

From: [Adam S. Huhta](#)
To: ["Peter Kohlhepp"](#)
Cc: ["Gregory M. Erickson"](#); ["Bill Mohrman"](#); ["gerdts@blackhole.com"](mailto:gerdts@blackhole.com)
Subject: RE: Zayed v. Buysee et al - Discovery issues and timing of Motions to Compel
Date: Monday, October 17, 2011 12:36:00 PM

Mr. Kohlhepp:

I am writing to address a number of the issues you raised in your e-mail from Friday night.

First, I indicated my intention to seek the attorneys fees incurred in bringing a motion to compel based on the Receiver's attempt to force the respondents to try and find a needle in a haystack regarding a number of issues, including what other investors received distributions of principal and interest, what their losses were, and when those distributions took place.

The Receiver's attempt to rely on a document dump is misplaced - the relative burdens between the parties are not the same. The Receiver has been paid to gather that information, institute a claims process of approving or objecting to the other investors' claims based on the information you gathered, yet you try to procedurally prejudice the Respondents and hide the information from the Respondents by trying to rely on a document dump of inaccurate information.

One need look no further than Mr. Hlavacek's Declaration (which is not a business record) and the information it contains about Mrs. Anderson to confirm the information the Receiver disclosed is not even accurate. Hlavacek fails to document Mrs. Anderson's \$102,000 payment to Basel, and claims that she was a "net-winning" investor, to the tune of \$102,000. Did you over look that mistake when you identified that document in response to the interrogatory? I am willing to bet that there are other mistakes and inconsistencies between Hlavacek's declaration and the document dump, that the Receiver identified through the claims process, but that would not be apparent from the mass of information identified.

I also find it interesting that you claim I waited to the last minute to raise these discovery issues, when I provided you with a letter outlining these issues three days after you sent your letter on behalf of the receiver.

Your e-mail claims that I only agreed to supplement one interrogatory. I note that you asked for supplemental responses on two interrogatories, and I will supplement both. You apparently misunderstood our meet and confer discussion on Friday - I agreed to supplement BOTH Interrogatory No. 8 (although I think the response is accurate) and Interrogatory No. 10 on the affirmative defenses asserted, which are the only two interrogatories you asked me to supplement.

As I indicated on Friday, I hope to be able to provide supplemental responses by the end of this week. I find it disingenuous for you to assert that I should have been able to supplement Mrs. Anderson's responses immediately, when we did not even have our meet and confer discussion until late Friday morning. And as I have indicated to you in the past, Mrs. Anderson's son David has been assisting his mother with discovery issues, given her age and declining health. David Anderson has also experienced some significant health issues over the last few months, including suffering at least three heart attacks, a stroke, bypass surgery, and a diagnosis of cancer which cannot be treated given his recent bypass surgery. I provide that information so that you can understand the logistical difficulties in dealing with Mrs. Anderson, who recently had her 90th birthday.

It's not like I can walk down the hall to her office and have a discussion with her, as you are certainly able to do with the Receiver. Yet I have not received a response from you on the outstanding discovery issues to which you wanted additional guidance from the Receiver.

Regards,
Adam Huhta

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-----Original Message-----

From: Peter Kohlhepp [<mailto:pkohlhepp@ccvl.com>]
Sent: Friday, October 14, 2011 8:11 PM
To: Adam S. Huhta
Cc: Gregory M. Erickson; Bill Mohrman; gerdts@blackhole.com
Subject: RE: Zayed v. Buysee et al - Discovery issues and timing of Motions to Compel

Mr. Huhta,

Your threats of attorneys' fees do nothing to promote a civil and professional discussion of the issues at hand. Despite the fact that you waited until the very last minute to raise any issues related to discovery in this action--almost a month after the close of fact discovery and only two business days before the non-dispositive motion deadline --the Receiver has endeavored to engage in a meaningful meet and confer process so that the parties could attempt to work out those issues without the time and expense of motion practice. We urge you to focus on the merits.

With respect to our discussion this afternoon, I did not ask you to withhold your motion. Rather, I told you that we are working to determine how to best address the issues that were met and conferred upon for the first time today, that we expect to discuss those issues further on Monday, and that nondispositive motions are due on Monday based on our reading of the Federal Rules of Civil Procedure and accompanying Local Rules. Your motion practice is the result of you waiting until the very last hour to raise all of your discovery issues.

With respect to the Receiver's Interrogatory No. 10 (which is the only interrogatory you agreed to supplement), we simply cannot rely on your representations that you will supplement at some point in the future or that the supplemental response will fulfill Respondent Anderson's obligations under the Federal Rules of Civil Procedure. Moreover, we raised these issues with you over a week ago. We are at a loss as to why you are unable to supplement your response with over a week's notice. You could prevent this motion simply by timely supplementing your responses to our interrogatory. Your refusal to do so shows disregard for the federal rules, the court's pretrial scheduling order, and evidences your unwillingness to participate in a meaningful meet and confer process under LR 37.1. If you refuse to supplement your response by Monday, we need to protect our rights to compel complete responses and will do so by filing a motion.

Regards,

Peter Kohlhepp

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-----Original Message-----

From: Adam S. Huhta [<mailto:adam@huhtalaw.com>]
Sent: Friday, October 14, 2011 4:42 PM
To: Peter Kohlhepp

Cc: 'Gregory M. Erickson'; 'Bill Mohrman'; gerdts@blackhole.com
Subject: Zayed v. Buysee et al - Discovery issues and timing of Motions to Compel

Peter:

This confirms your calls to me this afternoon that you are not yet able to provide me with the Receiver's position on a number of the outstanding discovery issues, and will not be able to do so until Monday morning. You also represented that it is your position that under the Local Rules, the briefing on the motion to compel is not due until Monday, October 17. You asked me not to file Mrs. Anderson's Motion until Monday, and that if it was filed on Monday, you would not claim the brief was untimely and would affirmatively represent to Magistrate Noel what your position was.

I await your response on the discovery issues, but reiterate I will seek an award of attorneys fees relating to those discovery issues if you do not appropriately supplement those responses.

Although I indicated Mrs. Anderson would supplement each interrogatory you raised an issue about, by the end of next week, you intended to file a motion to compel on Monday "as a placeholder."

Regards,
Adam
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