



CARLSON, CASPERS, VANDENBURGH & LINDQUIST
INTELLECTUAL PROPERTY LITIGATION & COUNSELING

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January 18, 2011

VIA EMAIL AND U.S. MAIL

William F. Mohrman
Gregory M. Erickson
Morhman & Kaardal
33 South Sixth, Suite 4100
Minneapolis, MN 55402

**Re: CFTC v. Cook, et al., Court File No.: 09-cv-3332 (D. Minn.)
SEC v. Cook, et al., Court File No.: 09-cv-3333 (D. Minn.)**

Dear Counsel:

I write regarding several issues related to discovery in this action.

A. Protective Order

Yesterday we circulated a draft stipulated Protective Order for this case. Please review and, if the provisions are agreeable, sign and return it. We would like to get a Protective Order in place as soon as possible so that both sides can move ahead with document production.

B. Document Production – Mutual Exchange Date

To facilitate document production, we propose that the parties agree to exchange documents responsive to discovery requests on Friday, January 21, 2011. Please let me know if you will agree to a mutual exchange of documents on this date.

C. Document Production – Documents to be Produced

As stated in the Receiver's Objections and Responses to the Investor Respondents' requests for production, many of the Investor Respondents' requests are overly broad and unduly burdensome or otherwise objectionable. We will not be producing, for example, "every

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document which discusses, reflects, refers or relates to Trevor Cook.” We will, however, produce documents related to each of the Investor Respondents and the claims and defenses in the summary proceeding action. Although the universe of relevant documents will be produced to you, we also will make additional documents available for inspection, as outlined below, in an effort to avoid needless—and expensive—discovery disputes.

1. Hard Drives Seized from Receivership Properties

We are in possession of over sixty imaged hard drives that were seized from computers found at properties used by the Receivership entities. We have keyword-searched these drives for documents relating to the Investor Respondents and/or their interactions with Trevor Cook, Clifford Berg, or any Receivership Entity employee or agent, and we will produce, subject to a Protective Order, the documents and emails that this search produced. We consider this set of documents to be a complete set of the relevant information contained on the seized hard drives.

We note that these drives also contain hundreds of irrelevant spreadsheets and lists in which the names of the Investor Respondents appear among other names, as well as other documents that have no connection whatsoever to the Investor Respondents. Although these documents are wholly irrelevant to the claims and defenses in this action, we are willing to take the additional step of making the seized hard drives available for you to inspect under an Attorneys’ Eyes Only designation. If you choose to inspect the hard drives, you may set up a mutually convenient time to come to our offices, review the hard drives, and identify any additional documents you would like produced. We will then review those documents to (1) determine if we have any objection to their production and (2) to determine whether non-objectionable documents need to be produced under the Protective Order.

2. Seized Hard Copy Files

The IRS is in possession of approximately 150 boxes of hard copy documents seized from the Receivership properties. As with the seized computer drives referenced above, we have reviewed these hard copy files for documents relating to the Investor Respondents and/or their interactions with Trevor Cook, Clifford Berg, or any Receivership Entity employee or agent, and we will produce, subject to a Protective Order, the documents that this search produced. Here again, any documents beyond these parameters simply are not relevant to the claims or defenses in this action. Nevertheless, if you wish to inspect these hard copy files, we will make appropriate arrangements with the IRS to allow your inspection under the same Attorneys’ Eyes Only process outlined above, *e.g.*, if you identify any further hard copy files from that collection that you would like produced we will then review them to (1) determine if we have any objection to their production and (2) to determine whether non-objectionable documents need to be produced under the Protective Order.

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3. Receiver's Investigative Files

In addition to the seized hard copy and electronic files, the Receiver has investigative files that have been collected in fulfillment of his mandate under Chief Judge Davis's Receivership Orders. *See, e.g.*, SEC Docket No. 68, CFTC 96. We have also searched these files with the same parameters described above and will produce the results subject to a Protective Order. To the extent they exist, documents in this set will include relevant, non-privileged notes from interviews of the Investor Respondents; relevant, non-privileged notes and transcripts from interviews of Trevor Cook; subpoenaed bank records from Receivership accounts showing Investor Respondents' transactions; correspondence between the Receiver and the Investor Respondents; and any documents provided to the Receiver by the Investor Respondents in response to subpoenas served on the Investor Respondents. If after reviewing the production you believe there are additional documents from the Receiver's investigative files that are relevant to the claims and defenses in this action, we are willing to discuss that issue with you. However, due to the highly sensitive and confidential nature of the Receiver's ongoing duties under Chief Judge Davis's Orders, we will not make the Receiver's investigative files available for your inspection.

4. Files Obtained From the SEC

In furtherance of his duties and obligations under Chief Judge Davis's Receivership Orders the Receiver also has obtained certain investigative and other non-public documents from the SEC. The Receiver is not at liberty to produce these documents without prior approval by the SEC. We are in the process of reviewing the documents we have from the SEC to determine whether any are responsive to this action. If any such documents are located, we will work with the SEC to determine whether they object to their production and if not, the proper designation under the Protective Order.

D. Subpoena Served on the Mauzy Firm

We are in the process of reviewing approximately six boxes of hardcopy documents from the Mauzy firm and a hard drive that the Receiver provided to the Mauzy firm under Chief Judge Davis's Order in preparation for investigative interviews of Trevor Cook. We will let you know whether and what objections we have to production of those documents when our review is complete. We anticipate that we will object to the production of some but not all of that material and that you will be able to inspect or copy the non-objectionable material while the parties, and if necessary, the Court, parse through the objections.

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E. Deposition schedule

Given the number of depositions that must take place in this case between now and the close of fact discovery on July 1, 2011, we would like to plan a mutually convenient schedule to conduct the depositions of at least the following individuals: Steven and Pamela Cheney; Walter Defiel; Terry Frahm; Steven and Jenene Fredell; Michael Heise; Michael and Cynthia Hillesheim; Larry Hopfenspirger; Steven Kautzman; James McIntosh; George and Karen Morrisset; and Reynold Sundstrom. We propose to schedule the depositions of these eleven individuals beginning the week of February 28, 2011. Please advise of your clients' availability beginning in and around that date.

Very truly yours,



Peter M. Kohlhepp

PMK/dr

c: Daniel Gerds (via e-mail)
Adam Huhta (via e-mail)



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August 16, 2011

VIA EMAIL

Adam S. Huhta, Esq.
Huhta Law Firm, PLLC
36 S. 9th Street, Suite 200
Minneapolis, MN 55402

Re: Zayed v. Buysse et al., 11-cv-1042 (D. Minn.)

Mr. Huhta,

I write regarding several deficiencies in Ms. Anderson's responses to the Receiver's discovery requests and in response to your email of August 15, 2011 to me.

As you will recall, and as correspondence clearly shows, the Receiver stood ready to produce documents as early as January 2011. Since that time we have continually offered to make available for inspection the hard drives and hard copy files that the Receiver seized from the Receivership individuals and entities. Moreover, when Ms. Anderson served requests for production, the Receiver not only timely provided written responses, but also produced responsive documents the very same week.

By contrast, Ms. Anderson's discovery responses were due on December 16, 2010. Out of consideration for Ms. Anderson's age and health, the Receiver granted several discovery extensions, ultimately agreeing to allow Ms. Anderson to serve her written discovery responses on January 21, 2011. Nonetheless—and despite repeated inquiries from the Receiver—Ms. Anderson did not produce any documents until over three months later. Moreover, our requests for Ms. Anderson to fill the holes in her document production have gone unanswered. Specifically, Ms. Anderson testified at her deposition about another account at TCF Bank through which the \$102,000.00 she received passed. I then asked you off the record to produce the bank records for this account. You have not responded. We again request that Ms. Anderson produce all bank statements for the TCF account number XXXXXX2219 held in Ms. Anderson's name, from June 2009 through the present. Please also produce bank account statements for TCF account number XXXXXX4116 held in Ms. Anderson's name, from March 2011 through

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the present. These documents are directly responsive to the Receiver's Requests for Production Numbers 3 and 5.

I also remind you that you have yet to return the original CD containing our recalled May 25, 2011 production. Under the terms of the Protective Order, you were obligated to return this CD to us by June 7, 2011. In a June 20, 2011 email you stated that you would provide the disk "when I locate it." Please locate and return the CD immediately.

Please advise no later than the close of business tomorrow whether you intend to produce these documents and return the aforementioned CD, and if so, when. If you do not intend to produce and return this material, please provide a date and time in the next three (3) business days when you are available for a telephone call to meet and confer on these issues.

As to the issues raised in your August 15, 2011 and earlier email, I remind you that discovery is ongoing. The Receiver timely served responses to Ms. Anderson's first set of interrogatories on April 25, 2011. We expect to supplement those responses, including additional references to documents under Federal Rule of Civil Procedure 33(d), by the end of the week. We also will continue to produce relevant, responsive, and non-privileged documents as we identify them, as was the case with the documents produced on July 19, 2011.

Your accusations about the identification of who interviewed Ms. Anderson are puzzling. Your client and her son participated in that interview and they were fully advised of the participants from the Receivership team. In other words, this information has been available to you since March 2010 from your own client. Nevertheless, as a professional courtesy, in the letter accompanying our document production of April 29, 2011, we provided a guide for the notes of all Respondents' interviews. We had no obligation whatsoever to do so. If you are complaining that we unintentionally mistakenly identified Mr. Ostrom's notes for Mr. Austrum's, when your client could have provided you this information and we provided a guide for our document production as a professional courtesy, we are happy to meet and confer, but are unclear as to what relief you seek from that exercise.

The relevant notes of Mr. Ostrom's interview with Mr. Gryzbowski were produced on April 29, 2011. The balance of the notes that you requested on August 11, 2011 have nothing whatsoever to do with the money that Mr. Gryzbowski got out for Ms. Anderson, but rather, ongoing Receivership investigations and other Receivership business. The redacted notes are, therefore, beyond the scope of discovery in this case. *See* 09-cv-3333, Docket 380 at 5; 11-cv-1042, Docket 108 at 6. As you know, Mr. Gryzbowski's deposition is scheduled to take place on September 1, 2011¹, at which point you will have an opportunity to question him. However, the

¹ Pending Mr. Grzybowski's confirmation of your request to move the deposition to September 2, 2011.

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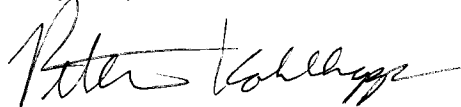
Receiver will not produce irrelevant notes from Mr. Ostrom's earlier interview with Mr. Gryzbowski.

As to the parties' production of privilege logs, given that additional document requests recently have been served, we suggest that the parties agree on a mutual date for the exchange of privilege logs near the close of discovery.

Finally, during the deposition of David Austrum, you asked about tabs that appeared on the right-hand margin of notes authored by either David Austrum or Rick Ostrom. These tabs simply identified the Respondent and consisted of the following text: IR002496 – "Cheney"; IR002516 – "David Buysse"; IR002528 – "Harris"; and IR002540 – "Dot Anderson." Other than these tabs, no additional notes were appended to the pages of handwritten notes that the Receiver has produced.

If you would like to meet and confer on any of the issues raised in your correspondence, please propose a date and time.

Very truly yours,

A handwritten signature in black ink, appearing to read "Peter M. Kohlhepp", written in a cursive style.

Peter M. Kohlhepp

Cc: Daniel Gerdts (via email)
Gregory Erickson (via email)