

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA
CASE NO. 12-034123 (07)

P & S ASSOCIATES GENERAL
PARTNERSHIP, etc. et al.,

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.

**DEFENDANT FRANK AVELLINO'S MOTION TO COMPEL PLAINTIFFS TO
PRODUCE DOCUMENTS IN RESPONSE TO HIS FIFTH REQUEST TO PRODUCE**

Defendant Frank Avellino ("Avellino"), moves this Court for an order compelling Plaintiffs to produce all documents requested in Avellino's Fifth Request to Produce and in support therefore states as follows:

1. On March 23, 2015, Avellino served Plaintiffs with his Fifth Request to Produce, a copy of which is attached hereto as Exhibit "A" (the "Request"). On May 1, 2015, Plaintiffs served their Responses and Objections to the Request, a copy of which is attached hereto as Exhibit "B" (the "Response"). Plaintiffs have produced no documents responsive to the Request.

2. Throughout this action, Plaintiffs have done all they can to avoid meeting their discovery obligations while through multiple complaints have significantly expanded their claims against Avellino in which they now seek millions of dollars in damages.

3. In an attempt to obtain all documents relevant to this action Avellino served the Request which seeks four categories of documents. True to form, Plaintiffs have provided nothing but rather raised a myriad of improper and baseless objections.

4. Initially, Plaintiffs' assert improper general objections as well as improper objections to definitions and to the instructions, all of which should be stricken. Asserting conclusory objections of "unduly burdensome and overly broad" without providing any support is patently improper.

5. As to the specific requests, Request No. 1 seeks the tax returns with schedules of the Plaintiff Partnerships for the years 2000 to the present. In the parties' meet and confer undersigned counsel agreed that such request is limited to the tax returns of Plaintiffs, P&S Associates and S&P Associates (the "Partnerships"), and not the limited partners of the Partnerships. Subsequent to the meet and confer Plaintiffs' counsel acknowledged they would provide the tax returns of the Partnerships, and would make available for inspections the schedules to the tax returns. However, at the time of the filing of this Motion to Compel, no tax returns have been produced by Plaintiffs. Plaintiffs should be ordered to comply with their agreement to provide the Partnerships' tax returns.

6. Requests 2 and 3 are similar in what they seek. Request No. 2 seeks all documents that the Plaintiffs have obtained through discovery or otherwise in this or any action in which the Conservator is involved. Request No. 3 seeks all documents produced by the Conservator in any litigation in which the Conservator is involved. In the parties' meet and confer, undersigned counsel confirmed that these requests do not seek pleadings filed in the actions in which the Conservator is involved but rather seeks the discovery the Conservator received and produced in such actions. Plaintiffs, nevertheless continue to object and have produced no responsive documents.

7. Plaintiffs' objections to the documents sought in Requests 2 and 3 are improper in that they are conclusory and unsupported (for, example, "unduly burdensome"). Moreover, the

documents sought from the other actions in which the Conservator is involved are directly relevant to the issues in this action, because, as more fully set forth below, all the other actions were commenced prior to the instant one, and involve similar allegations regarding monies being improperly diverted from the Partnerships, either to other partners, or to third parties, some who are or were defendants in this action. Thus, information which was obtained through discovery in these other lawsuits is not only relevant to the allegations raised in this lawsuit, but also to the defenses raised such as statute of limitations, which in part, may entail issues regarding what and when the partners knew and/or should have known regarding the alleged payments to Defendants that form the basis for this action.

8. A brief recital of these other actions in which the Conservator is a party makes clear the relevance of the discovery obtained in those actions to the issues in this case. On January 17, 2013, the Conservator was appointed to, *inter alia*, gather the assets of the Partnerships and distribute them to the limited partners. In carrying out its duties, the Conservator is involved in four actions pending in this court:

a. *P&S Associates, General Partnership, et al v. Roberta P. Alves, et al*, Case No.: 12-028324 (07). This action was brought by the Partnership against investors/partners. The complaint was for interpleader and declaratory relief, in which the Partnerships sought the Court's declaration as to the proper method of distribution of the Partnership monies, including the distribution of settlement funds received by the Partnerships from the Trustee of BLMIS. Included in the allegations were that certain of the investors had received commissions and/or referral fees, and those should be used as a set-off for the particular investors. Although it cannot be determined from the docket sheet or the Conservator's website all the discovery conducted in this case, based on pleadings filed in the case, it is clear the

Conservator received the Partnerships' accounting records from Glass Ratner, and elicited additional information from the Partnerships' principals and related entities, all of which are relevant and discoverable. In addition, depositions of investors were noticed and presumably taken in this litigation, again their sworn testimony would be relevant and discoverable.

b. *Margaret Smith, et al v. Janet A. Hooker Charitable Trust, et al.*, Case No.: 12-34121 (07). This action was brought by Margaret Smith on behalf of the Partnerships against individual investors alleging improper distributions from capital contributions of other partners not from profits; breach of contract, unjust enrichment, money had and fraudulent transfer. From what can be gleaned from the public records, similar to the above case, the discovery in this case relates to the knowledge of the investors, what information and documents the investors and partnerships have in their possession and/or control. It also refers specifically to what involvement, if any, the Defendants, such as Avellino, had in bringing the investors to the Partnerships. (The interrogatories served on Defendants ask questions related to how they became invested in the Partnership, and to identify any communications with specific individuals/entities, such as Sullivan, Steven Jacob, Frank Avellino, Michael Bienes, Kelco Foundation and Vincent Kelly). Clearly such discovery is relevant to the instant lawsuit and is discoverable;

c. *Matthew Carone, as Trustee, etc., et al v. Michael D. Sullivan*, Case No.: 12-24051 (07). This action was brought by an individual investor, represented by the Conservator's attorneys, against Michael Sullivan. The Verified Complaint alleged Sullivan diverted millions of dollars from the Partnerships to pay additional management fees and commissions to co-conspirators, and was sought a temporary injunction against Sullivan. Again, although it is difficult, if not, impossible to know from the public filings all the discovery which

was engaged in during this lawsuit, it is revealed that the Conservator has possession of the Partnership books and records; conducted meetings with investors, Sullivan, and professionals. For example, a notice of production was served on Becker & Poliakoff LLP and Helen Davis Chaitman, requesting partnership books and records and other documents. There are pleadings filed which dispute the issue of whether or not all books and records were turned over in discovery and pursuant to court orders. The alleged diversion of Partnerships' assets pursued in this action form the basis for the claims against Avellino in the instant action and, thus, documents from such action are clearly relevant. Moreover, when the Conservator or its attorneys obtained Partnership records and thus, became aware of the payments made to Avellino which Plaintiffs seek to recover in this action, is directly relevant to the issue of statute of limitations. Accordingly, the discovery obtained is relevant to the instant lawsuit; and

d. The instant lawsuit. This action was commenced on December 12, 2012, but Avellino was not served until August 22, 2013. Prior to and subsequent to Avellino being served in this matter, discovery such as documents and interrogatories have been obtained from the other parties in this matter, and non-parties, but have not been provided to Avellino. Clearly any discovery which has been obtained in this lawsuit is relevant and should be provided to Avellino.

9. Request No. 4 seeks documents utilized or referred to by the Conservator's expert, Barry Mukamul, in the preparation of his report dated November 11, 2013, including all worksheets and work papers. In the parties' meet and confer, undersigned counsel agreed to eliminate the request for the expert's worksheets and work papers. Plaintiffs subsequently agreed to produce the remaining documents requested but have failed to do so. Such documents should have been produced by Plaintiffs in response to Avellino's previous document requests

which sought such records of the Partnerships. Plaintiffs should be ordered to produce documents Plaintiffs agreed to produce.

WHEREFORE, Avellino moves this court for an order compelling Plaintiffs to produce all requested documents as well as additional relief including attorney's fees.

CERTIFICATE OF COMPLIANCE

I hereby certify that counsel for Avellino has contacted Plaintiffs' counsel in a good faith effort to resolve the issues raised in this motion and to secure the information and materials sought through discovery without court action, but to date issues remain unresolved. On May 6, 2015, undersigned counsel had a telephone conversation with Plaintiffs' attorneys, Thomas Zeichman and Steve Weber, during which call Avellino's objections to Plaintiffs' discovery responses were discussed. The parties resolved several of the issues as is reflected in this motion but were unable to resolve all issues necessitating the filing of this motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document is being served on those on the attached service list by electronic service via the Florida Court E-Filing Portal in compliance with Fla. Admin. Order No. 13-49 this 4th day of June, 2015.

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IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA
CASE NO. 12-034123 (07)
Complex Litigation Unit

P & S ASSOCIATES GENERAL
PARTNERSHIP, etc. et al.,

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.

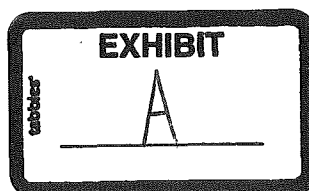
**DEFENDANT FRANK AVELLINO'S FIFTH REQUEST
TO PRODUCE TO PLAINTIFF**

Defendant, Frank Avellino, by and through his undersigned counsel and pursuant to Rule 1.350, Florida Rules of Civil Procedure, requests that Plaintiff Philip J. Von Kahle, as Conservator of P&S Associates, General Partnership and S&P Associates, General Partnership, (hereinafter "Plaintiff"), produce the documents identified below at the offices of Haile, Shaw & Pfaffenberger, P.A., 660 U.S. Highway One, Third Floor, North Palm Beach, Florida 33408, or other mutually agreed upon location, within thirty (30) days.

DEFINITIONS AND INSTRUCTIONS

For the purpose of this Document Request, the following words and phrases are defined:

1. "Document" is used in its broadest sense under the Florida Rules of Civil Procedure and includes graphic matter of any kind or nature, whether written, printed, typed, recorded, filmed punched, transcribed, taped, or produced or reproduced by any means, including without limitation electronically. The term "document" includes, but is not limited to, all papers, books, contracts, licenses, inter-office communications, records, personal notes,



cablegrams, telexes, e-mails, electronic data, studies, calendars, diaries, desk calendars, appointment books, agendas, minutes, pamphlets, envelopes, telephone messages, graphs, records or meetings, summaries or records of telephone conversations, voice mails, summaries of records of personal conversations or interviews, employee notebooks, summaries or records of meetings or conferences, tabulations, analyses, evaluations, projections, work papers, charts, statements, summaries, journals, billing records, and invoices, and all communicative material of any kind. The term "document" also includes every other means by which information is recorded or transmitted, including, but not limited to, photographs, videotapes, tape recordings, microfilms, punch cards, computer programs, printouts, all recordings made through data processing techniques, and the written information necessary to understand and use such materials. The term "documents" is further defined to mean the original, any drafts, and any non-identical copies (i.e., those bearing notations or marks not found on the original). Documents includes all information electronically created or maintained, by way of computers, networks, telephones, PDAs, hard drives, software or otherwise, regardless of whether printed. Any document which you contend is subject to the work product or attorney-client privileges shall be identified with your reasons for claiming the privilege.

2. A document "relates to" a particular fact, matter, or event when it proves or disproves, or tends to prove or disprove, that fact, matter, or event or contains information concerning, explaining, or providing a background for understanding that fact, matter, or event, or is evidence of or a result of that fact, matter, or event, or could lead to additional relevant information concerning, explaining, or providing a background for understanding that fact, matter, or event, or was produced, altered, or signed as a part of or as a result of that fact, matter, or event.

3. "Reflecting", "reflect" or any other derivative shall be construed as referring to, responding to, relating to, pertaining to, connected with, comprising, memorializing, commenting on, regarding, discussing, showing, describing, concerning, analyzing and constituting.

4. "Refer", "relate", "related to" or evidencing shall mean, directly or indirectly, refer to, reflect, mention, describe, pertain to, arise out of, or in connection with, or in any way legally, logically, or factually be connection with the matter identified.

5. "And" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the demand all documents that which might otherwise be construed to be outside the scope. "Each" shall be construed to include the word "every," and "every" shall be construed to include the word "each." "Any" shall be construed to include the word "all", and "all" shall be construed to include the word "any."

6. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, wherever necessary to bring within the scope of the demand all documents which might otherwise be construed to be outside its scope.

7. A plural noun shall be construed as a singular noun and a singular noun shall be construed as a plural noun, whenever necessary to bring within the scope of the demand all documents which might otherwise be construed to be outside its scope.

8. "Partnerships" shall mean P&S Associates, General Partnership and S&P Associates, General Partnership, their general and limited partners, members and representatives and agents.

9. "Avellino" shall mean Frank Avellino.

10. "Sullivan" shall mean Michael D. Sullivan.

8. "You" or "Your" shall mean Plaintiffs and their partners, associates, members and representatives and agents.

INSTRUCTIONS

1. You are to produce all responsive documents within your possession, custody, or control or in the possession, custody, or control of your attorneys, accountants, or other agents, wherever located.

2. Produce each document requested herein with an indication of the particular paragraph or subparagraph hereof to which the document is responsive.

3. With respect to any responsive document, which was formerly in your possession, custody, or control, and has been lost or destroyed, state:

- a. The type of document;
- b. The subject matter and contents of the document;
- c. The author of the document;
- d. Each person to whom the original or a copy of the document was sent;
- e. The date on which the document was prepared or transmitted;
- f. The date on which the document was lost or destroyed and, if destroyed;

and

g. The condition of and reasons for such destruction and the persons requesting and performing the destruction,

4. This request shall be deemed continuing so as to require prompt, further, and supplemental production (without further request by Defendant or her attorneys) if you locate or obtain possession, custody, or control of additional responsive documents at any time prior to

trial herein.

PRIVILEGE

1. Whenever a request calls for the production of a document claimed by you to be privileged, supply sufficient factual detail to enable the Court to determine whether or not such document is entitled to a claim of privilege, including:

- a. the date or dates of the documents;
- b. the name and position of each person who participated in the preparation of the document;
- c. the name and position of each person to whom the document was addressed, and the name of each person to whom the document, or the contents thereof have been communicated by copy, exhibition, reading, or oral conversation of any kind;
- d. the general subject matter of the document; and
- e. the basis or bases for the claim of privilege.

DOCUMENTS TO BE PRODUCED

1. Partnership's Tax returns, with schedules, for the years 2000 to the present.
2. All documents You obtained through discovery or otherwise in connection with this action or any other action or proceeding in which the Conservator is involved.
3. All documents produced by the Conservator in any litigation in which the Conservator is involved.

4. All documents utilized by or referred to by Conservator's expert, Barry Mukamal, in the preparation of his report dated November 11, 2013, including all worksheets and work papers.

Dated March 23, 2015.

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P & S Associates General Partnership, etc. et al. v. Michael D. Sullivan, et al.
Case No. 12-034123(07)
Defendant, Frank Avellino's Fifth Request for Production to Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of March, 2015, the foregoing document is being served on all counsel of record on the attached service list by email.

/s/ Gary A. Woodfield
Gary A. Woodfield

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IN THE CIRCUIT COURT FOR THE
SEVENTEENTH JUDICIAL CIRCUIT IN
AND FOR BROWARD COUNTY, FLORIDA

COMPLEX LITIGATION UNIT

PHILIP J. VON KAHLE, as Conservator of CASE NO.: 12-034123 (07)
P&S Associates, General Partnership and
S&P Associates, General Partnership

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

**PLAINTIFFS' RESPONSES AND OBJECTIONS TO DEFENDANT,
FRANK AVELLINO'S FIFTH REQUEST TO PRODUCE**

Plaintiffs, by and through the undersigned counsel, hereby provide responses and objections to Defendant Frank Avellino's ("Avellino") Fifth Request for Production of Documents to Plaintiffs (the "Requests"), pursuant to Rule 1.350 of the Florida Rules of Civil Procedure.

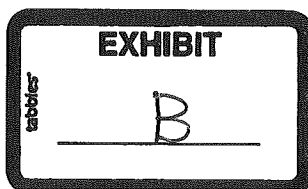
GENERAL OBJECTIONS

Plaintiffs object to producing documents that are protected by the attorney-client privilege, attorney work product doctrine, or any other applicable privilege.

OBJECTIONS TO DEFINITIONS

1. Plaintiffs object to the definition of "You" in Definition #8¹ of the Requests as vague, ambiguous, unduly burdensome, and overly broad in scope because it demands Plaintiffs produce documents concerning P&S Associates, General Partnership's and S&P, Associates, General Partnership's (the "Partnerships") "partners, associates, members, representatives, and

¹ The Definition portion of the Requests includes the #8 twice.



agents” which may include entities or persons over which Plaintiffs lack any control or from which Plaintiffs have no ability to obtain documents and persons or entities of which Plaintiffs have no knowledge. Plaintiffs are unable to obtain and produce responsive documents from persons who purport to act as representatives and agents on behalf of Plaintiffs without Plaintiffs’ knowledge. Plaintiffs object to the definition of “You” to the extent that it seeks privileged communications with their attorneys and accountants.

OBJECTIONS TO INSTRUCTIONS

1. Plaintiffs object to Instruction #1 of the Requests because it seeks privileged communications with their attorneys and accountants.

2. Plaintiffs object to Instruction #4 of the Requests because it imposes a duty to supplement Plaintiffs responses to the Request. Such duty is unduly burdensome and is not required by the Florida Rules of Civil Procedure.

OBJECTIONS TO PRIVILEGE INSTRUCTION

1. Plaintiffs objection to Privilege #1 of the Requests because it requires Plaintiff’s to produce a privilege log prior to the Court’s determination of any objection raised by the Plaintiff that such documents are not otherwise discoverable. *State Farm Fla. Ins. Co. v. Coburn*, 136 So. 3d 711 (Fla. 2d DCA 2014) (“[A] party is required to file a [privilege] log only if the information is otherwise discoverable”); *see also Gosman v. Luzinski*, 937 So. 2d 293, 296 (Fla. 4th DCA 2006) (“Where a party claims that the production of documents is burdensome and harassing, such as was done here, the scope of the discovery is at issue. Until the court rules on the request, the party responding to the discovery does not know what will fall into the category of discoverable documents”).

RESPONSES AND OBJECTIONS TO REQUESTS FOR PRODUCTION

1. Partnership's Tax returns, with schedules, for the years 2000 to the present.

Objections:

Plaintiffs object to this request because it is overly broad in scope, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Definition #8 of the Requests states that "Partnerships" includes "P&S Associates, General Partnership and S&P Associates, General Partnership, their general and limited partners, members and representatives and agents" and this request would therefore require Plaintiff to produce the tax returns of the hundreds of general partners of the Plaintiffs, along with any general and limited partners, members and representatives and agents.

Response:

Plaintiffs cannot determine what, if any, privileged documents are responsive to this request because it is overly broad in scope, unduly burdensome, and seeks documents not reasonably likely to lead to the discovery of admissible evidence in this action, for the reasons stated above. Plaintiffs will serve a privilege log identifying any privileged documents that are responsive to this request after the Court rules on Plaintiffs' objections to this request and determines the permissible scope of this request. *State Farm Fla. Ins. Co. v. Coburn*, 136 So. 3d 711 (Fla. 2d DCA 2014) ("[A] party is required to file a [privilege] log only if the information is otherwise discoverable"); *see also Gosman v. Luzinski*, 937 So. 2d 293, 296 (Fla. 4th DCA 2006) ("Where a party claims that the production of documents is burdensome and harassing, such as was done here, the scope of the discovery is at issue. Until the court rules on the request, the party responding to the discovery does not know what will fall into the category of discoverable documents").

2. All documents You obtained through discovery or otherwise in connection with this action or any other action or proceeding in which the Conservator is involved.

Objections:

Plaintiffs object to this request as vague and ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence because the term "Conservator" is undefined and is susceptible to more than one interpretation.

Plaintiffs object to this request on the grounds that it is vague and ambiguous, overly broad in scope, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence because it is unclear from the undefined phrase "otherwise in connection" what is the scope of this request as the Conservator is involved in and receives documents in numerous contexts, proceedings, and actions that do not concern the claims or defenses in this action.

Plaintiffs object to this request because it is not constrained by any time limitation and requesting all documents obtained "through discovery or otherwise in connection with this action or any other action or proceeding in which the Conservator is involved" is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence because the Conservator is involved in and receives documents in numerous contexts, proceedings, and actions that do not concern the claims or defenses in this action. To the extent that this Request seeks documents which were produced to the Conservator in litigation where the Partnerships are named as parties, it may seek documents that were produced pursuant to a confidentiality order.

Plaintiffs object to this request because it may seek documents which were produced to the Conservator pursuant to a confidentiality order.

Response:

Plaintiffs cannot determine what, if any, privileged documents are responsive to this request because it is overly broad in scope, unduly burdensome, and seeks documents not reasonably likely to lead to the discovery of admissible evidence in this action, for the reasons stated above. Plaintiffs will serve a privilege log identifying any privileged documents that are responsive to this request after the Court rules on Plaintiffs' objections to this request and determines the permissible scope of this request. *State Farm Fla. Ins. Co. v. Coburn*, 136 So. 3d 711 (Fla. 2d DCA 2014) (“[A] party is required to file a [privilege] log only if the information is otherwise discoverable”); *see also Gosman v. Luzinski*, 937 So. 2d 293, 296 (Fla. 4th DCA 2006) (“Where a party claims that the production of documents is burdensome and harassing, such as was done here, the scope of the discovery is at issue. Until the court rules on the request, the party responding to the discovery does not know what will fall into the category of discoverable documents”).

3. All documents produced by the Conservator in any litigation in which the Conservator is involved.

Objections:

Plaintiffs object to this request as vague and ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence because the term “Conservator” is undefined and is susceptible to more than one interpretation.

Plaintiffs object to this request because it is not constrained by any time limitation and requesting all documents “produced by the Conservator in any litigation in which the Conservator is involved” is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence because the Conservator is involved in and produces

documents in numerous litigations that do not concern the claims or defenses in this action. To the extent that this request seeks documents which the Conservator produced in litigation where the Partnerships are named as parties, it may seek documents that were produced pursuant to a confidentiality order.

Plaintiffs object to this request because it may seek documents which were produced by the Conservator pursuant to a confidentiality order.

Response:

Plaintiffs cannot determine what, if any, privileged documents are responsive to this request because it is overly broad in scope, unduly burdensome, and seeks documents not reasonably likely to lead to the discovery of admissible evidence in this action, for the reasons stated above. Plaintiffs will serve a privilege log identifying any privileged documents that are responsive to this request after the Court rules on Plaintiffs' objections to this request and determines the permissible scope of this request. *State Farm Fla. Ins. Co. v. Coburn*, 136 So. 3d 711 (Fla. 2d DCA 2014) (“[A] party is required to file a [privilege] log only if the information is otherwise discoverable”); *see also Gosman v. Luzinski*, 937 So. 2d 293, 296 (Fla. 4th DCA 2006) (“Where a party claims that the production of documents is burdensome and harassing, such as was done here, the scope of the discovery is at issue. Until the court rules on the request, the party responding to the discovery does not know what will fall into the category of discoverable documents”).

4. All documents utilized by or referred to by Conservator's expert, Barry Mukamal, in the preparation of his report dated November 11, 2013, including all worksheets and work papers.

5.

Objections:

Plaintiffs object to this request as vague and ambiguous, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence because the term “Conservator” is undefined and is susceptible to more than one interpretation.

Plaintiffs object to this request as vague and ambiguous because no expert report has been served for this action and this request appears to assume that one has been prepared.

Plaintiffs object to this request as overly broad in scope, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence because this request seeks all documents utilized by or referred to in a report by Barry Mukamal that was served in another lawsuit. All documents utilized by or referred to in that report are not relevant to the claims and defenses in this action and are not reasonably calculated to lead to the discovery of admissible evidence.

Plaintiffs object to this request because it may seek documents which were produced by the Conservator pursuant to a confidentiality order.

Response:

Plaintiffs cannot determine what, if any, privileged documents are responsive to this request because it is vague and ambiguous, overly broad in scope, unduly burdensome, and seeks documents not reasonably likely to lead to the discovery of admissible evidence in this action, for the reasons stated above. Plaintiffs will serve a privilege log identifying any privileged documents that are responsive to this request after the Court rules on Plaintiffs’ objections to this request and determines the permissible scope of this request. *State Farm Fla. Ins. Co. v. Coburn*, 136 So. 3d 711 (Fla. 2d DCA 2014) (“[A] party is required to file a [privilege] log only if the information is otherwise discoverable”); *see also Gosman v. Luzinski*, 937 So. 2d 293, 296 (Fla.

4th DCA 2006) (“Where a party claims that the production of documents is burdensome and harassing, such as was done here, the scope of the discovery is at issue. Until the court rules on the request, the party responding to the discovery does not know what will fall into the category of discoverable documents”).

Dated: May 1, 2015

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of May, 2015, a true and correct copy of the foregoing document was served on the following parties:

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