

09-CV-00041-WDM-BNB
1-11-10

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00041-WDM-BNB

COPIC INSURANCE COMPANY,

Plaintiff,

v.

WELLS FARGO & COMPANY and
WELLS FARGO BANK, N.A.

Defendants.

**PLAINTIFF'S AMENDED RESPONSE TO DEFENDANTS' FIRST SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS, INTERROGATORIES, AND
REQUESTS FOR ADMISSION**

Plaintiff responds to Defendants' First Set of Requests for Production of Documents, Interrogatories, and Requests for Admission as follows:

GENERAL OBJECTIONS APPLICABLE TO ALL DOCUMENT REQUESTS

1. COPIC asserts its general objections to each of the Discovery Requests.
2. COPIC objects to the discovery requests to the extent that they seek information and/or the production of documents protected from discovery by the attorney-client privilege, the work-product doctrine, the joint-defense privilege or any other legally recognized privilege, immunity or doctrine.
3. COPIC objects to the discovery requests to the extent that they seek to impose discovery obligations upon COPIC that are broader than, or inconsistent with, or exceed or differ from those imposed by the Rules of Civil Procedure.
4. COPIC also objects to the Definitions set forth in the requests to the extent they seek to give words meanings other than their ordinary meanings and on the grounds that they exceed or alter the requirements of the Rules of Civil Procedure.

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PLAINTIFF'S EXHIBIT 2

5. COPIC objects to the discovery requests on the grounds that they are overly broad, vague, ambiguous, unduly burdensome, harassing, oppressive, and seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.
6. COPIC objects to the discovery requests to the extent they seek information already in Wells Fargo's control.
7. COPIC objects to the discovery requests to the extent they seek information concerning periods and matters that are not relevant to this litigation.
8. COPIC states that its investigation is ongoing in this matter and COPIC reserves the right to supplement these responses should additional information become available.
9. By making an objection, COPIC does not imply that it has documents responsive to such request or more documents than provided.
10. COPIC objects to each request for production on the grounds that they seek documents which are in the possession of the Plaintiffs, are public records, or are more readily available from persons/entities other than COPIC.
11. In producing documents, COPIC does not admit that the documents are relevant, material or admissible to this action.
12. COPIC objects to Plaintiffs' duplicative requests for documents.
13. COPIC objects to the extent that the requests seek documents not in the control of COPIC.
14. Any statement that documents will be produced, or documents will be provided or that documents may be inspected and copied or by responding to any request, COPIC does not admit the existence of any document or information but rather means that responsive, non-privileged documents located after a reasonable search of documents within the possession, custody, or control of COPIC will be produced for inspection, subject to COPIC's objections. Any such statement is not intended to be and should not be construed as a representation that such documents actually exist or can be located by reasonable efforts, and does not expand the duty to supplement under the Rules of Civil Procedure.
15. COPIC objects to the instructions as overly broad and unduly burdensome.

16. COPIC's responses to the requests specifically incorporate each of these general objections into the COPIC's specific responses, whether or not expressly referred to in said specific response.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: All documents relating to any security purchased from January 1, 1999 to the present for any account held by or for the benefit of COPIC including, but not limited to, any fixed income investment rated below "A-1" by Standard & Poor's, below "P-1" by Moody's Investors Service, below "F-1" by Fitch, below "D-1" by Duff and Phelps or long-term debt ratings by these entities below "A."

RESPONSE: Plaintiff objects to this based on the forgoing objections and further states that this information is neither relevant nor likely to lead to the discovery of admissible evidence. Plaintiff further objects because Wells Fargo, as the custodian of COPIC's custodial account, has this information in its possession.

REQUEST NO. 2: For the period from January 1, 1999 to the present, all account statements, confirmations, account forms, account agreements, correspondence, reports or other documents, howsoever designated, for all of COPIC's investment accounts of any kind in which securities have been held including, without limitation, brokerage accounts, custodial accounts, securities lending accounts, or internal accounts or portfolios.

RESPONSE: Plaintiff objects to this based on the forgoing objections and further states that this information is neither relevant nor likely to lead to the discovery of admissible evidence. Plaintiff further objects because Wells Fargo, as the custodian of COPIC's custodial account, has this information in its possession.

REQUEST NO. 3: All documents relating to COPIC's investments, investment accounts, or investment portfolios from January 1, 1999 to the present.

RESPONSE: Plaintiff objects to this based on the forgoing objections and further states that this request is overly broad and unduly burdensome.

REQUEST NO. 4: All documents relating to any securities lending program in which COPIC participated at any time from January 1, 1982 to the present.

RESPONSE: Plaintiff objects to this based on the forgoing objections and further states that this information is neither relevant nor likely to lead to the discovery of admissible evidence. Plaintiff states that the only securities lending program it has participated in is the Wells Fargo securities lending program. Plaintiff will produce documents relating to the Wells Fargo securities lending program.

REQUEST NO. 5: All documents relating to investment advice, recommendations or counseling (whether internal or external) from January 1, 1999 to the present.

RESPONSE: Plaintiff objects to this based on the forgoing objections and further states that this request is overly broad and unduly burdensome. Plaintiff will produce advice it received regarding the Wells Fargo securities lending program.

REQUEST NO. 6: All documents relating to communications between COPIC and Wells Fargo including, without limitation, letters, e-mail, correspondence, and/or recordings, transcripts, logs or notes of communications.

RESPONSE: Subject to and without waiving the forgoing objections, COPIC will provide non-privileged documents within its control to the extent that they have not already been produced.

REQUEST NO. 7: All documents relating to COPIC's investment objectives, guidelines or policies including, but not limited to, all communications relating to those investment objectives, guidelines or policies.

RESPONSE: Plaintiff objects to this based on the forgoing objections and further states that this request is overly broad and unduly burdensome. Subject to and without waiving the objections, Plaintiff will produce policy guidelines for its investments.

REQUEST NO. 8: All agreements, forms, information and documents relating to the Securities Lending Program and COPIC's financial accounts with Wells Fargo from January 1, 2000 to the present.

RESPONSE: Subject to and without waiving the forgoing objections, COPIC will provide non-privileged documents within its control to the extent that they have not already been produced.

REQUEST NO. 9: All documents relating to COPIC's participation in the Securities Lending Program, including, but not limited to, internal communications, board meeting or investment committee minutes, handouts, handwritten notes, diary entries or calendar entries from January 1, 2000 to the present.

RESPONSE: Subject to and without waiving the forgoing objections, COPIC will provide non-privileged documents within its control to the extent that they have not already been produced.

REQUEST NO. 10: For the period January 1, 2000 to the present, all documents relating to communications between COPIC and any other person, including, without limitation, Wells Fargo, relating to the Securities Lending Program.

RESPONSE: Subject to and without waiving the forgoing objections, COPIC will provide non-privileged documents within its control to the extent that they have not already been produced.

REQUEST NO. 11: All communications between COPIC and any other person relating to SIVs, fixed income investments, corporate bonds, asset-backed securities, mortgage-backed securities or any other securities, however designated.

RESPONSE: Plaintiff objects to this based on the forgoing objections and further states that this information is neither relevant nor likely to lead to the discovery of admissible evidence.

REQUEST NO. 12: All documents COPIC claims to have relied upon in making any decisions relating to the Securities Lending Program from January 1, 2000 to the present.

RESPONSE: Subject to and without waiving the forgoing objections, COPIC will provide non-privileged documents within its control to the extent that they have not already been produced.

REQUEST NO. 13: All documents relating to SIVs, the fixed income market, corporate bonds, asset-backed securities, mortgage-backed securities or any other securities which COPIC asserts were of a type which should not have been purchased by the Securities Lending Program.

RESPONSE: Plaintiff objects to this based on the forgoing objections and further states that this information is neither relevant nor likely to lead to the discovery of admissible evidence.

REQUEST NO. 14: All documents relating to marketing materials, PowerPoint presentations, brochures, letters or advertisements regarding securities, including the Securities Lending Program, from January 1, 2000 to the present.

RESPONSE: Subject to and without waiving the forgoing objections, COPIC will provide non-privileged documents relating to the Securities Lending Program that are within its control to the extent that they have not already been produced.

REQUEST NO. 15: All internal and external audits of COPIC's financial statements, accounts, investments, investment accounts, assets or portfolios from January 1, 1999 to the present, including, without limitation, communications with auditors about SIVs, fixed-income securities, asset-backed securities, mortgage-backed securities, commercial paper or any other security which was of a type which COPIC asserts should not have been purchased by the Securities Lending Program.

RESPONSE: Plaintiff objects to this based on the forgoing objections and further states that this information is neither relevant nor likely to lead to the discovery of admissible evidence.

for management of funds of COPIC to be invested in securities; (b) were responsible for formulating, implementing or complying with any investment objectives, guidelines, or policies, either internal or external, that were applicable to COPIC's investments; or (c) communicated with banks, financial institutions or brokers relating to investment of COPIC's funds in securities, and for each person, identify the time period during which they performed these functions.

ANSWER: Plaintiff objects to this based on the forgoing objections and further states that this information is neither relevant nor likely to lead to the discovery of admissible evidence. Plaintiff states that Steve Wagner and Marvin Ostermiller were primarily responsible for determining COPIC's participation in the securities lending program.

INTERROGATORY NO. 8: Identify each security purchased in the Securities Lending Program that COPIC asserts was unsuitable or the purchase of which otherwise breached any contractual or other duty allegedly owed COPIC by Wells Fargo, and as to each security state the CUSIP, the full name of the security, the date of purchase, its purchase price, its rating at the time of purchase (and the identity of the rating organization); and the sale price and date of sale, if applicable.

ANSWER: Subject to and without waiving the forgoing objections, Plaintiff asserts that Wells Fargo represented that its Securities Lending Program had never before suffered a loss and that based on its investment strategy, which included preserving principal and seeking only a very tiny return, the risk of loss was virtually non-existent. Wells Fargo changed this strategy and began stretching for greater yield for its own selfish benefit as well as at the behest of other participants. Wells Fargo increased the risk of the Program, which greater risk was not necessary to obtain the minimum yield that Wells Fargo had told COPIC it would seek. The increased risk was also not necessary to obtain the minimum yield that COPIC expected and sought. Wells Fargo never disclosed that it was increasing the risk for the Program. Accordingly, any of the securities that are worth less than what Wells Fargo paid for the security or were sold for less than the purchase price were unsuitable. The identity of these securities, the date they were purchased and/or sold, and their ratings are within Wells Fargo's control. Wells Fargo has not provided sufficient information to the Program participants regarding the securities that Wells Fargo purchased or which ones suffered a loss.

Wells Fargo purchased securities and failed to monitor them properly. If Wells Fargo had monitored the securities purchased with the Collateral properly, it would have known to sell certain securities before they became impaired. The specific securities that Wells Fargo purchased, in an effort to stretch for yield and increase the risk of the Program, and for which Wells Fargo failed to monitor properly and sell prior to their losing value are: the asset backed securities listed on WF COPIC 00077630 and the corporate bonds that were valued at less than par listed on WF COPIC 00077630-00077631, and including the restructured entities for Cheyne and Stanfield. The CUSIP numbers and the full name of the securities are listed on WF-COPIC 00077630-00077631.

INTERROGATORY NO. 9: Identify each purchase by COPIC or for COPIC's benefit of: (a) any securities issued by the entities identified in Paragraph 102 of the Amended

Complaint or their affiliates; (b) any structured investment vehicles (SIVs), corporate bonds, mortgage-backed securities or asset-backed securities as those terms are used in Paragraphs 86 to 103 of the Amended Complaint; (c) any debt security with a maturity thirty or more years from the time of purchase; and (d) all securities issued by entities that issued, or whose affiliates issued, the securities identified in COPIC's response to Interrogatory 8 above, and state for each such purchase identified in response to this Interrogatory, the CUSIP, the full name of the security, the date of purchase, the account name and number in which the security was purchased or held, its purchase price, its rating at the time of purchase (and the identity of the rating organization) and the sale price and date of sale, if applicable.

ANSWER: In addition to the forgoing objections Plaintiff objects to this interrogatory because it is overly broad and unduly burdensome. Plaintiff further objects because all the purchases relating to the securities lending program, which Wells Fargo appears to state were for COPIC's benefit, were made by Wells Fargo and the information is within Wells Fargo's control. All of COPIC's securities are held in the Wells Fargo custodial account and Wells Fargo has all the information relating to securities purchased by or on behalf of COPIC.

INTERROGATORY NO. 10: Identify by title, court, administrative or arbitration organization, and docket or other identifying number all legal proceedings, including suits or arbitrations, initiated since January 1, 1997, in which COPIC alleged that it was misled in connection with a purchase of securities, COPIC alleged that unsuitable securities were sold to COPIC or acquired for it, or COPIC alleged that it suffered a loss from any form of mismanagement of an investment account.

ANSWER: In addition to the forgoing objections Plaintiff objects to this interrogatory because it is overly broad, unduly burdensome, is irrelevant and is not likely to lead to the discovery of admissible evidence.

INTERROGATORY NO. 11: Identify all internal and external auditors, including entities and persons employed or affiliated with such auditing entities, who were responsible for monitoring or confirming COPIC's compliance with COPIC's investment objectives, guidelines or policies.

ANSWER: In addition to the forgoing objections Plaintiff objects to this interrogatory because it is overly broad, unduly burdensome, is irrelevant and is not likely to lead to the discovery of admissible evidence. Plaintiff identifies the following people as having responsibilities relating to Wells Fargo's Securities Lending Program: Steve Wagner, Larry Thrower and Marvin Ostermiller.

INTERROGATORY NO. 12: Identify all persons who served on the COPIC Board of Directors (including dates of service), whose responsibilities included anything to do with the purchase of securities or the formulation, implementation or maintenance of investment objectives, guidelines, or policies for COPIC.