

From: [Adam S. Huhta](#)
To: [Peter Kohlhepp](#)
Cc: [Gregory M. Erickson](#); gerdts@blackhole.com
Subject: Re: Zayed v Buysse et al -- meet and confer
Date: Friday, October 14, 2011 9:19:30 AM

Peter:

I am writing to highlight several issues before our meet and confer this morning, and follow up on your letter from last night.

With regard to interrogatory nos. 1, 7 & 10, the receiver has only generally identified Julia Smith, and the general topics she may have information about. There are no specific facts identified about which she has knowledge. Is it your position that you will not provide any additional information about the facts she has information about?

With regard to interrogatory no. 2 (2nd set), which asks for information about other investors and what they received back from any Receivership Entity, the Receiver's response is inappropriate. First, the information is relevant. I note that the receiver's theory of the case is that the payments to the investor respondents was unjust compared to what other investors received from the Receivership Entities.

Ms. Norgard spent two days in Ohio preparing the Phillips - other investors who did not receive all their funds back but who did receive payments of principal - and deposing them, so you cannot assert that information relating to other investors' gains and losses is irrelevant.

I note that virtually all the documents you have identified as a purported "response" are not business records of the Receivership Entities. Rule 33(d) does not permit a party to identify the records of others in response to an interrogatory. Nor do the records identified by the Receiver indicate whether any payments are of interest or a purported return on investment, so we cannot derive the information requested from the records. Accordingly, the response is deficient.

And the burden of going throughout the records and ascertaining what information is responsive to the interrogatory is not the same for the Receiver and the Respondents. The Receiver has already gone through that information in the claims process, requested additional information from the investors who made claims under the court-approved claims process, and received additional information from those investors about what they invested and received back from the Receivership Entities. Certainly, your office has that information in either a spread sheet or database and can easily answer the interrogatory.

I also note that the Receiver identified 150 investors who purportedly were "winning investors" who received more back from the Receivership Entities than they provided. During that process, the Receiver gained additional information from those investors that is not disclosed in the records you identified. Under the circumstances, it is disingenuous at best for the Receiver not to answer the interrogatory, given that the receiver has already been paid to gather the information, synthesize it, approve or object to the claims made by investors and report to the Court.

With regard to subpart (e), I would be willing to accept the claim files maintained by the Receiver for the investors, with the forms submitted by the investors during the

claims process, and the documents relating to the 150 "net winning" investors that were gathered during the claims process and submitted by those investors in response to the assertion they profitted.

I look forward to our discussion this morning.

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Minneapolis, MN 55402

On Oct 13, 2011, at 6:41 PM, "Peter Kohlhepp" <pkohlhepp@ccvl.com> wrote:

Mr. Huhta,

Please see attached correspondence.

Regards,

Peter Kohlhepp

<image002.jpg>

Peter M. Kohlhepp

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