

Exhibit 1

Chiofalo, Frank A.

From: Chiofalo, Frank A.
Sent: Monday, March 05, 2012 12:43 PM
To: Chiofalo, Frank A.
Subject: FW: Picard v. Katz et al., 11-CIV-3605 - Trustee Deposition Proposal

From: Bohorquez, Jr., Fernando
Sent: Tuesday, November 29, 2011 3:57 PM
To: 'Seshens, Dana M.'
Cc: Sheehan, David J.; Jenson, Karin Scholz; Wagner, Karen E.; Ditchfield, Andrew; Friedman, Andrew Clark; Zunno, Kathryn M.
Subject: RE: Picard v. Katz et al., 11-CIV-3605 - Trustee Deposition Proposal

Dana, we obviously disagree with your positions below and concur that a conference with Judge Rakoff on the issue is necessary. That said, David is not available tomorrow at 10:00am but he is free at 3pm. I propose that you and I call chambers at 10:30am (I am not free until then) to schedule a substantive call on the outstanding matter for 3pm (or later depending on the court's schedule). Please let me know if that works.

Fernando

From: Seshens, Dana M. [<mailto:dana.seshens@davispolk.com>]
Sent: Tuesday, November 29, 2011 12:52 PM
To: Bohorquez, Jr., Fernando
Cc: Sheehan, David J.; Jenson, Karin Scholz; Wagner, Karen E.; Ditchfield, Andrew; Friedman, Andrew Clark; Zunno, Kathryn M.
Subject: RE: Picard v. Katz et al., 11-CIV-3605 - Trustee Deposition Proposal

Fernando--

As we have discussed, Defendants are entitled to depose the plaintiff in this litigation, Irving Picard ("Trustee"), who brought \$1 billion worth of claims against Defendants based on allegations of willful blindness that Defendants have asserted are largely false. The testimony that Defendants seek to take of Mr. Picard is relevant to their defense and well within the confines of what is appropriate under the Federal Rules. Your suggestion, therefore, that the only reason Defendants seek to take such testimony is "harassment" is unfounded and improper. Simply because you disagree with Defendants' position that such discovery is relevant does not mean that a basis for it does not exist; indeed, we explained our basis to you several times during Monday afternoon's call.

As discussed previously, Defendants intend to depose Mr. Picard about his knowledge concerning his factual allegations and their basis and/or veracity, which you have not disputed is relevant to the defense of this case. Rather, your issue appears to be with the manner in which the Trustee attests to the lack of personal knowledge you have represented that he has. Notwithstanding your representation, Defendants intend to depose Mr. Picard about the allegations set forth in the Complaint because, among other reasons, even if he lacks personal knowledge, Defendants are entitled to explore who has such knowledge. Moreover, personal knowledge is not a prerequisite to being deposed, and a blanket prior restraint is not appropriate. See, e.g., *In re Kelton Motors*, 130 B.R. 183 (Bankr. D. Vt. 1991). If Mr. Picard indeed has no personal knowledge, the deposition will not be particularly burdensome and he can respond to questions with relative ease.

Relatedly, discovery concerning how those allegations came to be made, including the Trustee's appointment, his retention of Baker Hostetler, and any knowledge he has of his own Rule 2004 investigation of Defendants bears on that knowledge (or lack thereof) and, thus, is an appropriate topic for pre-trial discovery. The Trustee and his counsel also have made several public statements about this litigation, including about the factual allegations in the Trustee's Complaint. The Trustee's personal knowledge (or lack thereof) about the basis for any such statements concerning his own allegations also is relevant for the same reasons set forth above.

Finally, consistent with Defendants' defense that the factual allegations of "willful blindness" are largely false, it is relevant to understand the motivations behind the assertion of such allegations. One possible area of discovery in this regard is, as discussed, whether the Trustee has any pecuniary incentive tied specifically to this litigation. To the extent that he does, that fact is relevant, as Mr. Picard is a fiduciary for all BLMIS customers, including Defendants. Similarly appropriate is the exploration of any other motivations behind the assertion of such allegations and claims.

We are prepared to raise this issue with Judge Rakoff when we address the other deposition-related items we need to raise and would propose that we call chambers on Wednesday morning at 10:00 a.m. if that works for you and your colleagues. We will respond to your revised deposition proposal in advance of that call.

Regards,
Dana

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From: Bohorquez, Jr., Fernando [<mailto:FBohorquez@bakerlaw.com>]
Sent: Monday, November 28, 2011 11:29 PM
To: Seshens, Dana M.; Zunno, Kathryn M.
Cc: Sheehan, David J.; Jenson, Karin Scholz; Wagner, Karen E.; Ditchfield, Andrew; Friedman, Andrew Clark
Subject: RE: Picard v. Katz et al., 11-CIV-3605 - Trustee Deposition Proposal

Dana,

I write to confirm our discussions regarding Defendants' intention to notice Mr. Picard's deposition. As we have explained, Mr. Picard has no personal knowledge of the facts of this case. We have offered to stipulate to his lack of personal knowledge or provide an affidavit attesting to the same, but you indicated today that you will not accept any sworn statement under any circumstances as you maintain you are entitled to question him on his lack of personal knowledge. Moreover, you for the first time today identified the additional topics about which you intend to seek testimony from Mr. Picard. Those topics are:

- Mr. Picard's appointment as SIPC trustee for the Madoff liquidation;
- The retention of Baker Hostetler as counsel to Mr. Picard;
- Statements to the press by Mr. Picard, or statements made on his behalf, concerning the facts of the case as alleged in the complaint; and
- Mr. Picard's motivation for bringing avoidance actions generally, and this lawsuit in particular, including his "pecuniary motivation".

As I stated earlier today, we object to the deposition of Mr. Picard on these foregoing topics. None of these topics is relevant to the two central issues in this case, namely whether your clients received hundreds of millions of dollars in transfers from Madoff for value and whether your clients were willfully blind to signs of Madoff's fraud, i.e., your clients' lack of good faith. Despite my repeated questioning, you were unable to explain – because you cannot – how any of

these foregoing depositions topics are relevant to the issues in this case. As such, your proposed deposition of Mr. Picard on topics such as his "pecuniary motivation" sounds more in harassment than discovery of information likely to lead to admissible evidence.

We understand that you intend to raise the issue of Mr. Picard's deposition on these topics with Judge Rakoff during our call tomorrow or Wednesday. Please let us know when you are available for that call.

Regards,

Fernando

From: Seshens, Dana M. [<mailto:dana.seshens@davispolk.com>]

Sent: Monday, November 28, 2011 2:03 PM

To: Zunno, Kathryn M.

Cc: Sheehan, David J.; Bohorquez, Jr., Fernando; Jenson, Karin Scholz; Wagner, Karen E.; Ditchfield, Andrew; Friedman, Andrew Clark

Subject: RE: Picard v. Katz et al., 11-CIV-3605 - Trustee Deposition Proposal

Katie--

Thank you for your response. We are prepared to address these items, including the deposition of Mr. Picard, at 4PM today.

Regards,
Dana

Dana M. Seshens

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From: Zunno, Kathryn M. [<mailto:kzunno@bakerlaw.com>]

Sent: Monday, November 28, 2011 11:03 AM

To: Seshens, Dana M.

Cc: Sheehan, David J.; Bohorquez, Jr., Fernando; Jenson, Karin Scholz; Wagner, Karen E.; Ditchfield, Andrew; Friedman, Andrew Clark

Subject: RE: Picard v. Katz et al., 11-CIV-3605 - Trustee Deposition Proposal

Dana,

Thank you for your response. We are available to address your questions in more detail at 4 p.m. today and we will call your office then. In advance of the call, we offer the following brief responses.

1. Please let us know Defendants' anticipated cross time for each of the witnesses on the Trustee's list.
2. "TBD" time contemplates additional witnesses that the Trustee may choose to depose based on the ongoing discovery process. We have explained this necessity to you and David addressed the issue to the Court last week. As you see, consistent with that position, the total Trustee deposition time, including TBD time, does not exceed 140 hours.
3. Again, as we have explained to you and as David explained to the Court, 140 hours is the maximum amount of Trustee deposition time. The hours on the list are an approximation for each witness, not an iron clad agreement. Indeed, in requesting that the Trustee identify the estimated time for each witness, the Court recognized this flexibility and stated that it would not hold the Trustee to any estimated number.
4. We can address this question on our call tomorrow, but the bottom line is that the Court made clear that we are permitted to depose those partners and Mr. Peskin notwithstanding their examinations under Rule 2004.
5. Your request in item 5 is not clear, so please be prepared to explain this on our call.

Lastly, when we spoke on Nov. 17 about Defendants' request for Mr. Picard's deposition, we advised that Mr. Picard has no personal knowledge of the facts of the case. We offered to stipulate to that fact in lieu of his deposition and you took it under advisement. We also asked that if there were other potential areas of inquiry for Mr. Picard, you explain what they are. You have not responded to either request.

Regards,
Katie

From: Seshens, Dana M. [<mailto:dana.seshens@davispolk.com>]

Sent: Sunday, November 27, 2011 5:45 PM

To: Zunno, Kathryn M.

Cc: Sheehan, David J.; Bohorquez, Jr., Fernando; Jenson, Karin Scholz; Wagner, Karen E.; Ditchfield, Andrew; Friedman, Andrew Clark

Subject: RE: Picard v. Katz et al., 11-CIV-3605 - Trustee Deposition Proposal

Katie--

Thank you for providing us with the Trustee's deposition proposal. We have several issues with the proposal that we would like to discuss at 4:00 p.m. on Monday if your team is available. If not, please let us know an alternative time that would work.

Among the issues we would like to discuss are the following:

1. The Trustee's basis for unilaterally limiting deposition time, particularly for third-party witnesses, seemingly without consideration of the possibility that Defendants will cross-examine those witnesses, thereby increasing the length of their depositions;
2. The Trustee's untenable proposal that he reserve more than 35 hours of "TBD" deposition time, which could equate to anywhere from 5 to 35 additional depositions between now and January 13;
3. How the Trustee intends to account for "unused" deposition time in those instances where a deposition does not go as long as estimated, i.e., to the extent any reserve for "TBD" deposition time is determined to be appropriate, we assume that the Trustee does not intend to reallocate "unused" time to that "TBD" reserve;
4. The Trustee's basis for re-deposing certain of the Sterling Partners and Mark Peskin, including the intended subject matter of those depositions, the purported "new evidence" that forms the basis for the Trustee's expressed desire to re-depose these witnesses, and the basis for each witness' time estimate;

5. The relationship between the Trustee's current deposition proposal and his initial disclosure of nearly 700 individuals that the Trustee claimed in good faith to believe are in possession of discoverable information relevant to the instant proceeding.

In addition, and in accordance with Judge Rakoff's instructions during the parties' November 21, 2011 teleconference with the Court, Defendants presently intend to depose the plaintiff in this action, Irving Picard, of which we already have notified counsel for the Trustee, as well as the Trustee's recently disclosed experts, either all or some. To the extent Defendants determine that additional depositions become necessary, we will notify counsel for the Trustee as soon as practicable.

Please advise at your earliest convenience if a call at 4PM on Monday will work.

Regards,
Dana

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From: Zunno, Kathryn M. [<mailto:kzunno@bakerlaw.com>]
Sent: Wednesday, November 23, 2011 5:56 PM
To: Seshens, Dana M.; Friedman, Andrew Clark; Ditchfield, Andrew
Cc: Sheehan, David J.; Bohorquez, Jr., Fernando; Jenson, Karin Scholz
Subject: Picard v. Katz et al., 11-CIV-3605 - Trustee Deposition Proposal

Dana,

As directed by Judge Rakoff during the November 21, 2011 chambers teleconference, attached is the Trustee's proposed list of deponents with an approximate estimated time on the record for each. We look forward to discussing on Monday after the holiday. Happy Thanksgiving to you and your team.

Regards,
Katie

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