

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

MICHAEL L. WALLACE,

Plaintiff,

vs.

Civil Action 2:09-CV-104
Judge Watson
Magistrate Judge King

THE HUNTINGTON NATIONAL BANK,

Defendant.

HUNTINGTON NATIONAL BANK,

Plaintiff,

vs.

Civil Action 2:10-CV-469
Judge Watson
Magistrate Judge King

MICHAEL L. WALLACE,

Defendant.

OPINION AND ORDER

Michael L. Wallace ("Wallace") filed a civil action in this Court, 2:09-CV-104 ("Wallace's action"), seeking declaratory, injunctive and monetary relief in connection with his guaranty for a loan agreement and guidance line cognovit note in favor of BellePointe, Inc. ("BellePointe"). Wallace specifically alleges that the Huntington National Bank ("Huntington") improperly permitted BellePointe to increase advances on the guidance line in violation of the loan agreement, thereby increasing his exposure on the guaranty. Wallace asserts claims of alteration of the underlying obligations, breach of statutory requirements on the sale of collateral based on

Huntington's alleged failure to provide notice of the sale of BellePointe's collateral and/or failure to dispose of BellePointe's collateral in a commercially reasonable manner. Wallace also asserts claims of breach of contract and breach of fiduciary duty. Wallace also seeks his own release on the guaranty based on the Huntington's release of co-guarantor Timothy Wallace.

Huntington filed a civil action in the Northern District of Ohio, which was based on the same transaction underlying Wallace's action. Case No. 2:10-CV-469, Doc. No. 1-1. That action was later transferred to this Court and consolidated with Wallace's action. Case No. 2:09-CV-104, *Opinion and Order*, Doc. No. 50. Huntington seeks judgment against Wallace as a result of his alleged default of the terms of the guaranty and guidance line cognovit note. This matter is now before the Court on *Defendant The Huntington National Bank's Motion to Compel Porter, Wright, Morris and Arthur, LLP to Produce Documents and Things for Determination of Privileged Status of Documents and Things*, Doc. No. 44 ("*Motion to Compel*"). For the reasons that follow, the *Motion to Compel* is **DENIED**.

I. BACKGROUND

This Court previously set forth in detail the factual background and procedural history of these consolidated cases. *Opinion and Order*, Doc. No. 50. After discovery commenced, Huntington served its first set of interrogatories and requests for production of documents on Wallace. *Exhibit F*, attached to *Motion to Compel*. In response, Wallace produced 366 pages, which Huntington believed "were only tangentially related to BellePointe and included things like clothing

flyers and other marketing material. Wallace did not produce any corporate records or documents, no financial records and nothing relating to the operations of BellePointe." *Affidavit in Support of Defendant The Huntington National Bank's Motion to Compel Porter, Wright, Morris and Arthur LLP to Produce Documents and Things*, Doc. No. 45, ¶ 12 ("Oster Aff.")). Huntington also tried, unsuccessfully, to locate Timothy Wallace, Wallace's son, co-guarantor and BellePointe's former president, in an effort to obtain BellePointe's files. *Id.* at ¶ 13.

Thereafter, on May 4, 2010, Huntington served a subpoena upon the law firm Porter Wright Morris & Arthur LLP ("PWMA"), seeking production of documents and records relating to Wallace, Michael L. Wallace, Inc. and BellePointe ("the subpoena"). *Exhibit A*, attached to *Motion to Compel*. The subpoena sought "the same documents and information from PWMA" as the initial discovery requests served on Wallace. *Oster Aff.* ¶ 11; *Exhibits A and F*, attached to *Motion to Compel*. PWMA, which does not represent Wallace in the current action, has represented Wallace in other matters and represents Timothy Wallace, Michael L. Wallace, Inc., and BellePointe. *Exhibit C*, attached to *Motion to Compel*; *Exhibit A*, attached to *Plaintiff Michael L. Wallace's Memorandum in Opposition to the Huntington National Bank's Motion to Compel and Determination of Privileged Status of Documents and Things*, Doc. No. 48 ("Memo. in Opp.").¹ PWMA's relationship with Wallace and BellePointe dates back to 1988 and

¹These exhibits appear to be identical copies of a spreadsheet reflecting the files in PWMA's possession. For ease of reference, the Court will refer only to *Exhibit C*, attached to *Motion to Compel*.

encompasses 48 separate matters. *Exhibit A*, attached to *Memo. in Opp.*

On May 12, 2010, Wallace's counsel in the instant litigation advised PWMA, with notice to Huntington's counsel, that Wallace "does not waive any attorney-client privilege as it relates to himself, Michael L. Wallace, Inc., BellePointe, Inc., or any other entity in which Wallace was an officer, director or shareholder." *Exhibit B*, attached to *Motion to Compel*.

Thereafter, PWMA provided to Huntington a list of the files in its (PWMA's) possession. *Oster Aff.* ¶ 5; *Exhibit C*, attached to *Motion to Compel*. After receiving this information, Huntington and PWMA worked together to limit the number of files to be produced pursuant to the subpoena. *Oster Aff.* ¶ 7. After Huntington identified certain files for production, PWMA advised Huntington, by letter, that PWMA had located all but three of the requested files, which related to related to "Bellepointe Business Plans," "Securities Claims" and "Sale of Israel Street property." *Exhibit E* attached to *Motion to Compel*. In total, PWMA had located approximately five thousand pages of documents. *Id.* PWMA continued to assert the attorney-client privilege on behalf of Wallace, Timothy Wallace and the entities in which they have been involved as officers, directors and/or shareholders. *Id.* PWMA further objected to the subpoena on the basis of Rules 1.6(a) and 1.9© of the Ohio Rules of Professional Conduct. *Id.*

After receipt of PWMA's letter, Huntington continued to demand production of the requested documents and offered to compensate PWMA for the production. *Oster Aff.* ¶ 9. On June 17, 2010, PWMA continued to assert privilege, but offered to conduct a privilege review and

produce non-privileged documents from the following six files: "General Corporate," "Business Plans," "Financial Statements," "Board of Directors Meetings," "Sale of Israel Property" and "Huntington National Bank - Line of Credit." *Exhibit B*, attached to *Memo. in Opp.*² However, this offer did not resolve the parties' dispute.

After issuing the subpoena to PWMA, Huntington located Timothy Wallace and served a subpoena on him as the BellePointe records custodian. *Oster Aff.* ¶ 14. Timothy Wallace objected to the subpoena "and it is not certain at this point whether Timothy Wallace has any BellePointe records in his possession or that there will be any resolution regarding his production of them, if he does have any records." *Id.* at ¶ 15.

Counsel for the parties and PWMA subsequently met with the Court, which determined that the issues raised by the issuance of the subpoena were best addressed on written motion and memoranda. *Order*, Doc. No. 42. With the filing of *Defendant The Huntington National Bank's Reply to Plaintiff's Memorandum in Opposition to Motion to Compel Porter, Wright, Morris and Arthur, LLP to Produce Documents and Things for Determination of Privileged Status of Documents and Things*, Doc. No. 49 ("Reply"), this matter is now ripe for resolution.

II. STANDARD

Rule 26(b) of the Federal Rules of Civil Procedure provides that "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense[.]" Fed. R. Civ. P. 26(b)(1). Determining the proper scope of discovery falls within the

²Counsel for Timothy Wallace consented to this proposal. *Id.*

broad discretion of the trial court. *Lewis v. ACB Business Servs., Inc.*, 135 F.3d 389, 402 (6th Cir. 1998).

Rule 45 of the Federal Rules of Civil Procedure provides that a person commanded to produce documents pursuant to a subpoena may serve an objection prior to the deadline specified in the subpoena or 14 days after service of the subpoena. Fed. R. Civ. P. 45(c)(2)(B). Rule 45 also provides, in pertinent part, that "the issuing court must quash or modify a subpoena that. . . requires disclosure of privileged or other protected matter, if no exception or waiver applies[.]" Fed. R. Civ. P. 45(c)(3)(A) (iii).

In addition, "[t]he proponent of a motion to compel discovery bears the initial burden of proving that the information sought is relevant." *Martin v. Select Portfolio Serving Holding Corp.*, No. 1:05-CV-273, 2006 U.S. Dist. LEXIS 68779, at *2 (S.D. Ohio Sept. 25, 2006) (citing *Alexander v. Fed. Bureau of Investigation*, 186 F.R.D. 154, 159 (D.D.C. 1999)).³

In the case *sub judice*, Huntington seeks production of three categories of documents, for a total of 24 files, including 20 files related to BellePointe, three files related to Wallace and one file related to Timothy Wallace. *See, e.g., Motion to Compel*, pp. 9, 17-18; *Memo. in Opp.*, pp. 2-4. The Court shall address each category in turn.

III. THE BELLEPOINTE FILES

³The party moving to compel must also certify that it "has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." Fed. R. Civ. P. 37(a)(1). *See also* S.D. Ohio Civ. R. 37.2. There is no dispute that Huntington has met this prerequisite in the case *sub judice*. *See Oster Aff.*

As noted *supra*, Huntington bears the initial burden of establishing that the requested BellePointe files are relevant to the issues presented in the litigation. The Court will therefore address whether PWMA has agreed to produce each file and the relevancy of the remaining requested files before turning to the issue of whether any of these files are protected by the attorney-client privilege.

A. PWMA Has Agreed to Produce Six BellePointe Files

Huntington seeks production of, *inter alia*, six BellePointe files labeled as follows: "General Corporate," "Business Plans," "Financial Statements," "Board of Directors Meetings," "Sale of Israel Property," and "Huntington National Bank - Line of Credit." *Motion to Compel*, pp. 9-11; *Exhibit C*, attached thereto. PWMA has agreed to conduct a privilege review and to produce all non-privileged documents in these files.⁴ *Memo. in Opp.*, p. 5; *Exhibit B*, attached thereto. Based on the record before the Court, it appears that the only remaining dispute relates to whether these documents are protected by the attorney-client privilege, an issue that the Court will address *infra*.

B. Relevancy of Remaining Fourteen BellePointe Files

1. "Employment Agreement / Michael L. Wallace," "Split Dollar Insurance" and "401(k) Employee Savings Plan"

Huntington seeks production of three BellePointe files labeled "Employment Agreement / Michael L. Wallace," "Split Dollar Insurance"

⁴In its letter to Huntington dated June 9, 2010, PWMA identified as lost files labeled "Business Plans," "Securities Claims" and "Sale of Israel Street Property." *Exhibit C*, attached to *Motion to Compel*. The Court assumes that PWMA later located at least two of these files that it has now agreed to produce.

and "401(k) Employee Savings Plan." *Motion to Compel*, pp. 10-11; *Exhibit C*, attached thereto. Huntington argues that these files "may also contain information relevant to this case," *Motion to Compel*, pp. 10-11, explaining that

Wallace alleges that if Huntington had not made additional loans to BellePointe, BellePointe would have closed its doors and his exposure under the Guaranty would have been less than what it is today. If, however, Wallace benefitted from BellePointe's continued operations by receiving salary or other compensation from the employment agreement including contributions to the 401(k) plan or a benefit from the split dollar agreement, then Wallace's receipt of those funds or other compensation would demonstrate that Wallace actually benefitted from BellePointe's continued operations as opposed to being harmed by it.

Id. at 11.

Huntington also specifically argues that the file labeled "Employment Agreement / Michael L. Wallace" is relevant because it would likely contain details about Wallace's job duties at BellePointe which may reflect whether Wallace was in such a position with the company that he knew or should have known about BellePointe's request for additional extensions of credit, any requests for alteration to the loan documents with Huntington, or BellePointe's liquidation of its collateral.

Id. In response, PWMA contends that Huntington's purported basis for requesting these files is "disingenuous" because the last activity date on each of these files occurred well before the relevant dates in this case. *Memo. in Opp.*, p. 6.

In determining whether or not these files are relevant to any claim or defense presented by this litigation, the Court must consider the time period underlying Huntington's stated reasons for production, namely, (1) when Huntington provided additional advances to BellePointe, (2) BellePointe's liquidation period and (3) when Wallace received notice of the liquidation sales. Wallace alleges that

BellePointe would have ceased operations on or about November 30, 2007, had Huntington not agreed to provide additional advances to BellePointe. *Amended Complaint*, Doc. No. 51, ¶¶ 10-18 (“*Am. Compl.*”). Wallace also alleges that Huntington issued additional advances on December 3, 2007, and that an event of default existed as of that date. *Id.* at ¶¶ 11-14. Wallace further alleges, and Huntington does not dispute, that Huntington hired a liquidator and wind-down consultant on March 27, 2008. *Memo. in Opp.*, p. 6. See also *Am. Compl.* ¶¶ 32-34. Finally, Wallace alleges that Huntington did not notify him of the sales through liquidation until September 5, 2008. *Am. Compl.* ¶ 33.

The list of files in PWMA’s possession contains information in headings labeled “CLOSE_DATE” and/or “LAST_TIME_DATE” and/or “LAST DOC DATE” for each file. See *Exhibit C*, attached to *Motion to Compel*. It is evident from the *Memo. in Opp.*, which Huntington does not refute, that the first description refers to the date that a matter was closed by the firm. *Memo. in Opp.*, pp. 4-5. The next heading, “LAST_TIME_DATE,” reflects the date of the last activity in a matter, such as the last date that a file was modified. *Id.* at 6. The last description, “LAST DOC DATE,” indicates the last date that a document was created for a particular file. *Id.*

Based on the date information contained in the headings, the Court concludes that none of these three files contain information that is reasonably calculated to lead to the discovery of admissible evidence. For example, PWMA closed “Split Dollar Insurance / Michael L. Wallace” on December 29, 2006 and the last date that a document was created for this file was in January 1999. *Exhibit C*, attached to

Motion to Compel; Memo. in Opp., p. 6. Similarly, PWMA closed "Employment Agreement / Michael L. Wallace" and the last date that a document was created for this file was February 1999. *Id.* Finally, the last activity or modification date for the third file, "401(k) Employee Savings Plan," was October 11, 2007. *Id.* Based on the record presently before the Court, it appears that none of these files contain information that relate to the relevant time period identified by Huntington. Therefore, Huntington's stated reasons for requesting these files do not justify their production.

2. Remaining Eleven BellePointe Files

Having addressed the relevancy of nine of the twenty requested BellePointe files, eleven files remain: "Bank One Loans," "JRP Consulting," "Design Options, Inc. v. BellePointe, Inc.," "Trademarks and Tradenames," "Audit Letter Requests / Responses," "D&O Insurance and Indemnifca.," "Securities Claim by Investors," "Robert A. Liebert, et al. v. BellePointe," "Syncor Entertainment, Inc. Collection," "Liebert - Purchase of Common Stock," "Maureen Lee-MDCR Complaint" (collectively, "the remaining BellePointe files"). *Exhibit C*, attached to *Motion to Compel*. Huntington does not explain why each of the remaining BellePointe files is discoverable; Huntington does, however, generally argue that these files are relevant to the issues presented in the litigation. For example, Huntington contends that

BellePointe's records would reflect whether BellePointe or Huntington liquidated the collateral, who BellePointe notified of the sale, if anyone, and whether there was any damage caused as a result of any lack of notification, all of which relate to Wallace's proposed claim that Huntington breached its statutory duty to liquidate the collateral in a commercially reasonable manner and notify Wallace of the sale. Ohio Rev. Code §§ 1309.610 and 1309.611. If Wallace learned about the sale from BellePointe, he would be

estopped to claim he was injured as a result of any lack of knowledge of the liquidation. The BellePointe files may also contain information relevant to damages: what BellePointe thought the collateral was worth, what Wallace knew about the value of the assets and whether he disputed it, and whether BellePointe attempted to obtain more than it finally got from sale of the assets.

Motion to Compel, p. 12.

Huntington further argues that BellePointe's files are relevant to Wallace's claims of breach of contract and breach of fiduciary duty:

BellePointe's records and information are also directly related to Wallace's breach of contract claim against Huntington, as his allegations are intertwined with BellePointe's operations and its liquidation. [Wallace's *Motion for Leave to File Amended Complaint*,] Doc. No. 34. Establishing that such a duty existed, whether the duty was breached and proving damages that resulted from breach will be determined by examining the relationship between Huntington, BellePointe and Wallace and records relating to the disposition of the collateral and valuation of the collateral, among other things.

Id.

Therefore, Huntington's stated reasons for seeking the remaining BellePointe files again relate to the time period when Huntington provided additional advances, beginning on or about December 3, 2007, the events related to BellePointe's liquidation, which commenced on or around March 27, 2008, and Wallace's knowledge of those advances and liquidation. The remaining BellePointe files, however, pertain to matters that occurred months or, in most cases, years before this relevant time period:

- "Bank One Loans" was closed on May 15, 2007 and the last activity date was December 3, 2004
- "JRP Consulting" was closed on March 13, 1997
- "Design Options, Inc. v. BellePointe, Inc." was closed on May 15, 2007 and the last activity date was January 13, 1997

- "Trademarks and Tradenames" was closed on May 15, 2007 and the last activity date was February 16, 2005
- "Audit Letter Requests / Responses" was closed on May 15, 2007
- "D&O Insurance and Indemnifca." was closed on March 13, 2007
- "Securities Claim by Investors" was closed on December 29, 2006
- "Robert A. Liebert, et al. v. BellePointe" was closed on December 29, 2006 and the last activity date was September 18, 2001
- "Syncor Entertainment, Inc. Collection" was closed on May 15, 2007 and the last activity date was October 30, 2000
- "Liebert - Purchase of Common Stock" was closed on May 15, 2007 and the date of the last document was May 2003
- "Maureen Lee-MDCR Complaint" was closed on May 15, 2007, and the last activity date was March 31, 2006

Exhibit C, attached to *Motion to Compel*. Based on this record, the Court cannot conclude that any of the remaining BellePointe files relate to the concerns identified by Huntington. Accordingly, the Court concludes that Huntington's stated reasons do not justify an order compelling production of these files.⁵

C. Attorney-Client Privilege

1. Existence of Attorney-Client Privilege

The parties disagree whether the attorney-client privilege applies to BellePointe. Huntington contends that the privilege does not apply to a defunct corporation such as BellePointe; Wallace argues that (1) it is unclear whether BellePointe is defunct, but (2) even if it is, the privilege nevertheless applies.

As an initial matter, this Court notes that Wallace has submitted

⁵Having concluded that these files do not contain relevant information, this Court need not, and does not, address Huntington's arguments that this information is unavailable from any other source.

documents from the website of the Ohio Secretary of State that reflect BellePointe's status as "active." *Exhibit E*, attached to *Memo. in Opp.* However, Wallace acknowledges that all of BellePointe's assets had been liquidated by late 2008. *Memo. in Opp.*, p. 7; *Am. Compl.* ¶¶ 25-33. Accordingly, the Court will proceed to analyze whether the privilege applies to BellePointe under the facts in this case.

The parties observe, and this Court agrees, that there is no Ohio law⁶ addressing whether or not the attorney-client privilege applies to a defunct corporation. However, O.R.C. § 2317.021 provides, in pertinent part:

Where a corporation or association is a client having the privilege and it has been dissolved, the privilege shall extend to the last board of directors, their successors or assigns, or to the trustees, their successors or assigns.

O.R.C. § 2317.021(A).

Huntington argues that this statutory provision does not apply to BellePointe because that corporation has not undergone the administrative or statutory process of dissolution under Ohio law. *Motion to Compel*, pp. 5-6; *Reply*, p. 3. Wallace, however, contends that, because Section 2317.021(A) clearly applies to dissolved corporations, it should also apply to defunct corporations. *Memo. in Opp.*, p. 8. Such a construction is consistent, Wallace argues, with the great protection afforded the attorney-client privilege. *Id.* at 8-10 Wallace further contends that, although states are split on the issue, this result is also consistent with the law in some jurisdictions. *Id.*

⁶The parties agree that Ohio law governs this dispute. See Fed. R. Evid. 501.

Wallace's arguments are well-taken. Although an Ohio corporation must take certain formal actions in order to effect a voluntary dissolution, see O.R.C. § 1701.86, this Court can find no basis under Ohio law for treating a defunct corporation and a dissolved corporation differently in regard to the attorney-client privilege. Indeed, Ohio law instructs that the language of Section 2317.02 is to be construed liberally in order to effect its purpose. See O.R.C. § 2317.03(H) ("When a case is plainly within the reason and spirit of this section and sections 2317.01 [addressing competent witnesses] and 2317.02 [privileged communications] of the Revised Code, though not within the strict letter, their principles shall be applied."). See also *Shanks v. Waldmann*, No. 5043, 1976 Ohio App. LEXIS 6308, at *6 (2nd Dist. Ct. App. Feb. 13, 1976) (quoting O.R.C. § 2317.03 and stating that "a liberal construction shall be applied to carry out the purpose of privilege"). In light of this command and construing O.R.C. § 2317.021(A) liberally, this Court concludes that, under the circumstances of this particular case, BellePointe retains its right to assert the attorney-client privilege.

2. Who May Assert Privilege

Huntington argues that, even if BellePointe retains the privilege, neither Wallace nor Timothy Wallace are authorized to assert the privilege on behalf of BellePointe. *Motion to Compel*, pp. 14-16; *Reply*, pp.3-5. Wallace contends that he and Timothy Wallace are entitled to assert the privilege because Wallace was the chairman of the board of directors and BellePointe's majority shareholder, while Timothy Wallace was BellePointe's director and owner. *Memo. in*

Opp., pp. 11-12. Huntington concedes that Wallace was a director or shareholder of BellePointe, *Reply*, p. 3, but nevertheless contends that Wallace cannot assert the privilege because he was not involved in BellePointe's day to day operations or "actually ma[de] decisions for the company" or "knew what was happening day to day[.]" *Id.* at 3-4.

This Court disagrees. Nothing in O.R.C. § 2317.021(A) requires that the last board of directors of a dissolved corporation demonstrate its knowledge of or daily involvement in that corporation in order to assert the attorney-client privilege. Indeed, Huntington cites to no case authority to support its position in this regard. Accordingly, the Court concludes that Wallace, a director of BellePointe, may assert the privilege on behalf of that corporation.

3. Waiver

Huntington also argues that Wallace impliedly waived the attorney-client privilege as to BellePointe because, *inter alia*, he placed in issue whether he knew about any material alteration of the loan documents and when he knew about such alteration. *Motion to Compel*, pp. 13-14, 16-17; *Reply*, pp. 5-8. Therefore, Huntington argues, it is entitled to all BellePointe files involving Wallace. Wallace disagrees, denying that he waived the corporation's privilege. *Memo. in Opp.*, pp. 12-14. Huntington also complains that Wallace failed to produce a privilege log. *Reply*, p. 6.

The issue of waiver of the attorney-client privilege is prematurely presented. Absent a privilege log addressed to specific documents, neither Huntington nor the Court can effectively evaluate

either the proper invocation of the privilege or the possible waiver of the privilege. To the extent that documents otherwise properly discoverable are withheld on the basis of privilege, a privilege log must be produced in accordance with Fed. R. Civ. P. 26(b)(5)(A). Should Huntington then conclude either that the privilege has not been properly invoked or has been waived, Huntington may return to the Court for resolution of the issue at that time.⁷

IV. THE WALLACE FILES

Huntington also seeks the production of three files related to Wallace. One, "Estate Planning" relates to Wallace personally, and the other two, "General" and "401(k) Plan," relate to his company, Michael L. Wallace, Inc. (collectively, "the Wallace files"). *Exhibit C*, attached to *Motion to Compel*.

Huntington contends that the "Estate Planning" and "401(k)" files are relevant to Wallace's claims that he was injured or his exposure was increased as a result of Huntington's actions. Wallace claims that his exposure would have been limited or capped if BellePointe closed its doors at a particular time. [*Complaint*,] Doc. No. 2, p. 4, paragraph 18. However, if the files show that Wallace received compensation or other benefits after that time, then certainly Wallace benefitted from BellePointe's continued operations as opposed to being injured by it as he claims.

Motion to Compel, pp. 17-18. See also *id.* at 11.

This Court disagrees. First, like the BellePointe files discussed *supra*, these two files contain no information from the relevant time period addressed *supra*. The last activity date in the

⁷Huntington also asks that any privilege review be performed by Timothy Wallace or PWMA. *Reply*, pp. 8-9. However, Huntington provides no authority for this position. Accordingly, either Wallace or PWMA may conduct the privilege review and submit a privilege log in accordance with Rule 26(b)(5)(A).

"Estate Planning" file was August 20, 2007. *Exhibit C*, attached to *Motion to Compel*. The "401(k) Plan" file was closed on May 15, 2007, and its last activity date was May 30, 2001. *Id.* Second, even if the "Estate Planning" file did reflect activity from the relevant time period, the Court concludes that Wallace's personal estate planning documents are not relevant to any of the claims and defenses in this litigation

Huntington also argues that it "is without any ability to determine what might be included in the 'General' file. Regardless, considering that Wallace initiated this action, the file should be produced with the exception of any attorney-client privileged documents." *Motion to Compel*, p. 17. However, Huntington cites to no authority for the proposition that a plaintiff must be compelled to produce documents simply because he initiated a lawsuit. Moreover, even though Huntington cannot determine the precise information contained in the "General" file, it is evident from the dates associated with that file (last activity date was April 11, 2000, and the file was closed on May 15, 2007) that it contains no information relevant to the claims and defenses in this litigation. *Exhibit C*, attached to *Motion to Compel*. Accordingly, the Court is not persuaded that any of the Wallace files contain information reasonably calculated to lead to the discovery of admissible evidence in this case.

V. THE TIMOTHY WALLACE FILE

Huntington also seeks the production of Timothy Wallace's estate planning file. *Motion to Compel*, p. 18; *Exhibit C*, attached thereto.

This Court has previously concluded that this estate planning file falls outside the ambit of discoverable information. Huntington has not persuaded the Court that contrary conclusion is warranted.

WHEREUPON, *Defendant The Huntington National Bank's Motion to Compel Porter, Wright, Morris and Arthur, LLP to Produce Documents and Things for Determination of Privileged Status of Documents and Things*, Doc. No. 44, is **DENIED**. However, as discussed *supra*, PWMA has agreed to produce six files related to BellePointe. Either PWMA or Wallace may conduct a privilege review and, should documents be withheld on the basis of privilege, a privilege log must be produced in conformity with Fed. R. Civ. P. 26(b)(5)(A).

September 10, 2010

s/Norah McCann King
Norah M^cCann King
United States Magistrate Judge