe to the Receivership. Even if, *arguendo*, Respondents are somehow allowed to keep these fraudulent transfers, Respondents are better served knowing that sooner rather than later, as are the defrauded

investors who deserve to know if they will not get back any portion of their investment that Cook gave to Respondents.

Fourth, neither the private interests of the Respondents in delaying this case nor the purported burdens in going forward are strong enough to outweigh the other *Brown* factors and justify an indefinite stay. The Respondents contend that (1) without Mr. Berg, they would be “forced to rely on their own personal testimony” and (2) if Mr. Berg continues to assert his Fifth Amendment privilege, the adverse inference would prejudice a civil trial jury. (Respondents’ Brief, at 14.) Neither assertion provides a legitimate reason to stay this proceeding.

Mr. Berg’s knowledge is not critical to resolving whether or not the Respondents took the money they received from Cook’s entities in objective good faith. Unless the Respondents took in objective good faith—in other words, only if they did not know or should not have known there was a problem with their investments at the time they received the money—the transfers are voidable as fraudulent under Minn. Stat. § 513.41 *et seq.* The Respondents are the ones who received the money and accordingly, must testify as to the facts and circumstances surrounding their receipt of those funds. The Respondents acknowledge that *they* are the most important witnesses in this action. (Respondents’ Brief, at 12.) And although Mr. Berg may assert his Fifth Amendment right if called to testify at trial, a jury is legally entitled to draw an adverse inference. *Baxter v. Palmigiano*, 425 U.S. 308, 316-18 (1976); *Rosebud Sioux Tribe v. A & P Steel, Inc.*, 733 F.2d 509, 520-21 (8th Cir. 1984). Any prejudice the Respondents would suffer in this hypothetical situation is certainly not reason enough to indefinitely halt the case.

In sum, there is no authority whatsoever to support Respondents' request for a stay in this case. Even if the closest Eighth Circuit law is applied here, which is the equivalent of pounding a square peg through a round hole, Respondents have failed to make the showing required to stay a civil proceeding in the Eighth Circuit. Indeed, such a showing is not possible because the Respondents' Fifth Amendment rights are simply not at issue. Moreover, the Respondents have failed to show how the circumstances of this action justify the "extraordinary remedy" of a stay.

2. The Court Should Not Allow the Respondents to Delay Their Own Depositions Any Further.

The Respondents have similarly failed to support their request to delay their own depositions, which the Receiver has been trying to schedule since mid-January 2010 and which were officially noticed by the Receiver on April 1, 2011. The Respondents contend that their depositions should be delayed until the Receiver produces complete "transcripts" of investigative interviews the Receiver conducted with the Respondents. But no such transcripts exist. Moreover, the Receiver has already produced all relevant and nonprivileged notes from those interviews. More importantly, the noticed depositions are entirely unrelated to any disputes regarding the Receiver's document production.

It is a mystery why the Respondents continue to insist that the Receiver produce "transcripts" of the interviews the Receiver conducted with them, when the Receiver has repeatedly confirmed that no such transcripts exist. And it is troubling—at best—that

Respondents falsely suggest to this Court that the Receiver has not produced anything related to the interviews in question.

The Receiver not only produced his nonprivileged notes from these interviews over a month and a half ago, he went so far as to specifically identify the Bates numbers of those interview notes in the cover letter that accompanied the Receiver's document production. (Kohlhepp Decl., SEC Docket No. 737, ¶ 6, Ex. 5 (Apr. 11, 2011).) In addition to this and other material that was physically produced to Respondents, the Receiver offered to make approximately 150 boxes of hard copy files and over 60 computer drives seized from Cook available for Respondents' counsel to inspect. (*Id.* ¶ 4, Ex. 3.)

The Receiver confirmed during the April 7, 2011 meet and confer that no other non-privileged materials, much less transcripts or other recordings of the interviews with the Respondents, ever have existed.³ The Respondents' odd and wholly unfounded conspiratorial accusation that the Receiver is trying to trip up the Respondents with "the secret interview transcripts" is another intentional misrepresentation that has no legitimate place in a court of law. (Respondents' Brief, at 24.) The Respondents'

³ With respect to the Receiver's January 5, 2010 interview of Mr. Berg, the Receiver also informed the Respondents at the April 7, 2011 meet and confer that there are no transcripts or recordings of that interview. The Receiver informed the Respondents that Mr. Berg and his wife simply asserted their Fifth Amendment privilege for the duration of the interview. (Kohlhepp Decl. ¶ 5.) In other words, the interview—and thus notes from the interview—were entirely non-substantive. Counsel for Respondents presumably know this fact not only from the Receiver, but from their discussion with the Bergs' criminal attorney, who apparently confirmed that Mr. Berg will continue to assert his Fifth Amendment privilege. Nonetheless to quell any further conspiracy theories on this topic the Receiver will produce all non-privileged notes from the Receiver's interview of Clifford and Ellen Berg to the Respondents.

contention that they have not had an opportunity to review the answers provided by the Respondents at these interviews is their own lapse—and puzzling. (Respondents’ Brief, at 23.)

Moreover, the Federal Rules of Civil Procedure do not permit the Respondents to hold the noticed depositions hostage until they are satisfied with the Receiver’s document production. Civil discovery is not a *quid pro quo*. *E.g. Plan Pros, Inc. v. Torczon*, No. 8:08CV136, 2009 U.S. Dist. LEXIS 92512, at *8 (D. Neb. Sept. 18, 2009) (“Torczons are advised that their obligation to respond to PPI’s discovery requests is not contingent on PPI’s responding to Torczons’ discovery requests.”). The Respondents’ argument not only fails as a matter of law, it fails as a matter of common sense. Each of the Respondents attended his or her own interview and as such, each Respondent presumably has an independent recollection of what he or she stated during those interviews. Respondents have not provided any support whatsoever for their argument that they must review their own previous statements (and even more quizzically, Cliff Berg’s statements reciting the Fifth Amendment) to provide truthful answers under oath.

Although they have not made any such argument in the papers supporting their Motion, to the extent the Respondents are demanding that the Receiver produce notes from these interviews created by attorneys for the Receiver, this is would be the first time they have made such a demand and thus it is not properly before the Court under Local Rule 37.1. In response to the Respondents’ document requests, the Receiver agreed to provide *non-privileged* documents. (*See* Kohlhepp Decl. ¶ 4, Ex. 3.) Again in a January 18, 2011 letter the Receiver stated his intent to produce “relevant, non-privileged notes

from interviews of the Investor Respondents.” (Kohlhepp Decl., SEC Docket No. 737, ¶ 4, Ex. 3 (Apr. 11, 2011).) Following the April 7, 2011 meet and confer, the Receiver confirmed in a follow-up email that all non-privileged notes from the interviews had in fact been produced. (*Id.* ¶ 10, Ex. 23.) In response, the Respondents merely requested that the Receiver provide a privilege log identifying any privileged notes from the Receiver’s interviews of the Respondents. (*Id.* ¶ 11, Ex. 24.) Of course the Receiver will do so, and expects the Respondents to do the same. But then on the very next business day the Respondents filed this Motion to stay the noticed depositions until all “transcripts” of the Receiver’s interviews are produced. Even if the issue of privilege were properly before the Court, notes taken by counsel for the Receiver are indisputably attorney work product and therefore not discoverable. “Notes and memoranda of an attorney, or an attorney’s agent, from a witness interview are opinion work product entitled to almost absolute immunity.” *In re Green Grand Jury Proceedings*, 492 F.3d 976, 981-982 (8th Cir. 2007). This is because “when taking notes, an attorney often focuses on those facts that she deems legally significant.” *Id.* Any such notes were created in clear anticipation of litigation—the interviews with the Respondents, Cliff Berg, and Trevor Cook were conducted after the Receiver was appointed and in furtherance of his duty to locate and recover Receivership assets.

3. The Court Should Deny the Respondents’ Motion to Compel Because the Receiver has Already Produced All Relevant Portions of the Trevor Cook Deposition Transcripts and Associated Exhibits.

For the reasons explained in footnote 1, *supra*, the Receiver understands the Trevor Cook interview transcripts to be the crux of the Respondents’ motion to compel

the production of documents. To the extent the Respondents seek an Order compelling production of interview transcripts from the Receiver's interviews of Clifford Berg and the Respondents themselves, the motion is moot because, as explained above, no such transcripts exist or ever existed. To the extent the Respondents' motion and proposed order attempt to sweep in transcripts of any other witness from whom the Receiver has ever received testimony in the course of his duties as Receiver in the *SEC v. Cook* and *CFTC v. Cook* cases, they fail to make any argument as to how such documents are responsive to the Respondents' document requests or relevant in any way to the instant action. Given that the request is utterly unsupported, it must be denied. Accordingly, the Receiver limits his reply to these interview transcripts, which are the documents actually in dispute.

The Respondents' memorandum misleadingly ignores what the Receiver has produced. In fact, the Respondents go so far as to assert that "what is noticeably missing from [documents produced by the Receiver] is any reference to or production of information related to the interviews of Trevor Cook." (Respondents' Brief, at 8.) One can only hope that this misrepresentation to the Court was an oversight: since March 3, 2011, Respondents have had at least 35 unredacted pages of transcripts from the Trevor Cook interviews, as well as relevant portions of associated exhibits. The Receiver explicitly stated in correspondence with the Respondents that he would produce all relevant, non-privileged portions of transcripts from the Cook interviews. (Kohlhepp Decl., SEC Docket No. 737, ¶ 4, Ex. 3 (Apr. 11, 2011).) And that is exactly what the Receiver did—his March 3, 2011 production included *every* portion of the Cook

interview transcripts that referenced the Respondents in any capacity, including any corresponding exhibits. The Receiver is more than willing to provide the Court with a copy of the Cook deposition transcripts and accompanying exhibits for an *in camera* review to confirm this fact and to verify the irrelevance of the unproduced portions.

The remaining, redacted portions of the Cook deposition transcripts and associated exhibits are simply not relevant to the defenses in this case and therefore not discoverable under Federal Rule of Civil Procedure 26(b)(1) and the Court's Summary Proceeding Order. They pertain to the Receiver's and government agencies' investigation of numerous aspects of the internal workings of Cook's Ponzi scheme—information that has absolutely nothing to do with the Respondents' defenses and is not likely to lead to the discovery of admissible evidence.

The Respondents list eight reasons why they believe that the redacted portions of the Cook transcripts are relevant to their good faith defense, none of which have merit. (Respondents Brief, at 20-21.)

The first reason—that the documents may show the extent to which Cook and his affiliates covered up the nature of the Ponzi scheme—misapprehends the nature of the defense: the Respondents must show that *they* were acting in good faith when they received the funds, based on what *they* knew or should have known. *Armstrong v. Red River Entm't (In re Armstrong)*, 285 F.3d 1092, 1096 (8th Cir. 2002) (quoting *In re Sherman*, 67 F.3d 1348, 1355 (8th Cir. 1995)). It is how the scheme actually appeared to the outside world—not what Cook was doing or not doing to make it appear that way—that is relevant to the defense. Neither Cook's thoughts nor the internal workings of his

scheme, have any bearing on what a reasonable person in the Respondents' position knew or should have known.

As the Receiver explained at length in his February 7, 2011 letter to the Respondents, the interviews of Cook were conducted at the behest of Chief Judge Davis and concerned the inner machinations of the scheme and the Receiver's efforts to locate and return assets to defrauded investors. (Kohlhepp Decl. ¶ 2, Ex. 1.) The transcripts also contain information related to the SEC's ongoing investigation of other persons and/or entities associated with Cook's Ponzi scheme. None of this information pertains to what Cook was broadcasting to the outside world—the only information about Cook's broader Ponzi scheme that is relevant to the Respondents good faith defense. The Respondents have access to *all* of the information related to what Cook *was* broadcasting to the outside world—both in the 1,100 documents the Receiver has produced, and the approximately 150 boxes of hard copy files and over 60 computer hard drives seized from Cook that the Receiver has offered to make available for Respondents' counsel to inspect. Tellingly, the Respondents have not taken the Receiver up on this offer.

To the extent the inner workings of the scheme could arguably be relevant, it would be only inasmuch as those inner workings specifically concern the Respondents. The Respondents acknowledge this in their second, third, sixth, and seventh asserted relevance arguments. (Respondents' Brief, at 20.) (asserting that the documents may reveal, for example, communications with Respondents and admissions related to Respondents).) But these asserted arguments are moot; as the Receiver has made clear

repeatedly, *every portion* of the Cook transcripts or exhibits referencing or relating to the Respondents has already been produced.

The Respondents' fourth and fifth asserted relevance arguments—which raise the possibility that the transcripts could show that Cook's entities were not used to run a Ponzi scheme and that the proceeds paid to Respondents were not proceeds of a Ponzi scheme—have no support in fact or law. The fact of the Ponzi scheme and the fact that the Respondents' money was transferred pursuant to it has been indisputably established by, at least, Cook's guilty plea, as well as by the Court's Summary Proceedings Order. (Order Allowing Summary Proceedings, SEC Docket No. 380, at 3 (July 20, 2010).) Respondents admit this in their memorandum, as well. (Respondents' Brief, at 2-3.) (“Oxford Global Advisors, LLC . . . pursuant to Cook's admission, was actually operated as a Ponzi scheme.”.)

The Respondents' eighth relevance argument—that documents produced by the Mauzy firm may reveal documents the Receiver failed to produce—is simply another baseless accusation that reeks of desperation. Appendices A and B, provided to the Respondents as attachments to the Receiver's February 7, 2011 letter, specifically and exhaustively identifies every document the Receiver objects to producing that the Mauzy firm made available for the Receiver to review in fulfillment of this Court's Order. (Kohlhepp Decl. ¶ 2, Ex. 1.)

Further fighting over the irrelevant information contained in the redacted portions of the Cook deposition transcripts does nothing more than waste the parties' and the Court's time and resources. The Receiver has produced every portion of the Cook

deposition transcripts that discusses or relates to the Respondents and is arguably relevant to the claims or defenses in this case. Under the Rules, the Respondents are not entitled to more. They should not be permitted to use this “dispute” or the contents of the irrelevant transcripts to further delay this proceeding or distract from the actual issues in this case.⁴

4. The Court Should Deny the Respondents’ Motion for Attorneys’ Fees and Costs

Perhaps to guise the misrepresentations and omissions in their motion, Respondents request fees and costs in their motion and proposed order. Their papers are not surprisingly void of any basis whatsoever for this request. That is because there is none. The Receiver has opposed and continues to oppose the Respondents’ attempts to stay this proceeding, delay their own depositions, and expand the scope of discovery beyond that authorized by the Federal Rules of Civil Procedure and the Court’s Summary Proceeding Order. The Receiver has done this in good faith and on grounds strongly supported by fact and law.

Moreover, the Receiver fully complied with Magistrate Judge Noel’s December 22, 2010 Order regarding the Mauzy subpoena, providing the Respondents with a letter

⁴ The Receiver has previously asserted the law enforcement privilege on behalf of and at the request of the SEC. In the time since the Respondents filed their motion to compel, the SEC has advised that they have withdrawn their assertion of the law enforcement privilege over the Trevor Cook interview transcripts with two caveats: (1) the transcripts would be designated as “Attorneys’ Eyes Only” under the Protective Order and (2) that production (if any) would not constitute a waiver of the privilege generally. Because the Receiver’s earlier assertion of the Law Enforcement Privilege was made at the behest of the SEC, and but has now been withdrawn, the Receiver does not oppose Respondents’ motion on this ground.

and appendices on February 7, 2011 logging the Receiver's Objections to producing specific documents in the Mauzy firm's possession. The Receiver followed up after the Protective Order was in place to arrange for counsel to review the non-objectionable documents in the Mauzy firm's possession. Respondents have never even acknowledged this invitation, much less replied to its content. Until the Respondents filed this Motion, the Receiver had no indication whatsoever that the Respondents disagreed with any of the Receiver's Objections to producing specific documents.

Respondents' request for fees and costs is yet another of the many distractions they offer in lieu of merits and as such, should be denied.

II. CONCLUSION

The Respondents' motion seeks delay when there is no cause for delay and discovery where there is no relevant discovery to be had. The Receiver respectfully requests that the Court deny the Respondents' motion in its entirety.

Dated: April 18, 2011

Respectfully submitted,

s/ Peter M. Kohlhepp

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