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U.S. BANKRUPTCY
DISTRICT OF ARIZONA

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Robert G. Furst
c/o 4201 North 57th Way
Phoenix, Arizona 85018
(602) 377-3702
Pro Per

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:) In Proceedings Under Chapter 11
MORTGAGES LTD.,) Case No. 2:08-bk-07465-RJH
an Arizona corporation,) **RESPONSE TO ML LIQUIDATING
Debtor.) TRUST'S MOTION FOR ENTRY OF
and) PROTECTIVE ORDER PURSUANT
ROBERT FURST'S MOTION FOR) TO COURT'S RULING OF JUNE 5,
DETERMINATION OF PRIVILEGE) 2012;AND CONFIDENTIALITY ISSUES;)
MOTION FOR SANCTIONS)
Oral Argument Requested)**

Robert G. Furst hereby files his Response to the ML Liquidating Trust's Motion for Entry of Protective Order Pursuant to Court Ruling of June 5, 2012, and files his own Motion for Determination of Privilege and Confidentiality Issues; Motion for Sanctions. As set forth below, the ML Liquidating Trust's Motion should be denied because it seeks a grossly overbroad protective order, which would characterize each document produced by Kevin

1 O'Halloran as "confidential," whether or not the document was actually confidential. This
2 Protective Order, if approved, would require a court ruling for each and every produced
3 document, before Mr. Furst could use it in litigation or disclose it to others. The Protective
4 Order, in its final form, should incorporate Mr. Furst's recommendations, as discussed below,
5 in order to properly limit its application to only those documents that are confidential in the
6 first place. In addition, the Court should grant Mr. Furst's Motion, which seeks a court order
7 that documents pertaining to certain subject matter (which may be embarrassing, regrettable
8 and possibly actionable) are **not** confidential.
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11 MEMORANDUM OF POINTS AND AUTHORITIES

12 **I. Background.**

13
14 On June 5, 2012, the Court granted Mr. Furst's motion to conduct a Rule 2004
15 examination of Kevin O'Halloran, the initial ML Liquidating Trustee, and his request for the
16 production of documents from Mr. O'Halloran, over the objections of the ML Liquidating
17 Trust. At the hearing, Mr. Furst notified the Court that he wanted to expand his document
18 request to include all documents prepared through December 31, 2010, and the Court had no
19 objection.
20

21 The parties agreed that they would execute a stipulated confidentiality agreement (i.e.,
22 the protective order), so that all confidential documents subject to existing applicable
23 common defense agreements would remain confidential. Importantly, the parties did not
24 agree that every document produced by Mr. O'Halloran, whether confidential or not, would
25 be deemed to be confidential for purposes of the protective order, as the ML Liquidating
26 Trust now urges.
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1 **II. Status of Review and Production**

2 On June 29, 2012, Mr. O'Halloran delivered the requested documents to the ML
3 Liquidating Trust for its privilege and confidentiality review. On July 9, 2012, Mr.
4 O'Halloran notified Mr. Furst and Mr. Hartley that he would be available for the 2004
5 examination on either July 16, 2012 or July 17, 2012.¹ Mr. Furst wanted to try to
6 accommodate Mr. O'Halloran's schedule, if at all possible.² Mr. Hartley, who was out of
7 town, would not commit to either date.³ Mr. Furst then sent three unanswered e-mails to Mr.
8 Hartley regarding the proposed examination dates and the availability of the documents, each
9 time asking him when the documents would be made available (so that he could use them in
10 the 2004 examination).⁴ Unfortunately, because of Mr. Hartley's non-responsiveness, the
11 tentative 2004 examination had to be cancelled.⁵

12 On July 12, 2012, Mr. Hartley finally responded, stating that the non-privileged
13 documents would be ready by July 20, 2012. A few days later, Mr. Hartley confirmed that
14 "the documents will be available for pickup at Stinson this Friday [July 20, 2012] between 4
15 and 5:30."⁶ At this point, none of the documents were deemed to be confidential (as opposed
16 to privileged) by Mr. Hartley.

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23 ¹ See Exhibit A, the second e-mail in the chain.

24 ² See Exhibit A, the first e-mail in the chain.

25 ³ See Exhibit A, the last e-mail in the chain.

26 ⁴ See Exhibit B.

27 ⁵ Mr. Hartley now claims that he did not respond to Mr. Furst's e-mails because he was out
28 of town. However, he did respond to one e-mail in order to ask questions. However, once
the subject changed to the scheduling of the 2004 examination and the availability of the
documents, Mr. Hartley "went dark" on everyone.

⁶ See Exhibit C.

1 Mr. O'Halloran then proposed that the 2004 examination take place the following
2 week, on either July 26 or July 27. Mr. Furst immediately relayed the message to Mr.
3 Hartley, knowing full well, at this point in time, that Mr. Hartley would do everything in his
4 power to indefinitely delay the examination. Mr. Furst's assessment proved correct. Mr.
5 Hartley responded, "Please call me at your earliest convenience."⁷ Later that day, on July 19,
6 2012, as Mr. Furst expected, Mr. Hartley reported that "we have run into some issues with the
7 document production and will not have the documents read tomorrow."⁸ One of the problems
8 was that all of the produced documents, which had previously been deemed to be non-
9 confidential, suddenly became confidential. Once again, the 2004 examination was delayed
10 because of Mr. Hartley.
11
12

13
14 Totally frustrated, Mr. Furst responded to Mr. Hartley, as follows:

15 When will the documents be ready? When will the privilege log
16 be ready? Are you separating out the e-mails in every e-mail
17 chain for privilege review? I have not received an answer to any
18 of these questions, which were contained in my most recent e-
19 mails to you. In general, **whenever I send you an e-mail with a
20 list of questions, you respond by not answering any of my
21 questions and asking me a series of your questions. Please let
22 me know what is going on!**

23 **Conspicuously, every time that I ask you to set an
24 examination date, I receive either no response or total
25 stonewalling. Is it merely a coincidence that I sent you an e-
26 mail last night attempting to schedule Mr. O'Halloran's 2004
27 examination for next week and, in response, all of a sudden
28 you cannot produce the documents tomorrow as scheduled,
and you fail to provide me with any date on which to expect
them?**

⁷ See Exhibit D.

⁸ See Exhibit E.

1 I am going to give this one more shot with you before I seek
2 Judge Haine's intervention. Please tell me right away when the
3 documents and privilege log will be ready? If I do not hear back
4 from you by noon tomorrow, I will file my Motion.⁹ (Emphasis
added.)

5 On July 20, 2012, which was the date on which the documents were supposed to be
6 made available to Mr. Furst, Mr. Hartley wrote to Mr. Furst, stating that he should "direct all
7 future communications on this matter to my attorneys at Stinson."¹⁰ Counsel for the ML
8 Liquidating Trust then informed Mr. Furst that he would not receive any documents until he
9 signed the Protective Order prepared by their law firm. The Protective Order was totally
10 unreasonable and one-sided, defining all documents produced by Mr. O'Halloran as
11 confidential, whether they actually were or not. Mr. Furst responded:

13 I have reviewed your documents and have the following
14 comments:

15
16 1. You define "confidential documents" to include every
17 document produced by Mr. O'Halloran. That is not acceptable.
18 The only confidential documents are (a) attorney-client privileged
19 documents, and (b) documents subject to confidentiality
agreements, according to your statements in Court. You need to
specify those confidentiality agreements.

20
21 2. Mr. O'Halloran produced documents through the end of 2010.
22 All of those documents, which are not confidential, should be
23 provided to me (not just the documents requested in the Motion).
As you know, Judge Haines had no objections to expanding the
production to all 2010 documents.

24
25 3. Documents that may have initially been intended to be
26 confidential, but were communicated to others, are no longer
confidential. For example, if Joe Baldino gave confidential

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28 ⁹ See Exhibit F.

¹⁰ See Exhibit G.

1 information to others for his own personal purposes, those
2 documents are no longer confidential.

3 4. Mr. O'Halloran's notes of conversations with non-attorneys are
4 not confidential.

5 5. "Confidential documents" should be defined to specifically
6 exclude (a) Mr. O'Halloran's notes to non-attorneys, (b)
7 documents relating to board members' use of trust information
8 and resources for their own personal purposes, (c) documents
9 relating to board members' comments that indicate fiduciary
10 breaches (which may be embarrassing but not confidential), and
11 (d) voting by the board. Matt Hartley has indicated that there are
12 several documents in these categories, which you are now trying
13 to conceal.

14 6. Even if documents are confidential, I can share them with
15 multiple attorneys, accountants, consultants and advisors.

16 In addition, I need a detailed privilege log specifying the reasons
17 for the privilege. You must confirm that, in a chain of e-mails,
18 only the communication with an attorney is privileged, not the
19 entire chain of e-mails.

20 Finally, you have not produced the privilege log, as promised in
21 your e-mail. In fact, you have not communicated or provided
22 anything meaningful to me. Unless I receive adequate assurances
23 from you tomorrow, I am filing a motion with Judge Haines. You
24 should understand that I will not be deterred by your tactics. Matt
25 Hartley is well aware of the questionable activity that has
26 occurred, and I am surprised that he is willing to waste investor
27 funds attempting to conceal all of this. Conspicuously, Mr.
28 O'Halloran, who was the Liquidating Trustee at the time, has not
voiced a single objection and has been extremely cooperative in
all respects; only Mr. Hartley, the current Liquidating Trustee,
and the current board members are trying to be obstructionists.¹¹

29 Counsel for the ML Liquidating Trust refused to make any of the changes requested by
30 Mr. Furst. Realizing that the ML Liquidating Trust was going to indefinitely "stonewall" his

31 ¹¹ See Exhibit H.

1 efforts to conduct a meaningful 2004 examination with the benefit of the produced documents
2 in his possession, Mr. Furst decided that he would have to conduct an initial session of the
3 2004 examination, without the documents. He then scheduled the 2004 examination for
4 August 13, 2012, which was the date proposed by Mr. O'Halloran. Mr. O'Halloran
5 participated in a four-hour examination on that date. Among other things, Mr. O'Halloran's
6 testimony explained his abrupt resignation as Liquidating Trustee as being in response to
7 perceived breaches and self-dealing actions by members of the ML Liquidating Trust Board.
8
9

10 **III. Status of Protective Order**

11 The proposed Protective Order drafted by counsel for the ML Liquidating Trust is
12 unreasonable and unworkable. It requires that all documents produced by Mr. O'Halloran be
13 characterized as confidential, even if they are not. Under the proposed Protective Order, Mr.
14 Furst would be permitted to disclose the contents of these documents to third parties or use
15 the documents in a lawsuit, only if he obtained the prior approval of the Court. This standard,
16 if adopted, would require the Court to review more than 2,000 documents, one by one, to
17 determine their confidentiality (when, in fact, hardly any of them are actually confidential).
18
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20 In reality, the ML Liquidating Trust is not seeking to protect confidential information,
21 which is a valid concern acknowledged by Mr. Furst. It is seeking to conceal embarrassing
22 information, which is clearly not confidential and may be actionable.
23

24 At the June 5, 2012 hearing, the ML Liquidating Trust asserted that it was bound by
25 certain confidentiality agreements, and Mr. Furst understood that. But the ML Liquidating
26 Trust now seeks to expand the concept of confidentiality to include every document produced
27 by Mr. O'Halloran. That is unacceptable.
28

1 The ML Liquidating Trust cites various common defense agreements than allegedly
2 contain confidentiality provisions, but it is unwilling to submit those confidentiality
3 provisions to the Court or Mr. Furst for review. In addition, the ML Liquidating Trust is
4 unwilling to disclose the dates on which the common defense agreements were signed. If the
5 common defense agreements were, in fact, executed after Mr. O'Halloran's resignation, their
6 confidentiality provisions cannot apply to non-confidential communications previously made.
7

8
9 Mr. O'Halloran's 2004 examination raised numerous issues regarding the propriety of
10 the conduct of the ML Liquidating Trust Board, including past and current members. Many
11 of the issues are well known to the ML investors, and Mr. O'Halloran's testimony confirmed
12 their concerns. There is a group of investors who will likely join Mr. Furst in retaining group
13 counsel to examine these issues and possibly file a lawsuit. However, Mr. Furst must be able
14 to communicate freely with these investors and interview attorneys, without seeking court
15 permission for each such discussion.
16

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18 As a result, the Protective Order should incorporate Mr. Furst's six comments in the e-
19 mail quoted above. In addition, the Protective Order should permit Mr. Furst to communicate
20 any "confidential" information to other investors and counsel, provided that they also agree,
21 in writing, to be bound by the Protective Order. The Protective Order, in its present form,
22 would make it difficult, if not impossible, for Mr. Furst and the other interested investors to
23 organize and seek redress for wrongdoing.
24

25 **IV. Court Ruling on Certain Documents and Subject Matter**

26
27 Whatever the final form of the Protective Order, Mr. Furst seeks a court determination
28 that certain documents and subject matter are not confidential or privileged and, therefore, not

1 subject to the Protective Order. The Court should determine that all documents pertaining to
2 the following subject matter are not "confidential:"

- 3 a. Mr. O'Halloran's personal notes;
- 4 b. The ML Liquidating Trust Board's "conflict of interest" policies, as
5 amended from time to time, any voting by the Board to suspend the
6 "conflict of interest" policies, and any self-dealing actions taken by Board
7 members;
- 8 c. All communications relating to efforts by Board members to obtain personal
9 benefits for themselves that were unavailable to non-Board members;
- 10 d. All communications by Board members (or others) to impede the ML
11 Liquidating Trust's prosecution of its legal claims against Greenberg
12 Taurig, Quarles & Brady, Mayer Hoffman and others;
- 13 e. All communications with Cathy Reece, Esq., in which she stated that ML
14 Manager was not the agent for the Mortgages Ltd. 401(k) Plan (including
15 without limitation Mr. O'Halloran's testimony on this subject in his 2004
16 examination);
- 17 f. All documents prepared before the common defense agreements were
18 signed;
- 19 g. Kevin O'Halloran's testimony about Jim Merriman's statements;
- 20 h. All voting by the ML Liquidating Trust Board;
- 21 i. The transcript of Mr. O'Halloran's 2004 examination; and
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1 j. All communication relating to the allocation of expenses between ML
2 Liquidating Trust, ML Manager and the Loan LLCs.

3 With regard to the issue of attorney-client privilege, in the Ninth Circuit, a trustee-
4 fiduciary cannot assert the privilege against trust beneficiaries, unless the legal advice was
5 sought in connection with the defense of the fiduciary. However, if the legal advice was
6 sought in connection with trust administration matters, it is not privileged and can be
7 disclosed to trust beneficiaries. United States v. Mett, 178 F.3d 1058, 1064 (9th Cir. 1999).
8 This is known as the fiduciary exception to the privilege. At the 2004 examination, the ML
9 Liquidating Trust would not allow Mr. O'Halloran to answer the question of whether
10 communications with counsel were in relation to the defense of the Trust, as opposed to the
11 administration of the Trust. Mr. Furst requests that the Court rule that Mr. O'Halloran can
12 answer that question, without violating the privilege, and that Mr. O'Halloran can testify
13 about communications with counsel which are not privileged, under the "fiduciary exception"
14 standard adopted by the Ninth Circuit.
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19 **V. Conclusion**

20 For the reasons stated above, the Court should deny the Motion submitted by the ML
21 Liquidating Trust and grant the Motion submitted by Mr. Furst. In addition, the Court should
22 award Mr. Furst for the unnecessary costs incurred because he was forced to take the 2004
23 examination in two sessions. The court reporter's fee for the first session should be paid by
24 the ML Liquidating Trust.
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1 DATED: September 4, 2012

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Robert G. Furst

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Exhibit A

Subj: **RE: Scheduling of 2004 Examination**
 Date: 7/9/2012 5:21:04 P.M. Pacific Daylight Time
 From: MHartley@sierracgllc.com
 To: kevinm@bellsouth.net, rgfurst@aol.com
 Bob,

Please let me know if you intend to conduct the 2004 exam telephonically or in person. We will need to know before we can confirm which dates will work.

Thanks!

Matt

-----Original Message-----

From: Kevin O'Halloran [mailto:kevinm@bellsouth.net]
 Sent: Monday, July 09, 2012 10:48 AM
 To: rgfurst@aol.com
 Cc: Matt Hartley
 Subject: RE: Scheduling of 2004 Examination

Dear Mr. Furst,

Thank you for the email.

I would like to propose either Monday July 16th or Tuesday July 17th. As previously agreed I will be in Atlanta and you will conduct the examination by phone or in person on Atlanta.

As to records, all requested items were delivered to a copy service and they subsequently forwarded a copy to each of Mr. Hartley and his attorney some two weeks ago. While many of the documents are not privileged it was my understanding that you and Mr. Hartley had agreed that copies of documents would come directly from him after he and his attorneys had an opportunity to review. Since they were prepared in a digitized format you should discuss the form and style of delivery with Mr. Hartley. Please correspond directly with Mr. Hartley regarding turnover.

Thank you in advance and please promptly confirm the acceptable date to you so that I may schedule my calendar.

Yours Sincerely,

Kevin O' Halloran

-----Original Message-----

From: rgfurst@aol.com [mailto:rgfurst@aol.com]
 Sent: Tuesday, July 03, 2012 2:35 PM
 To: kevinm@bellsouth.net
 Subject: Scheduling of 2004 Examination

Dear Kevin,

I would like to schedule your 2004 examination at your earliest convenience. I am hopeful that the Liquidating Trustee and his counsel with promptly review the documents and authorize you to send them to me very soon. I would appreciate if you would send me a schedule of your available dates, and I can then work with you in selecting a mutually acceptable examination date.

I hope you enjoy the 4th of July holiday.

Best regards.

Bob furst

Exhibit B

Subj: **Scheduling of 2004 Examination**
Date: 7/11/2012 6:51:10 P.M. Pacific Daylight Time
From: rgfurst@aol.com
To: MHartley@sierracgllc.com
CC: kevinm@bellsouth.net
Matt,

I do not understand why you are not responding to me. Unfortunately, it appears that we will now need to address this issue with Judge Haines. I tried to work cooperatively with you, but I cannot wait any longer for a response.

Best regards.

Bob Furst

-----Original Message-----

From: rgfurst <rgfurst@aol.com>
To: MHartley <MHartley@sierracgllc.com>
Cc: kevinm <kevinm@bellsouth.net>
Sent: Tue, Jul 10, 2012 10:46 pm
Subject: Scheduling of 2004 Examination

Matt,

Time is of the essence. Mr. O'Halloran is available next Monday and Tuesday. I would like to accommodate his schedule (and provide him with the courtesy of a response), but I need the nonprivileged documents in order to conduct the 2004 examination. Please let me know when they will be made available to me.

Best regards.

Bob Furst

-----Original Message-----

From: rgfurst <rgfurst@aol.com>
To: MHartley <MHartley@sierracgllc.com>
Cc: kevinm <kevinm@bellsouth.net>
Sent: Tue, Jul 10, 2012 1:25 pm
Subject: Scheduling of 2004 Examination

Matt,

I have not heard back from you regarding the deliver of the documents produced by Mr. O'Halloran (see e-mail below). Can I expect to receive the documents from your counsel within the next few days? If not, please provide me with the anticipated date of delivery.

Best regards.

Bob Furst

-----Original Message-----

From: rgfurst <rgfurst@aol.com>
To: MHartley <MHartley@sierracgllc.com>; kevinm <kevinm@bellsouth.net>

Sent: Mon, Jul 9, 2012 6:17 pm
Subject: Scheduling of 2004 Examination

Matt,

I have not yet made a decision as to whether I will conduct the 2004 examination telephonically or in person. That decision will be made after I have had an opportunity to review the documents.

Mr. O'Halloran delivered the documents to you and your counsel approximately two weeks ago, which should have been ample time for your counsel to have reviewed them by now for privilege issues. Can I expect to receive the documents from your counsel within the next few days? If not, please provide me with a firm delivery date.

Thank you.

Best regards.

Bob Furst

-----Original Message-----

From: Matt Hartley <MHartley@sierracgllc.com>
To: Kevin O'Halloran <kevinm@bellsouth.net>; rgfurst <rgfurst@aol.com>
Sent: Mon, Jul 9, 2012 5:21 pm
Subject: RE: Scheduling of 2004 Examination

Bob,

Please let me know if you intend to conduct the 2004 exam telephonically or in person. We will need to know before we can confirm which dates will work.

Thanks!

Matt

-----Original Message-----

From: Kevin O'Halloran [mailto:kevinm@bellsouth.net]
Sent: Monday, July 09, 2012 10:48 AM
To: rgfurst@aol.com
Cc: Matt Hartley
Subject: RE: Scheduling of 2004 Examination

Dear Mr. Furst,

Thank you for the email.

I would like to propose either Monday July 16th or Tuesday July 17th.

As previously agreed I will be in Atlanta and you will conduct the examination by phone or in person on Atlanta.

As to records, all requested items were delivered to a copy service and they subsequently forwarded a copy to each of Mr. Hartley and his attorney some two weeks ago. While many of the documents are not privileged it was my understanding that you and Mr. Hartley had agreed that copies of

documents
would come directly from him after he and his attorneys had an
opportunity
to review. Since they were prepared in a digitized format you should
discuss the form and style of delivery with Mr. Hartley. Please
correspond
directly with Mr. Hartley regarding turnover.

Thank you in advance and please promptly confirm the acceptable date to
you
so that I may schedule my calendar.

Yours Sincerely,

Kevin O' Halloran

-----Original Message-----

From: rgfurst@aol.com [mailto:rgfurst@aol.com]
Sent: Tuesday, July 03, 2012 2:35 PM
To: kevinm@bellsouth.net
Subject: Scheduling of 2004 Examination

Dear Kevin,

I would like to schedule your 2004 examination at your earliest
convenience.
I am hopeful that the Liquidating Trustee and his counsel with promptly
review the documents and authorize you to send them to me very soon. I
would appreciate if you would send me a schedule of your available
dates,
and I can then work with you in selecting a mutually acceptable
examination
date.

I hope you enjoy the 4th of July holiday.

Best regards.

Bob furst

Exhibit C

Subj: **Documents**
Date: 7/18/2012 3:25:01 P.M. Pacific Daylight Time
From: MHartley@sierracgllc.com
To: rgfurst@aol.com
CC: bnillen@stinson.com
Bob,

I just wanted to confirm that the documents will be available for pickup at Stinson this Friday between 4 and 5:30. Beth Nillen at Stinson will be the contact if there are any problems. 602-212-8558.

Thanks!

Matt

Matthew R. Hartley
Sierra Consulting Group, LLC
One Renaissance Square
Two North Central Ave, Suite 700
Phoenix, AZ 85004
Direct: (602) 424-7005
Fax: (602) 424-7002
Mobile: (602) 769-0999
mhartley@sierracgllc.com
www.sierracgllc.com

ARIZONA * NEVADA * UTAH

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Exhibit D

Subj: **RE: Documents**
 Date: 7/19/2012 1:29:15 P.M. Pacific Daylight Time
 From: MHartley@sierracgllc.com
 To: rgfurst@aol.com
 CC: kevinm@bellsouth.net, bnillen@stinson.com
 Bob,

Please call me at your earliest convenience.

Matt

-----Original Message-----

From: rgfurst@aol.com [mailto:rgfurst@aol.com]
 Sent: Thursday, July 19, 2012 11:18 AM
 To: Matt Hartley
 Cc: kevinm@bellsouth.net; bnillen@stinson.com
 Subject: RE: Documents

Matt,

I have not decided whether my counsel and I will go to Atlanta. You should make your decision based on what is best for the Liquidating Trust. If you are concerned that I will be physically present at the 2004 examination (and that my physical presence would give me some sort of tactical advantage), then your counsel should go to Atlanta, but I am unable to commit one way or the other. It will be a last-minute decision based on my counsel's schedule.

Please remember that this is not an adversarial process right now. You and I have a common interest in discovering what happened before you became involved with the Liquidating Trust. My interests are as a trust beneficiary; your interests are as the trust protector. Aren't our interests totally aligned in discovering what really happened?

Back to the current issues: Is Thursday or Friday acceptable for the 2004 examination? Will the documents and privilege log be ready by Monday? Those are the key issues right now. Please let me know.

Best regards.

Bob Furst

-----Original Message-----

From: Matt Hartley <MHartley@sierracgllc.com>
 To: rgfurst@aol.com
 Cc: kevinm@bellsouth.net; bnillen@stinson.com
 Sent: Thu, Jul 19, 2012 9:05 am
 Subject: RE: Documents

Bob,

Have you decided if the 2004 exam will be telephonic or in person?

Matt

-----Original Message-----

From: rgfurst@aol.com [mailto:rgfurst@aol.com]
 Sent: Thursday, July 19, 2012 12:03 AM
 To: Matt Hartley
 Cc: kevinm@bellsouth.net; bnillen@stinson.com
 Subject: Re: Documents

Matt,

Case 2:08-bk-07465-RJH Saturday, September 01, 2012 AOL: Guest
 Doc 3575 Filed 09/04/12 Entered 09/05/12 11:04:14 Desc
 Main Document Page 22 of 37

I will pick up the documents and the privilege log at Stinson at the same time. Please let me know when they are both available, presumably early next week.

Thank you.

Bob Furst

-----Original Message-----

From: Matt Hartley <MHartley@sierracgllc.com>

To: Bob Furst <rgfurst@aol.com>

Cc: bnillen <bnillen@stinson.com>

Sent: Wed, Jul 18, 2012 3:25 pm

Subject: Documents

Bob, I just wanted to confirm that the documents will be available for pickup at Stinson this Friday between 4 and 5:30. Beth Nillen at Stinson will be the contact if there are any problems.

602-212-8558. Thanks! Matt Matthew R. Hartley Sierra Consulting Group, LLC One Renaissance Square Two North Central Ave, Suite 700 Phoenix, AZ

85004 Direct: (602) 424-7005 Fax: (602) 424-7002 Mobile: (602) 769-

0999 mhartley@sierracgllc.com www.sierracgllc.com ARIZONA * NEVADA * UTAH This message is intended only for the use of the individual or entity to which it is addressed. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the sender of this E-Mail by return E-Mail or by telephone.

Exhibit E

Subj: **Documents**
Date: 7/19/2012 4:26:07 P.M. Pacific Daylight Time
From: MHartley@sierracgllc.com
To: rgfurst@aol.com
Bob,

I am sure you are busy today since I have not heard back from you, but we have run into some issues with the document production and will not have the documents ready tomorrow. One issue is that you referenced you have an attorney representing you now, so we need to have his contact information. The other issue is that we need to have a confidentiality agreement as was agreed on the record before Judge Haines. The quickest way to resolve this is to have your attorney contact Chris Graver at Stinson. His number is 602-212-8519.

Thanks.

Matt

Matthew R. Hartley
Sierra Consulting Group, LLC
One Renaissance Square
Two North Central Ave, Suite 700
Phoenix, AZ 85004
Direct: (602) 424-7005
Fax: (602) 424-7002
Mobile: (602) 769-0999
mhartley@sierracgllc.com
www.sierracgllc.com

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This message is intended only for the use of the individual or entity to which it is addressed. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the sender of this E-Mail by return E-Mail or by telephone.

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Exhibit F

Subj: Re: Documents
Date: 7/19/2012 5:24:43 P.M. Pacific Daylight Time
From: rgfurst@aol.com
To: MHartley@sierracgllc.com
CC: kevinm@bellsouth.net
 Matt,

I have not hired an attorney at this time, so I am continuing to represent myself. Please have your attorney send me the Confidentiality Agreement to me as soon as possible (as an e-mail attachment).

When will the documents be ready? When will the privilege log be ready? Are you separating out the e-mails in every e-mail chain for privilege review? I have not received an answer to any of these questions, which were contained in my most recent e-mails to you. In general, whenever I send you an e-mail with a list of questions, you respond by not answering any of my questions and asking me a series of your questions. Please let me know what is going on!

Conspicuously, every time that I ask you to set an examination date, I receive either no response or total stonewalling. Is it merely a coincidence that I sent you an e-mail last night attempting to schedule Mr. O'Halloran's 2004 examination for next week and, in response, all of a sudden you cannot produce the documents tomorrow as scheduled, and you fail to provide me with any date on which to expect them?

I am going to give this one more shot with you before I seek Judge Haine's intervention. Please tell me right away when the documents and privilege log will be ready? If I do not hear back from you by noon tomorrow, I will file my Motion.

Best regards.

Bob Furst

-----Original Message-----

From: Matt Hartley <MHartley@sierracgllc.com>
To: rgfurst <rgfurst@aol.com>
Sent: Thu, Jul 19, 2012 4:26 pm
Subject: Documents

Bob, I am sure you are busy today since I have not heard back from you, but we have run into some issues with the document production and will not have the documents ready tomorrow. One issue is that you referenced you have an attorney representing you now, so we need to have his contact information. The other issue is that we need to have a confidentiality agreement as was agreed on the record before Judge Haines. The quickest way to resolve this is to have your attorney contact Chris Graver at Stinson. His number is 602-212-8519. Thanks. Matt Matthew R. HartleySierra Consulting Group, LLCOne Renaissance SquareTwo North Central Ave, Suite 700Phoenix, AZ 85004Direct: (602) 424-7005Fax: (602) 424-7002Mobile: (602) 769-0999mhartley@sierracgllc.comwww.sierracgllc.com ARIZONA * NEVADA * UTAH This message is intended only for the use of the individual or entity to which it is addressed. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the sender of this E-Mail by return E-Mail or by telephone.

Exhibit G

Subj: Re: Documents
Date: 7/20/2012 12:47:40 P.M. Pacific Daylight Time
From: MHartley@sierracgllc.com
To: rgfurst@aol.com
CC: kevinm@bellsouth.net
Bob,

Please direct all future communications on this matter to my attorneys at Stinson. I am happy to discuss other matters with you, but I think it is best if you handle the 2004 exam issues directly with my attorneys.

Matt Hartley

On Jul 19, 2012, at 5:25 PM, "rgfurst@aol.com" <rgfurst@aol.com> wrote:

> Matt,
 >
 > I have not hired an attorney at this time, so I am continuing to
 > represent myself. Please have your attorney send me the
 > Confidentiality Agreement to me as soon as possible (as an e-mail
 > attachment).
 >
 > When will the documents be ready? When will the privilege log be
 > ready? Are you separating out the e-mails in every e-mail chain for
 > privilege review? I have not received an answer to any of these
 > questions, which were contained in my most recent e-mails to you. In
 > general, whenever I send you an e-mail with a list of questions, you
 > respond by not answering any of my questions and asking me a series of
 > your questions. Please let me know what is going on!
 >
 > Conspicuously, every time that I ask you to set an examination date, I
 > receive either no response or total stonewalling. Is it merely a
 > coincidence that I sent you an e-mail last night attempting to schedule
 > Mr. O'Halloran's 2004 examination for next week and, in response, all
 > of a sudden you cannot produce the documents tomorrow as scheduled, and
 > you fail to provide me with any date on which to expect them?
 >
 > I am going to give this one more shot with you before I seek Judge
 > Haine's intervention. Please tell me right away when the documents and
 > privilege log will be ready? If I do not hear back from you by noon
 > tomorrow, I will file my Motion.
 >
 > Best regards.
 >
 > Bob Furst
 >
 >
 >
 > -----Original Message-----
 > From: Matt Hartley <MHartley@sierracgllc.com>
 > To: rgfurst <rgfurst@aol.com>
 > Sent: Thu, Jul 19, 2012 4:26 pm
 > Subject: Documents
 >
 > Bob, I am sure you are busy today since I have not heard back from you,
 > but we have run into some issues with the document production and will
 > not have the documents ready tomorrow. One issue is that you
 > referenced you have an attorney representing you now, so we need to
 > have his contact information. The other issue is that we need to have
 > a confidentiality agreement as was agreed on the record before Judge
 > Haines. The quickest way to resolve this is to have your attorney

Saturday, September 01, 2012 AOL: Guest

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09/04/2012

> contact Chris Graver at Stinson. His number is
> 602-212-8519. Thanks. Matt Matthew R. HartleySierra Consulting Group,
> LLCOne Renaissance SquareTwo North Central Ave, Suite 700Phoenix, AZ
> 85004Direct: (602) 424-7005Fax: (602) 424-7002Mobile: (602)
> 769-0999mhartley@sierracgllc.comwww.sierracgllc.com ARIZONA * NEVADA *
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>
>

Saturday, September 01, 2012 AOL: Guest

Exhibit H

Subj: **Documents**
 Date: 8/5/2012 1:50:57 P.M. Pacific Daylight Time
 From: RGFURST@aol.com
 To: CGraver@stinson.com

Dear Mr. Graver,

I have reviewed your documents and have the following comments:

1. You define "confidential documents" to include every document produced by Mr. O'Halloran. That is not acceptable. The only confidential documents are (a) attorney-client privileged documents, and (b) documents subject to confidentiality agreements, according to your statements in Court. You need to specify those confidentiality agreements.
2. Mr. O'Halloran produced documents through the end of 2010. All of those documents, which are not confidential, should be provided to me (not just the documents requested in the Motion). As you know, Judge Haines had no objections to expanding the production to all 2010 documents.
3. Documents that may have initially been intended to be confidential, but were communicated to others, are no longer confidential. For example, if Joe Baldino gave confidential information to others for his own personal purposes, those documents are no longer confidential.
4. Mr. O'Halloran's notes of conversations with non-attorneys are not confidential.
5. "Confidential documents" should be defined to specifically exclude (a) Mr. O'Halloran's notes to non-attorneys, (b) documents relating to board members' use of trust information and resources for their own personal purposes, (c) documents relating to board members' comments that indicate fiduciary breaches (which may be embarrassing but not confidential), and (d) voting by the board. Matt Hartley has indicated that there are several documents in these categories, which you are now trying to conceal.
6. Even if documents are confidential, I can share them with multiple attorneys, accountants, consultants and advisors.

In addition, I need a detailed privilege log specifying the reasons for the privilege. You must confirm that, in a chain of e-mails, only the communication with an attorney is privileged, not the entire chain of e-mails.

Finally, you have not produced the privilege log, as promised in your e-mail. In fact, you have not communicated or provided anything meaningful to me. Unless I receive adequate assurances from you tomorrow, I am filing a motion with Judge Haines. You should understand that I will not be deterred by your tactics. Matt Hartley is well aware of the questionable activity that has occurred, and I am surprised that he is willing to waste investor funds attempting to conceal all of this. Conspicuously, Mr. O'Halloran, who was the Liquidating Trustee at the time, has not voiced a single objection and has been extremely cooperative in all respects; only Mr. Hartley, the current Liquidating Trustee, and the current board members are trying to be obstructionists.

Bob Furst

In a message dated 7/20/2012 4:22:35 P.M. US Mountain Standard Time, CGraver@stinson.com writes:

Dear Mr. Furst:

I don't agree with your characterization of our efforts towards providing discovery as "tactics," but I can certainly respond in writing. I am aware that this has taken longer than any of us anticipated. The review and production has been complicated by the time it took to get the documents, the format in which the documents arrived, the number of documents (approximately 2,600), the intervention of summer holidays, and the extent to which numerous confidentiality agreements affected our review. Here is where we are at:

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- (1) You have received, as did we, Mr. O'Halloran's log of the documents he was producing.
- (2) A proposed form of stipulation and protective order is attached. I'm sorry this didn't get completed earlier, but I believe we should be able to agree on its form and get it approved very quickly. Its intent, consistent with the process the Court has approved, is to retain the confidentiality of all documents being produced, and does not restrict your ability to request the Liquidating Trustee's agreement to use them, or to apply to the Court for authority to use them.
- (3) We have nearly completed our review of the documents, although that is not the end of the process, as described below. While producing everything at once would be preferable, once the Protective Order is in place, we anticipate we can start a rolling production of documents next Wednesday, with what we expect will be approximately 1,000 documents.
- (4) There are certain documents subject to confidentiality agreements that we believe can be produced; however, we cannot do so without giving the other parties to the agreements an opportunity to object to their production. These are documents the other parties have already seen, it's just a question of whether the other parties will permit their production. We expect to provide those documents to the appropriate parties as soon as we've completed our review and we will request responses within ten business days from their receipt of the documents, which we anticipate sending out within the next couple of business days. To be clear: it is possible that certain third parties we are contractually bound to notify may separately seek to prevent the disclosure. We will not know that until they have reviewed the documents themselves.
- (5) Because Mr. O'Halloran provided his own log of documents, we have not separately prepared a privilege log. We anticipate being able to provide a designation of documents being withheld as privileged by next Friday.

We are happy to discuss potential dates for the 2004 examination of Mr. O'Halloran, but we anticipate you will want to wait to set that date once we know whether third parties are going to object to the production of the documents that are the subject of the confidentiality agreements.

Sincerely

Chris Graver

Christopher Graver

602.212.8519

x68519

Saturday, September 01, 2012 AOL: Guest

Christopher Graver | Attorney | Stinson Morrison Hecker LLP
1850 N. Central Avenue, Suite 2100 | Phoenix, AZ 85004-4584
T: 602.212.8519 | F: 602.586.5219
cgraver@stinson.com | www.stinson.com

-----Original Message-----

From: rgfurst@aol.com [mailto:rgfurst@aol.com]

Sent: Friday, July 20, 2012 12:05 PM

To: Graver, Christopher

Cc: MHartley@sierracgllc.com; Nillen, M. Elizabeth; kevinm@bellsouth.net

Subject: Re: FW: Documents

Chris,

I would like you to respond to me in writing. I am disappointed by your tactics, and I want a clear, unambiguous record of what you are telling me.

Best regards.

Bob Furst

-----Original Message-----

From: Graver, Christopher <CGraver@stinson.com>

To: rgfurst <rgfurst@aol.com>

Cc: Matt Hartley <MHartley@sierracgllc.com>; Nillen, M. Elizabeth <MNillen@stinson.com>

Sent: Fri, Jul 20, 2012 11:30 am

Subject: FW: Documents

Bob, your phone went to voicemail. I understand you are not represented. We'd like to discuss the issues in your email below with you so we can all get on the same page about timing. I am working on

a confidentiality agreement, and there are other complications we need to discuss. ThanksChris From:
"rgfurst@aol.com" <rgfurst@aol.com>

Date: July 19, 2012 5:24:43 PM MST

To: Matt Hartley <MHartley@sierracgllc.com>

Cc: "kevinm@bellsouth.net" <kevinm@bellsouth.net>

Subject: Re: Documents

Matt,

I have not hired an attorney at this time, so I am continuing to represent myself. Please have your attorney send me the Confidentiality Agreement to me as soon as possible (as an e-mail attachment).

When will the documents be ready? When will the privilege log be ready? Are you separating out the e-mails in every e-mail chain for privilege review? I have not received an answer to any of these questions, which were contained in my most recent e-mails to you. In general, whenever I send you an e-mail with a list of questions, you respond by not answering any of my questions and asking me a series of your questions. Please let me know what is going on!

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Best regards.

Bob Furst

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Christopher Graver | Attorney | Stinson Morrison Hecker LLP 1850 N. Central Avenue, Suite 2100
| Phoenix, AZ 85004-4584

T: 602.212.8519 | F: 602.586.5219

cgraver@stinson.com | www.stinson.com

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-----Original Message-----

From: Matt Hartley <MHartley@sierracgllc.com>

To: rgfurst <rgfurst@aol.com>

Sent: Thu, Jul 19, 2012 4:26 pm

Subject: Documents

Bob, I am sure you are busy today since I have not heard back from you, but we have run into some issues with the document production and will not have the documents ready tomorrow. One issue is that you referenced you have an attorney representing you now, so we need to have his contact information. The other issue is that we need to have a confidentiality agreement as was agreed on the record before Judge Haines. The quickest way to resolve this is to have your attorney contact Chris Graver at Stinson. His number is 602-212-8519. Thanks. Matt Matthew R. Hartley Sierra Consulting Group, LLC One Renaissance Square Two North Central Ave, Suite 700 Phoenix, AZ

85004 Direct: (602) 424-7005 Fax: (602) 424-7002 Mobile: (602)

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