



CARLSON, CASPERS, VANDENBURGH & LINDQUIST

INTELLECTUAL PROPERTY LITIGATION & COUNSELING

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October 17, 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,

Despite last-minute timing of your demands, the Receiver remains committed to professional dialogue and has worked diligently through the weekend in an attempt to amicably resolve the issues you waited until the eleventh hour to raise. This letter is in furtherance of the Receiver's ongoing efforts in that regard.

1. Your Email of Friday, October 14, 2011 at 3:16 P.M. Mischaracterizes Our Meet and Confer

In response to our discussion regarding the Receiver's fraudulent transfer claim, I stated that the documents the Receiver has bates labeled and provided to you, in addition to the documents and facts specifically identified in the Receiver's discovery responses, are more than sufficient to establish that there was a Ponzi scheme and that Basel Group LLC *was a part of it*. If you intend to contest that there was no Ponzi scheme, that Basel Group LLC was not part of it, or that the transfer to Respondent Anderson was not fraudulent under Minnesota law, then the Receiver reserves the right to rely on other documents, as explained in further detail in Part 3 below.

You also state that the Receiver "refused to provide any further facts in support of the Receiver's denials of Request for Admission Nos. 6, 12, 13, 15, 18, 19, 20, 21, 22, 23, 24, 25, 27, 29, 30, 35, and 35." That is not accurate. As to Requests 23, 24, and 25, I specifically explained to you the reasons for the Receiver's denials. You did not bring up or discuss any of the remaining Requests for Admission.

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EXHIBIT B

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2. Respondent Anderson's Third Interrogatory No. 2 and First Request for Production No. 10

All of the information sought by Respondent Anderson's Third Interrogatory No. 2 and First Request for Production No. 10 is available to you and has been available to you for well over six months. As I have explained on numerous occasions, this information is readily available both in the bank records that have been bates labeled and sent to you and the seized documents that the Receiver has made available for your inspection and copying on a stand-alone, key-word searchable computer database. But rather than look at this information, you insist that the Receiver gather, collate, and distill it for you. Under the Federal Rules, the Receiver has absolutely no obligation to do so.

During the meet and confer last Friday, you explained (for the first time) that what you seek is not only all of the relevant information related to other investors' transactions; you also want that information in a summarized, collated form. This is far beyond what the Court's Summary Proceeding Order allows and the Federal Rules of Civil Procedure require.

Nevertheless, in an attempt to resolve this issue without expending time and resources on motion practice, the Receiver has sought the permission of the SEC to provide you with an Excel file that summarizes the transactions prepared in conjunction with the *SEC v. Cook et al.* case. This document was created at some time prior to its filing in hardcopy form on November 23, 2009 as part of the Exhibits to the Declaration of Scott Hlavacek. To be clear, this is not our document—it is the SEC's. The Receiver will produce this document to you shortly.

This workbook includes the SEC's summary of records showing the dates of each investor's transaction, the amount, the entity associated with the transaction, the method of transaction, and total gains/losses for each investor. With this workbook, the burden of obtaining the information and/or documents sought by Respondent Anderson's Third Interrogatory No. 2 and First Request for Production No. 10 is the same for you as it is for the Receiver. For example, if you want to find "all documents relating to any funds provided to any Receivership Entity by any other investor" from the time of Respondent Anderson's deposit to July 16, 2009, as set forth in Respondent Anderson's First Request for Production No. 10, you can sort by date to identify those investors, and then keyword search the seized files that are available to you to identify the associated documents. That is exactly what the Receiver would have to do to identify those same documents.

The workbook created by the SEC is the most complete and comprehensive compilation of investor transactions known to the Receiver. The Receiver will not produce his investigative files or other work product related to any particular investor, nor will he endeavor to create for you a new summary document which you are equally capable of producing.

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3. Documents Supporting the Receiver's Fraudulent Transfer and Unjust Enrichment Claims

I note that with respect to your contentions in this action and the defenses you have raised, you have not identified *any* documents that you intend to rely on. In fact, you specifically refused to do so in response to the Receiver's Interrogatories Nos. 10-14, maintaining that the interrogatory was "overly broad and unduly burdensome to the extent it asks for the identification of 'all facts' and 'all documents upon which [the Respondent] relies' for the contention." You are now trying to extract that same information from the Receiver by improperly contorting your Requests for Production Nos. 3 and 4 into interrogatories. The Receiver has produced all of the documents sought by Requests for Production Nos. 3 and 4, either by bates labeling and sending them to you or making them available for your inspection and copying under Rule 34(a). Under the Federal Rules, that is all we are required to do.

Nonetheless, out of professional courtesy and in an effort to avoid needless motion practice, the Receiver is willing to do the following:

a) The Receiver's Fraudulent Transfer Claim

The Receiver has already specifically identified, by bates number or document title, documents that support his claim that the transfer to Respondent Anderson was fraudulent under Minn. Stat. § 513.41, *et seq.* To the extent you intend to contend that the transfer to Respondent Anderson was *not* made pursuant to the Ponzi scheme or otherwise fraudulent, the Receiver reserves the right to rely on all documents that have been produced to you pursuant to Rule 34(a). The Receiver also will amend his response to your First Interrogatory No. 10 to identify, *in addition to all of the documents that have already been specifically identified*, other categories of produced documents that the Receiver may rely on to establish that the transactions to Respondent Anderson were made pursuant to the Ponzi scheme and rebut your contention that the transfer to Respondent Anderson was not fraudulent.

b) The Receiver's Unjust Enrichment Claim

In response to Respondent Anderson's Second Interrogatory No. 2, the Receiver has already specifically identified documents that support his claim for unjust enrichment. Nonetheless the Receiver will amend his response to your Second Interrogatory No. 2 to identify, *in addition to all of the documents that have already been specifically identified*, other categories of documents the Receiver may rely on in support of his claim for unjust enrichment.

Note that the Receiver reserves the right to rely on *any* document that has been produced to you or are publically available to rebut any defenses you raise. This includes all documents that have been made available for your inspection and copying pursuant to Rule 34(a); all

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documents that have been bates numbered and sent to you; and all documents identified or referred to in the Receiver's discovery responses.

4. Respondent Anderson's Responses to the Receiver's Interrogatories Nos. 10-14

Given that the Receiver has already identified numerous specific documents in response to your interrogatories, and that the Receiver is agreeing to further supplement his responses to your First Interrogatory No. 10 and Second Interrogatory No. 2, we expect you to do the same. When I asked you specifically whether you would agree to supplement your responses to the Receiver's Interrogatories Nos. 10-14 to identify the documents you rely on for your contentions, you stated that you would get back to me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Peter M. Kohlhepp", with a long horizontal flourish extending to the right.

Peter M. Kohlhepp

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