Christine Lindahl

From: Gregory M. Erickson
Sent: Tuesday, October 11, 2011 9:16 PM
To: 'Peter Kohlhepp'
Cc: Marlee Jansen; Debbie Rasmussen; Bill Mohrman; James Magnuson
Subject: RE: Zayed v Buysse et al, 11-cv-1042 -- Meet and confer held on 10/10/2011 and 10/11/2011

The following is our response to your attempt to memorialize our discussions over the last two days:

A. You were advised that we would immediately agree to remove the contingencies to our interrogatory responses, once the Receiver agreed to remove the contingencies to his interrogatory responses and you advised that the Receiver is refusing to do so;
B. First, you did not provide a remotely valid explanation of how the Investor Respondents who spent portions of the money they received back is remotely probative to the issue of good faith when they received the payments from the Cook Currency Trading entities- your explanations were evasive and not specific to any Lender Respondent- We have advised you that we will produce documents responsive to the requests which we have agreed to produce prior to October 31, 2011- you have elected to waste additional resources of the receivership to obtain documents which we have agreed to produce;
C. In regards to your demands for amended responses to interrogatory responses which have already been the subject of a motion to compel, you have already deposed our clients and been provided the ability to ask all questions you wished of our clients. Despite this access to a superior discovery device which you have spent a fortune to deprive our clients of, you now demand additional responses to questions you could have asked directly to our clients. This constant churning of this file at the cost of the receivership and our clients must end. We will not spend additional resources summarizing testimony which you already possess. We agreed to provide supplemental information relating to requests which you made which were calculated to lead to information probative to the issues in Judge Davis's order.
D. We will provide this detail to help you categorize the documents in your possession;
E. We will provide you copies of all documents obtained from either Mauzy or Thompson (which you omitted from your initial request).

From: Peter Kohlhepp [mailto:pkohlhepp@ccvl.com]
Sent: Tuesday, October 11, 2011 4:58 PM
To: Gregory M. Erickson
Cc: Marlee Jansen; Debbie Rasmussen
Subject: Zayed v Buysse et al, 11-cv-1042 -- Meet and confer held on 10/10/2011 and 10/11/2011

Mr. Erickson,

I write to memorialize our meet and confer regarding the issues raised in my October 5, 2011 letter, held on Monday, October 10, 2011, from 2:15 p.m. to 3:00 p.m. and continued on Tuesday, October 11, 2011, from 2:15 p.m. to 3:15 p.m.

<u>A. Verifications of Respondents' Interrogatory Responses</u>

I noted that to the extent you have provided purported verifications of interrogatory responses, those verifications are improper under Federal Rule of Civil Procedure 33. You stated that you would not amend your verifications.

EXHIBIT 6

B. Outstanding Documents

With respect to Document Request No. 7, you agreed to provide the portion of each Respondent's tax returns showing how *each* transfer of funds he or she received from the Receivership Entities was claimed. I clarified, and you agreed, that this includes money any Respondent may have received prior to June 22, 2009. I also requested that you provide the signature page for each tax return document produced; you stated that you will let us know tomorrow (Wednesday, October 12, 2011) whether you will produce signature pages.

With respect to Document Requests Nos. 8, 9, and 12, you agreed to produce all responsive documents.

You stated that you would not produce any documents in response to Request No. 10,

With respect to Document Request No. 11, you stated that no responsive documents exist.

After I explained the relevance of Document Requests Nos. 13-16, you initially stated that you would take those Requests under advisement and get back to me by Thursday, October 13, 2011. Then when the meet and confer continued on Tuesday, you stated that Steve Cheney has no documents responsive to Requests Nos. 13-16, other than what has already been provided.

You also agreed to produce documents sufficient to show how the Respondents invested the funds they received from Trevor Cook, and what returns they earned. You agreed to produce these documents by the end of the day today. To the extent any Respondent did not re-invest the funds they received, you refused to produce any documents showing when the money was spent, the amount spent, and what it was spent on despite our explanation that this information is relevant to the respondents' good faith.

With respect to the documents requested in the second through fifth bullet points on pages 2-3 of my October 5, 2011 letter, you stated that no responsive documents exist.

I informed you that to the extent we do not receive any documents that you have agreed to produce by Friday, October 14, 2011, we will have to file a motion to ensure that we have recourse in the event that you do not produce the documents. You offered to promise to produce the documents in writing, but I explained that because you have previously given us such written promises and then failed to produce any documents, we cannot let the non-dispositive motion deadline pass without protecting ourselves by getting a motion on file.

C. Deficient Interrogatory Responses

You refused to supplement Interrogatories Nos. 2, 3, 4, 5, and 10 to provide answers specific to each Respondent.

With respect to Interrogatories Nos. 3 and 4, you agreed to supplement your answers to identify by bates number, for each Respondent, all documents produced by that Respondent. You also agreed to identify, by bates number, documents produced by the Receiver. You refused to more specifically identify the documents that you purport to rely on in answering Interrogatories Nos. 3 and 4 pursuant to Rule 33(d).

With respect to Interrogatory No. 5, you agreed to provide the specific amount of money each Respondent transferred to and received from the Cook entities, but you refused to provide either the date of each such transfer or the method of the transfer.

You agreed to supplement Interrogatory No. 9 to refer to specific documents by Bates number, as

required by Rule 33(d).

With respect to Interrogatory No. 10, you agreed to supplement your answers to identify the facts on which you rely for the defenses asserted in paragraphs 2, 4, 10, 15 and 18. You refused to identify the facts on which you rely for the defenses asserted in paragraphs 1, 6, 7, 8, 9, 11, 17, 19, 20, and 21.

With respect to Interrogatories 11 and 12, your answer appears to rely on a reference to documents under Rule 33(d), but you have not identified any specific documents. You promised to let me know by Wednesday, October 12, 2011 whether you will supplement Interrogatories Nos. 11 and 12 to identify specific documents by bates numbers, as required by Rule 33(d). You also clarified that your assertion in your responses to these interrogatories that "discovery is continuing" refers to your continuing obligation to supplement if new information becomes available. You stated that you are not withholding any responsive information in your possession.

With respect to Interrogatory No. 14, you agreed to supplement your response to identify all facts that support your assertion that each Respondent received funds from Cook or his entities "as provided in his contract." You also agreed to identify documents pursuant to Rule 33(d), but you stated that you would only identify, for each Respondent, all documents produced by that Respondent.

With respect to Interrogatories Nos. 19 and 20, you agreed to supplement your responses to provide the information requested.

You agreed to provide all supplemental responses by Friday, October 14, 2011.

D. Identification of documents produced by each Respondent:

You have provided a letter, dated October 7, 2011, identifying which Respondent produced some the documents you hand-delivered on September 9, 2011. Of those documents, the following ranges remain unidentified: 11748-11899; 11909-11969; and 12094-12095. You agreed to specify who produced these documents.

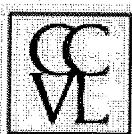
You also agreed to specify who produced each document for the remainder of your production, bates numbers 00000-11747.

E. Mauzy firm documents

You confirmed that you have not copied any documents from the Mauzy or Thompson law firms. You also confirmed that if you do copy any documents from the Mauzy or Thompson law firm, you will provide copies to us.

Regards,

Peter Kohlhepp



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Christine Lindahl

From: Gregory M. Erickson
Sent: Tuesday, May 31, 2011 8:24 PM
To: Peter Kohlhepp
Cc: Debbie Rasmussen; Denise Koza; Bill Mohrman
Subject: Re: Zayed v Buysse et al, 11-cv-1042

Based upon your e-mail, I suggest that we table the upcoming depositions until Judge Noel rules on the issue to avoid a further waste of everyones' professional fees because I will not tolerate a repeat of what transpired at the Fredells' deposition. We have already advised you that our clients will not be disclosing the exact location of their assets in the abscence of an order from Judge Noel and will not allow Ms. Noregard to badger our clients until they inadvertently let the location slip after the fourth or fifth time they were asked the exact same question. I'm confused about what the relevance of what people do with their money after they've found out they were previously been invested in a ponzi scheme. My guess is that everyone will invest more conservatively after that, but why is that relevant to the issue of good faith at the time of the transaction. I'm sure that will be part of your motion papers.

I'm also confused why you don't think that the penalty of perjury is enough to ensure truthful testimony from respectable businesspeople who by your own admission have done nothing wrong.

Sent from my Verizon Wireless BlackBerry

From: "Peter Kohlhepp" <pkohlhepp@ccvl.com>
Date: Tue, 31 May 2011 18:51:52 -0500
To: Gregory M. Erickson<erickson@mklaw.com>
Cc: Debbie Rasmussen<drasmussen@ccvl.com>; Denise Koza<dkoza@CCVL.com>
Subject: Zayed v Buysse et al, 11-cv-1042

Mr. Erickson,

I was surprised that the content of your email neither reflected the fact or content of our phone conversation that took place on Friday afternoon, May 27, 2011. We talked immediately before you sent the email below, and during the call I specifically requested that you incorporate the substance of our conversation into your email so that we could attempt to work toward an understanding of our respective positions and potential resolution of this issue. Since you omitted the fact and content of that conversation, I will set it forth here.

During our telephone conversation, I explained to you again that what your clients did with the money they received from the Cook entities is entirely relevant to their alleged good faith defense. At the pretrial conference with Magistrate Judge Noel on November 12, 2010, your colleague, Mr. Morman, told the Court that there were "a gazillion" factors to a good faith defense that he intended to explore in this case. The Receiver is entitled to rebut, in full and with all relevant evidence, any good faith defense that your clients allege.

What your clients did with the money since receiving it from Cliff Berg, and when they made all such transfers and expenditures, is highly relevant to their alleged good faith in receiving and keeping it. As such, we requested this information in written discovery, including Interrogatory 9 and Document Request No. 5.

As we advised during the deposition, the Fredells waived any right to object to discovery on this topic when they provided it to us on January 6, 2010. That document, which was produced to you on March 3, 2011, is attached for your reference. We will give you the benefit of the doubt that you had not reviewed that document before lodging your improper objections. I also note that in addition to the Fredells, Mr.

EXHIBIT 6

Harris and Ms. Anderson have provided the requested information to the Receiver. Furthermore, at least Mr. and Mrs. Morisset, Mr. Buysse, Mr. Kautzman, Mr. Frahm, Mr. Hopfenspirger, Mrs. Cheney, and Mr. Defiel have also provided the Receiver with information on this topic.

During our call last Friday you agreed that your clients who have not yet provided the information could answer questions related to how, as a general matter, they used the money after they received it through today, i.e., whether they re-invested it, what type of investment vehicle they used, what interest rate it was earning, whether that money remains in the investment vehicle, whether it was used to repay a loan, whether it was used to pay for college tuition, etc. You also stated that you would not allow your clients to answer questions that would require disclosing the specific location of the money now.

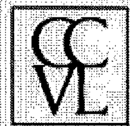
Thank you for that offer. However, your proposal does not provide all of the information we need. Your proposal does not allow us to ascertain the full extent of what your clients have done with the funds they received from Mr. Berg, the timing of those transactions, or provide the documents that the Receiver has requested. All of this information is highly relevant to any good faith defense your clients allege. In short, the Receiver simply cannot rely on your clients' word and/or their inexact recollections as to what they did with the money "generally."

If you have a proposal for how we can handle this matter without judicial intervention, we would be happy to consider it in further attempt to reach a resolution of this issue. We would like to resolve this matter as efficiently as possible and hope you will work with us to do so. However, if the parties are not able to resolve the issue between themselves, the Receiver will proceed with a motion to compel. We are not aware of Magistrate Judge Noel having an informal dispute resolution procedure and his practice pointers and preferences, which also are attached for your references, specifically state otherwise:

"Magistrate Judge Noel disfavors, absent compelling circumstances, resolving disputes by teleconference, especially disputes that should properly be decided by formal motion."

Best regards,

Peter Kohlhepp



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Christine Lindahl

From: Gregory M. Erickson
Sent: Friday, May 27, 2011 4:33 PM
To: Peter Kohlhepp
Cc: Tara Norgard; Denise Koza
Subject: RE: 11-cv-1042 -- Two issues arising from the Fredell depositions

In response to your two issues:

First, the information which Ms. Noregard was seeking from my client was post judgment discovery which is not available under the applicable discovery rules. I have been representing lenders for fourteen years (collecting money due on Notes, not preference claims outside of bankruptcy) and have never been able to obtain the information which you are seeking prior to entry of judgment. Ms. Noregard managed to obtain the current location of my clients funds only after asking him for the fifth or sixth time after I instructed him not to answer. She asked my client to ignore my explicit instructions on numerous occasions which are in the record. I feel partially responsible because I did not adjourn the deposition hoping that Ms. Noregard would show the slightest amout of professional courtesy and not continue to answer questions which I instructed my client not to answer. Of course, I was wrong to expect that.
I did tell Ms. Noregard that what types of investments my clients had invested in after their association with Mr. Cook was potentially discoverable and agreed that she could ask general questions of that nature rather than where the specific location of my clients funds were (which has absolutely no relevance to the claims at issue) and she declined that offer and continued to attempt to coerce my client into answering her questions for information she was not entitled to under the rules.

I am going to give you both the benefit of the doubt and hope that the reason why you're attempting to obtain this information over our objection is because you're unaware that under the rules you're not entitled to know the current location of assets until you have had a judgment entered on behalf of your client because of your patent backgrounds versus this creditor's remedies representation which seems inconsistent with your prior work experience. In that vein, I encourage you to attempt to set up an informal conference with the Magistrate (which we wholly support) so that the magistrate can clear this issue up for you without the necessity of a formal motion and further waste of everyone's resources.

Second, our clients are looking for those statements.

Gregory M. Erickson, Esq.
M.S.B.A. Board Certified Real Estate Specialist
Mohrman & Kaardal, P.A.
33 South Sixth Street #4100
Minneapolis, MN 55402

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Facsimile: 612-341-1076
E-Mail: erickson@mklaw.com

From: Peter Kohlhepp [mailto:pkohlhepp@ccvl.com]
Sent: Thursday, May 26, 2011 7:47 PM
To: Gregory M. Erickson
Cc: Tara Norgard; Denise Koza
Subject: 11-cv-1042 -- Two issues arising from the Fredell depositions

Mr. Erickson,

I write to follow up on two issues arising out of the depositions of Steve and Jenene Fredell today.

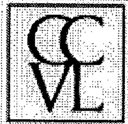
First, during Mr. Fredell's deposition Ms. Norgard asked Mr. Fredell what he did with the money he received from the Receivership entities and whether that money was still in the IRA account he rolled it into. You instructed your client not to answer those questions. The parties met and conferred on the record, and Ms. Norgard explained to you that what happened to the money after Mr. Fredell received it is relevant to the good faith defense that Mr. Fredell has raised. You continued to instruct Mr. Fredell to not answer the questions. Mr. Fredell did ultimately explain what he did with the money he received and that it remains in the IRA account.

All of your clients have raised a good faith defense to the Receiver's claims. This means that questions seeking information regarding how your clients used the money they received from the Receivership entities, from the time they received it through the present, are reasonably calculated to lead to the discovery of admissible evidence. Please let us know by **close of business tomorrow, Friday May 27, 2011,** whether you intend to continue to instruct your clients not to answer these questions at the upcoming depositions. If we do not hear from you by then, we will immediately bring a motion to compel.

Second, Mr. Fredell mentioned statements, communications, and/or other documents he has received from Entrust. These documents have not been produced. Please produce them immediately. Please also investigate whether any of your other clients have similar documents that have not yet been produced. If so please produce those documents immediately as well.

Regards,

Peter Kohlhepp



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Christine Lindahl

From: Gregory M. Erickson
Sent: Friday, April 08, 2011 4:45 PM
To: Peter Kohlhepp; Bill Mohrman
Cc: Tara Norgard; Marlee Jansen; Debbie Rasmussen
Subject: RE: Meet and Confer of April 7, 2011

As I received this document, I was writing our confirmatory correspondence. I now will limit my description of events to events that I can determine from my first reading that you mischaracterize or fail to mention in your summary.

First, we discussed our request for a continuance of this Civil Action until the criminal investigation against Mr. Berg is completed. It is virtually impossible to have a complete factual trial about whether or not our clients received funds in "good faith" when the person who was our primary contact with the Cook entities will not allow himself to be examined for fear of criminal prosecution. Our office has tried its share of cases and is well aware that you will likely attempt (as is consistent with good advocacy of your client's position) to utilize Mr. Berg's fifth amendment invocation against our clients. The problem is that this is wildly unfair to our clients, because it deprives them of extremely persuasive testimony relating to their defense that they received the loan repayments in good faith.

Second, you said that you produced all notes related to our client's examinations, now you are stating that you have withheld notes of our clients' examinations on the basis of privilege. Please describe the privilege that you are asserting to withhold these notes and provide a privilege log, if you have not already done so.

Third, you assert that we will not produce our witnesses to be deposed. That statement is false. We advised you and your firm that we will not allow our witnesses to be deposed until we have reviewed all of the examinations of Trevor Cook and other witnesses (not filtered through your claims of relevance or law enforcement privilege) or Judge Noel has denied our motion to compel. We have scheduled a motion to compel before Judge Noel at 9:00 a.m. on the 25th. He should rule shortly thereafter and the case will either be stayed, you will have to produce the full transcripts you have withheld or we will schedule their depositions shortly thereafter.

Fourth, we will diligently move to get you the supplemental information we agreed to provide, but April 15th is an unrealistic deadline when we have numerous clients, some don't live within the state, and some records may have to be requested from institutions if we are not able to find the documents within your production.

Please do not hesitate to contact me with any questions or comments.

Gregory M. Erickson, Esq.
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E-Mail: erickson@mklaw.com

From: Peter Kohlhepp [mailto:pkohlhepp@ccvl.com]

Sent: Friday, April 08, 2011 2:41 PM
To: Bill Mohrman; Gregory M. Erickson
Cc: Tara Norgard; Marlee Jansen; Debbie Rasmussen
Subject: Meet and Confer of April 7, 2011

Dear Mr. Mohrman:

I write to memorialize our meet and confer, held via telephone on April 7, 2011, beginning at 3:00 p.m.

Regarding the depositions of your clients we noticed on April 1, 2011, you stated that you do not intend to produce anyone for the noticed depositions and that you intend to bring a motion for protective order. Specifically you will not produce your clients to be deposed until you obtain full unredacted transcripts of the Trevor Cook depositions conducted by the Receiver and assorted government agencies. Also, you will not produce your clients to be deposed until Clifford Berg agrees to not assert his 5th Amendment privilege. You explained that you need to talk to Mr. Berg before your clients are deposed so that Mr. Berg's recollections can refresh your clients' recollections

Regarding the transcripts from depositions of Trevor Cook that the Receiver produced to you in redacted form, you asked for an explanation of the Receiver's basis for redacting the documents. We explained to you, as we have previously in a February 7, 2011 letter, in an April 6, 2011 email, and elsewhere, that the redacted portions of these documents are (1) not relevant, (2) subject to the law enforcement privilege that we are obligated to assert on behalf of the SEC, and (3) consist of irrelevant but sensitive information regarding the Receiver's ongoing investigations that the Receiver must and is entitled to maintain as confidential. You asserted that the redacted portions could be produced under an AEO designation, but we explained that was not possible for the reasons already outlined.

We also confirmed, again, that the Receiver has produced all non-privileged notes from the Receiver's conversations with your clients. We also confirmed that no electronic or other recordings of the Receiver's conversations with your clients exist.

We then moved on to discuss deficiencies in your discovery responses. With respect to our requests for production, you agreed to check with Respondents Buysse, Heise, Hopfenspirger, and McIntosh and produce any responsive documents they have, or to confirm in writing that the Respondents do not have any responsive documents, or to explain in writing your reasons for withholding any responsive documents that exist but will not be produced. Please provide this supplemental response by April 15, 2011. Mr. Erickson also explained that some of the Respondents threw away all documents related to their interaction with Trevor Cook and/or his entities when they received money from the Cook entities in the summer of 2009.

You agreed to withdraw objections to the Receiver's discovery requests that were premised on the fact that the Respondents had not yet answered and that the pending motion to dismiss made a response unnecessary. You also agreed to supplement discovery responses to include any information withheld on the basis of these two objections. Please provide this supplemental response by April 15, 2011.

You are maintaining your objection that the Receiver's discovery requests are premature contention interrogatories. You intend to maintain this objection at least until the Receiver produces unredacted copies of the Trevor Cook deposition transcripts. You also maintain that the Receiver is not entitled to know all facts on which the Respondents rely for their asserted defenses because those facts are privileged and it would be unduly burdensome to identify them.

With respect to the Receiver's request for an accounting of all funds each Respondent transferred to Trevor Cook and/or his entities and all funds each Respondent received from Trevor Cook and/or his entities (Interrogatories Nos. 5 and 9), and corresponding documents (RFP #5), we explained that the Receiver is not seeking a full forensic accounting and is not using the word "accounting" to refer to a cause of action. You agreed to provide dates and amounts for all funds that each Respondent transferred to and received from Trevor Cook and/or his entities. Please provide this supplemental response by April 15, 2011. You refused to provide any additional information requested by the Receiver, such as whether the funds were transferred by check or wire transfer and account numbers that the funds came from or went into.

You also refused to provide any information regarding what the Respondents did with the money they received from Cook and/or his entities after they received it. You contended that the information is not relevant and is impermissible post-judgment discovery.

As to deficiencies specific to individual interrogatories:

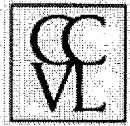
- *Interrogatory Nos. 1, 2, 6-8, and 11-14:* You maintained your objections to providing any additional

information and further noted that the information sought can be obtained in the depositions that your clients refuse to attend.

- *Interrogatory No. 3*: You agreed to supplement your response within 30 days, including specifying with greater detail the materials over which each person identified has possession or control.
- *Interrogatory No. 10*: You agreed to supplement this interrogatory within 30 days in view of the fact that you have agreed to withdraw the two written objections. But you noted that the supplement will be non-substantive, and you further noted that the information sought can be obtained at the depositions that your clients refuse to attend.

Regards,

Peter Kohlhepp



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