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May 25, 2017

VIA ECF AND ELECTRONIC MAIL

Honorable Stuart M. Bernstein
United States Bankruptcy Court
Southern District of New York
One Bowling Green, Room 723
New York, New York 10004-1408
Bernstein.chambers@nysb.uscourts.gov

Re: *In re: Bernard L. Madoff*, Adv. Pro. No. 08-01789

Dear Judge Bernstein:

We write to supplement our April 5, 2017, letter (ECF No. 15667) seeking the Court's adoption of several discovery-related arbitration decisions from Judge Maas across all Chaitman LLP cases where substantially the same discovery disputes still exist.

Our initial letter focused on rulings compelling several Chaitman LLP defendants to comply with their discovery obligations. Because Ms. Chaitman unfortunately continues to ignore the record and make baseless accusations concerning the Trustee's discovery conduct, most recently in her May 15, 2017 letter (ECF No. 16006), we would like to also bring to the Court's attention two additional rulings from Judge Maas that explicitly put those allegations to rest. We request that the Court adopt these additional rulings from the *Wilnitz* case,¹ and note that Judge Maas expressly stated his view that his ruling should "apply generally to all of the Madoff-related adversary proceedings in which Chaitman LLP serves as defense counsel." (ECF No. 88 at 2.) We also request that the Court adopt two defendant-specific rulings in *Picard v. Di Giulian*, Adv. Pro. No. 10-04728 (SMB) and *Picard v. Edyne Gordon*, Adv. Pro. No. 10-04914 (SMB).²

In *Picard v. Di Giulian*, Adv. Pro. No. 10-04728 (SMB), Judge Maas recently sanctioned Ms. Chaitman's discovery misconduct by precluding the use of evidence that he found was

¹ The orders are ECF Nos 81 and 88 in *Picard v. Wilnitz*, Adv. Pro. No. 10-04995 (SMB). Judge Maas's original order on this issue is ECF No. 76.

² The orders are ECF Nos. 15982 and 15983.

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produced in an untimely fashion.³ The Trustee finds it particularly egregious that, notwithstanding the fact that the Court-appointed arbitrator is simultaneously sanctioning her for her own discovery misconduct, Ms. Chaitman has requested that this Court reopen fact discovery in numerous cases and reset her case management order deadlines. Judge Maas also clarified, in the context of *Di Giulian*, and *Gordon*, that Defendants are not entitled to the benefit of streamlined discovery unless they agree to all aspects specified in the order. Moreover, Judge Maas's orders clarify that entering into a stipulation as described in Paragraph A.2 of ECF No. 14820 does not obviate the need for all discovery, including depositions of defendants.

With respect to the *Wilenitz* rulings, a brief summary of the long history of the litigation of these issues, both in this Court and before Judge Maas, is illustrative. The Trustee made available and produced third-party records from the Depository Trust Clearing Corporation reflecting that the verifiable trading activity at BLMIS was not the trades reflected in the BLMIS Investment Advisory's customer statements. Despite this, Ms. Chaitman requested, and then disingenuously moved to compel the production of "trading records" at BLMIS prior to 2002.

In response, since December of 2016, the Trustee has made several additional productions of documents, and taken the following additional measures: (i) spent more than \$500,000 to voluntarily restore and produce documents contained on 201 reels of previously unrestored microfilm that the Trustee believed could possibly contain records from the pre-1992 time period; (ii) created and applied a comprehensive list of 118 distinct search terms to run across the approximately 30 million scanned hard-copy and electronic documents in the BLMIS Database, and produced all documents retrieved by these search terms to Ms. Chaitman; and (iii) produced to Ms. Chaitman a searchable index of all hard copy BLMIS documents contained in more than 13,000 boxes and a separate searchable index of electronic media obtained from BLMIS. Judge Maas's order specifically described these indices as tools which "should enable Ms. Chaitman to formulate more focused requests for trading records." (ECF No. 81 at 6.) Critically, all of these productions exceeded any of the Trustee's obligations under Judge Maas's relevant orders, which only required that the Trustee produce additional third-party records reflecting legitimate trading activity at BLMIS, similar to those records the Trustee has long made available in E-Data Room 1.

In light of the Trustee's efforts, Judge Maas denied Ms. Chaitman's motion to compel and required that Ms. Chaitman "send the Trustee's counsel a letter specifically identifying the additional documents she seeks to have produced, and where she believes they may be found" and conduct an actual in-person meet and confer before she would be entitled to pursue any additional relief from the arbitrator. (ECF No. 81 at 6.) Unsurprisingly, Ms. Chaitman has neither reviewed the index nor attempted to assert a justifiable basis for requiring the Trustee to produce any additional discovery.

The Trustee's substantial document search and productions to Ms. Chaitman have confirmed that there are no documents to produce that would evidence that the trading activity

³ A copy of the transcript from the May 10, 2017 arbitration in front of Judge Maas is attached hereto as Exhibit A and the relevant order is ECF No. 15982.

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reflecting in BLMIS's Investment Advisory ("IA") customer statements actually occurred. As we have maintained all along—and as Madoff affirmed in his FD-302 form we submitted to the Court on May 23, 2017 (ECF No. 16046)—BLMIS's IA business never conducted any real trades.

Judge Maas's rulings stemming from the December 13, 2016 in-person arbitration confirm that the Trustee's good faith efforts to find and make available the requested trading records were sufficient and complied with both his orders and the applicable rules, and denied further relief. (*See* ECF No. 88.) It built upon his earlier order, which sustained the vast majority of the Trustee's objections to Ms. Chaitman's discovery requests seeking purported "trading records" in the Trustee's possession. (*See* ECF No. 81.)

Instead, although this issue has been fully briefed, argued, and decided by Judge Maas through multiple orders, Chaitman LLP is improperly attempting to re-litigate this issue, even though the baseless allegations have already been rejected. Most egregiously, Ms. Chaitman now seeks an order precluding the Trustee from using any documents at trial not already produced, without any actual justification or basis for such relief. This nonsense should be rejected without equivocation in light of the well-documented record discussed above and further attempts at re-litigation should be foreclosed by the Court's adoption and implementation of Judge Maas's orders on this issue.

For the reasons set forth in the Trustee's April 5, 2017 Letter and above, the Trustee supplements his letter dated April 5, 2017 and requests that the Court adopt all of Judge Maas's discovery orders in full, applying them to all similarly situated adversary proceedings, and any procedural requirements of such application.

Respectfully submitted,

/s/ Edward J. Jacobs

Edward J. Jacobs

Enclosures

cc: Hon. Frank Maas (fmaas@jamsadr.com)
Helen Davis Chaitman (hchaitman@chaitmanllp.com)
Gregory Dexter (gdexter@chaitmanllp.com)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

In re: :

BERNARD L. MADOFF INVESTMENT : SIPA LIQUIDATION
SECURITIES LLC, :
Debtor. : No. 08-01789 (SMB)

- - - - -x (Substantively
Consolidated)

In re : :

BERNARD L. MADOFF, :
Debtor. :

- - - - -x

IRVING H. PICARD, Trustee :
for the Liquidation of : Adv. Pro. No.
Bernard L. Madoff Investment : 10-04995 (SMB)
Securities LLC, :
Plaintiff, :

v. :
:

TRUST U/ART FOURTH O/W/O :
ISRAEL WILENITZ, :

EVELYN BEREZIN WILENITZ, :
individually, and as Trustee :
and Beneficiary of the Trust :
U/ART Fourth O/W/O Israel :
Wilenz, and :

SARA SEIMS, as Trustee of :
the Trust U/ART Fourth O/W/O :
Israel Wilenz, :

Defendants. :

- - - - -x

TELEPHONE CONFERENCE

May 10, 2017

1 IRVING H. PICARD, Trustee :
 for the Liquidation of
 2 Bernard L. Madoff Investment: Adv. Pro. No.
 Securities LLC, 10-04818 (SMB)
 3 :
 Plaintiff,

4 :
 v.

5 :
 TOBY HARWOOD,
 6 :
 Defendant.

7 - - - - - x

8 IRVING H. PICARD, Trustee :
 for the Liquidation of Adv. Pro. No.
 Bernard L. Madoff Investment: 10-04914 (SMB)
 9 Securities LLC,
 10 :
 Plaintiff,

11 :
 v.

12 EDYNE GORDON, in her
 capacity as the executrix :
 13 and primary beneficiary of
 the estate of Allen Gordon, :
 14 :
 Defendant.

15 - - - - - x

16 IRVING H. PICARD, Trustee :
 for the Liquidation of Adv. Pro. No.
 Bernard L. Madoff Investment: 10-04826 (SMB)
 17 Securities LLC,
 18 :
 Plaintiff,

19 :
 v.

20 ESTATE OF BOYER PALMER,
 DIANE HOLMERS, in her :
 21 capacity as Personal
 Representative of the :
 22 Estate of Boyer Palmer, and
 BRUCE PALMER, in his :
 23 capacity as Personal
 Representative of the :
 24 Estate of Boyer Palmer,
 25 :
 Defendants.

1 IRVING H. PICARD, Trustee :
for the Liquidation of Adv. Pro. No.
2 Bernard L. Madoff Investment: 10-04644 (SMB)
Securities LLC,
3 :
Plaintiff ,
4 :
v.
5 :
RUSSELL L. DUSEK,
6 :
Defendant.
7 - - - - - x
8 IRVING H. PICARD, Trustee :
for the Liquidation of Adv. Pro. No.
9 Bernard L. Madoff Investment: 10-04541 (SMB)
Securities LLC,
10 :
Plaintiff,
11 :
v.
12 :
12 KENNETH W. PERLMAN; FELICE :
J. PERLMAN; and SANFORD S. :
13 PERLMAN,
14 :
Defendants.
15 - - - - - x
15 IRVING H. PICARD, Trustee :
for the Liquidation of Adv. Pro. No.
16 Bernard L. Madoff Investment: 10-04728 (SMB)
Securities LLC,
17 :
Plaintiff,
18 :
v.
19 :
BRUNO DIGIULIAN,
20 :
Defendant.
21 - - - - - x
22 IRVING H. PICARD, Trustee :
for the Substantively Adv. Pro. No.
23 Consolidated SIPA : 10-04905 (SMB)
Liquidation of Bernard L.
24 Madoff Investment Securities:
LLC and Bernard L. Madoff,
25 :
Plaintiff,

1 v. :

2 TRAIN KLAN, a Partnership; :

3 FELICE T. LONDA, in her :

4 capacity as a Partner in :

5 Train Klan; CLAUDIA HELMIG, :

6 in her capacity as a :

7 Partner in Train Klan; :

8 TIMOTHY LANDRES, in his :

9 capacity as a Partner in :

10 Train Klan; JESSICA LONDA, :

11 in her capacity as a :

12 Partner in Train Klan; :

13 PETER LONDA, in his :

14 capacity as a Partner in :

15 Train Klan; TIMOTHY HELMIG, :

16 in his capacity as a :

17 Partner in Train Klan; and :

18 WENDY LANDRES, in her :

19 capacity as a Partner in :

20 Train Klan, :

21 Defendants. :

22 - - - - - x

23 IRVING H. PICARD, Trustee :

24 for the Substantively Adv. Pro. No.

25 Consolidated SIPA : 10-04621 (SMB)

Liquidation of Bernard L.

Madoff Investment :

Securities LLC and Bernard

L. Madoff, :

Plaintiff, :

v. :

DONALD A. BENJAMIN, :

Defendant. :

- - - - - x

22 TRANSCRIPT of telephone conference

23 as reported by SUSAN R. CHASTEK, a Certified Court

24 Reporter, Registered Merit Reporter, and Notary

25 Public of the State of New Jersey, on

Wednesday, May 10, 2017, commencing at 8:30 a.m.

1 B E F O R E:

2 HON. FRANK MAAS (RET.), Arbitrator
3 fmass@jamsadr.com
4 620 Eighth Avenue
5 34th Floor
6 New York, New York 10018

7 A P P E A R A N C E S:

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17 ejacobs@bakerlaw.com
18 MARIE CARLISLE, ESQ.
19 mcarlisle@bakerlaw.com
20 For Irving Picard, Trustee
21
22 CHAITMAN LLP
23 465 Park Avenue
24 New York, New York 10022
25 (212) 698-3500
(212) 698-3599
hchaitman@chaitmanllp.com
BY: HELEN CHAITMAN, ESQ.
For the Defendants

1 JUDGE MAAS: Anybody else on the
2 line?

3 MR. HUNT: Your Honor, it's Dean
4 Hunt, Marie Carlisle and Ted Jacobs for the
5 Trustee. And we also have our court reporter on
6 as well.

7 JUDGE MAAS: Okay. So I guess
8 we're waiting for Ms. Chaitman?

9 MR. HUNT: That is correct, your
10 Honor.

11 MS. CHAITMAN: Helen Chaitman.

12 JUDGE MAAS: Good morning,
13 Ms. Chaitman. This is Judge Mass.

14 MS. CHAITMAN: Good morning. How
15 are you?

16 JUDGE MAAS: I'm well, thank you.
17 Why don't counsel for the Trustee identify
18 themselves as well.

19 MR. HUNT: Your Honor, this is Dean
20 Hunt with Baker Hostetler for the Trustee. I have
21 my colleagues Ted Jacobs and Marie Carlisle on the
22 line.

23 JUDGE MAAS: And just so you're
24 aware, Ms. Chaitman, there's also a court
25 reporter.

1 I have read the letters submitted
2 by both sides. I know that Mr. Digiulian, if I'm
3 pronouncing it correctly, had the 16th affirmative
4 defense and also the 37th affirmative defense in
5 his answer. The 37th deals with mandatory
6 withdrawals beyond the age of seventy and a half.
7 The 16th relates to taxes that he paid on his
8 fictitious return. I guess one question I have
9 is, and I didn't have an opportunity to go look at
10 the docket sheet yesterday, what other affirmative
11 defenses, if any, is he asserting?

12 MS. CHAITMAN: Well, it's Bruno
13 Digiulian that is -- the widow is the defendant
14 now. There are a number of -- as you can see, I
15 mean, it goes way beyond 37. There are a lot of
16 different affirmative defenses, and as we've
17 indicated in other cases, virtually all of them
18 are based on legal argument. The one that's
19 related to the taxes in each case, Your Honor,
20 we're following your procedure and we're getting a
21 declaration from an accountant and producing the
22 tax returns in the form that you ordered, so
23 that's how we're dealing with that affirmative
24 defense.

25 The others are most largely based

1 either upon the Trustee's documents which we're
2 still awaiting production on and on legal
3 argument.

4 JUDGE MAAS: Well, you say based
5 largely on either the Trustee's documents or legal
6 arguments. That suggests that they're not based
7 entirely on either the Trustee's documents or
8 legal argument, but you also said that you're
9 awaiting documents from the Trustee. I'm not sure
10 what that refers to.

11 MS. CHAITMAN: Well, as you may
12 recall, Judge, we have -- we claim that in fact
13 securities were purchased with the investment of
14 out-of-state customers' money and you've ordered
15 the Trustee to produce all of these microfiche
16 records and we're in the process of getting those
17 records and trying to put them in a readable
18 format which is a herculean task but we're working
19 through that right now. So we -- obviously, we're
20 going to be depending upon the Trustee's documents
21 for some of the affirmative defenses, but these
22 are all documents that have been in the Trustee's
23 possession since 2008.

24 MR. JACOBS: Well, Your Honor, if I
25 may, this is Ted Jacobs. All of those records

1 from the microfiche film that Ms. Chaitman is
2 referring to have been produced in readable and
3 searchable format and they absolutely have nothing
4 to do with any of the affirmative defenses that
5 are at issue today or for which we would expect
6 documents and factual bases from the defendants,
7 so I'm not sure why she's raising that at this
8 juncture.

9 JUDGE MAAS: Well, because she's
10 saying it's the pot calling the kettle black. But
11 a couple of things strike me.

12 First of all, to the extent
13 additional documents were produced and your letter
14 says they were produced within the -- back at the
15 discovery deadline, but I gather they were
16 produced far longer than 30 days after the
17 document request was served and, in fact, if I'm
18 reading the email correctly, they were produced
19 after the Trustee took the deposition; is that
20 correct?

21 MS. CHAITMAN: Yes. And I can
22 explain why, Your Honor. We had taken the
23 position, which I thought was accepted, that in
24 the event that a defendant conceded the accuracy
25 of Exhibit B as to the deposits and withdrawals

1 except for the Inter Account Transfer issue, that
2 there was no reason for the defendant to have to
3 produce the account statements which would
4 evidence the deposits and withdrawals, so we had
5 not produced them. Mrs. Digiulian was deposed for
6 about four hours, and at the deposition, she
7 explained that she had in fact sent the documents,
8 but having reviewed the documents, I felt we could
9 concede the accuracy of Exhibit B and I hadn't
10 produced them. And then when Ms. Carlisle asked
11 that they be produced, we did produce them. But
12 we had followed the --

13 MR. HUNT: Your Honor, can I --

14 JUDGE MAAS: Wait a minute. Let
15 Ms. Chaitman finish, then I'll give you an
16 opportunity to speak. Go on.

17 MS. CHAITMAN: You know, the issue,
18 Judge, is I had thought that so long as we
19 conceded the accuracy of Exhibit B, there was no
20 reason to produce these documents, but if the
21 Trustee wants them in every case, we can produce
22 them. It's not a problem.

23 JUDGE MAAS: Okay. Now, was it
24 Mr. Hunt who was speaking?

25 MR. HUNT: Yes, sir.

1 JUDGE MAAS: Okay. Go ahead.

2 MR. HUNT: Sure. This is Dean Hunt
3 on behalf of the Trustee. What you're hearing
4 there is a bit of revisionist history, I believe.
5 The document requests were served April 1st of
6 last year, 13 months ago. Ms. Digiulian testified
7 in her deposition that she gave them to
8 Ms. Chaitman last year sometime. Ms. Chaitman
9 certainly had the documents in her possession in
10 December when we had our hearing and certainly
11 when you issued your orders in January. She could
12 have produced the documents ten days after the
13 order but she didn't. There was no agreement,
14 implied or otherwise, that she was not required to
15 produce documents. Instead, she let us go to
16 Florida, take the deposition, where we learned
17 that there were substantial quantities of
18 documents directly relevant to this case. She's
19 not withdrawn, as far as I know, any affirmative
20 defenses in this case and she challenges, directly
21 challenges the inter account transfers. There is
22 no way that we can fully present our case without
23 a subsequent deposition of Ms. Digiulian based on
24 the documents that we received 13 months late in
25 my office on Monday. So what she's telling you is

1 just not accurate.

2 JUDGE MAAS: Well, but you see
3 there's something of a tension between some of the
4 relief you seek and other relief you seek. Let me
5 be more specific.

6 In part, you're seeking that
7 Ms. Chaitman and her client not be allowed to rely
8 on any other documents that may have been produced
9 in support of affirmative defenses, but yet at the
10 same time that you're seeking that preclusion
11 order, you're also seeking the production of those
12 documents and a further deposition.

13 If she's precluded from using
14 additional documents, then it would seem to me
15 there's no purpose to be served by -- excuse me --
16 entering an order requiring a further production
17 and potentially a further deposition. Am I
18 missing something?

19 MR. HUNT: Yes, Your Honor. Again,
20 Dean Hunt. I believe you are.

21 JUDGE MAAS: Okay.

22 MR. HUNT: The -- the issue is
23 regardless of whether she can use those documents
24 for her affirmative defenses, whatever they're
25 going to be, as she mentioned, there are a whole

1 bunch of them, we still have the burden of proof
2 on our case in chief and the documents that we
3 received in my office on Monday directly relate to
4 those -- to our affirmative burden of proof.

5 JUDGE MAAS: Are there documents
6 that you received that go beyond the account
7 records that the Trustee himself had?

8 MR. HUNT: Yes, sir. Absolutely.

9 JUDGE MAAS: Well, anything you
10 wish to add, Ms. Chaitman?

11 MS. CHAITMAN: Yeah. You know,
12 I -- I've been through those documents and I don't
13 believe that they do anything further than confirm
14 the testimony of Mrs. Digiulian. She was
15 painstakingly taken through every deposit and
16 withdrawal and she conceded the accuracy of
17 Exhibit B except for the Inter Account Transfer,
18 so I'm not -- I'm not really sure what Mr. Hunt is
19 referring to but, you know, these are not
20 documents that we intended to use anyway because
21 we had conceded the accuracy of Exhibit B. So,
22 you know, from now on, if the Trustee wants all
23 the documents, that's fine, but there's no
24 incentive for us to concede anything. Why should
25 we relieve the Trustee of his burden of proof if

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1 there's no benefit to us in doing it?

2 JUDGE MAAS: Well, how did the

3 additional documents add to the picture, Mr. Hunt?

4 MR. HUNT: Additional documents

5 being correspondence back and forth with BLMIS

6 directly related to deposits and withdrawals,

7 including the green cards confirming receipts of

8 the documents -- of the letters. They have

9 substantial number of analyses of the accounts

10 that were apparently done by Mr. Digiulian, we're

11 not sure who, but it shows, you know, how much he

12 thinks he had, where it came from and so forth. I

13 mean, it's a completely new set of documents that

14 are not in our files all directly related to these

15 accounts.

16 JUDGE MAAS: Well --

17 MS. CHAITMAN: Well, what Mr. Hunt

18 isn't saying is that they simply prove why we

19 conceded the accuracy of Exhibit B. You know, the

20 only factual issue is was each deposit and

21 withdrawal made, and the documents that we've now

22 produced support the concession that we made.

23 That's why we made the concession, because our own

24 documents proved that Exhibit B was accurate

25 except for the Inter Account Transfer.

1 MR. HUNT: Whenever there's the
2 word "except" involved in a concession, excuse me,
3 it's not a concession.

4 JUDGE MAAS: Well, I've heard
5 enough in order to rule.

6 Referring to my January Court Order
7 which was entered January 9th, in my general
8 ruling, paragraphs A (2) and A (3) dealt solely
9 with a stipulation that would avert a particular
10 defendant need -- excuse me. I'm not sick. I
11 just seem to have something caught in my throat.
12 Relate solely to a stipulation which had a number
13 of parts and which would then avert the need to
14 answer further interrogatories or amend the
15 interrogatory answers, and as Mr. Hunt knows, it
16 was an all or nothing proposition. In any event,
17 those two paragraphs did not relate at all to the
18 document request. In part, I think we didn't get
19 to that because I mistakenly made the assumption
20 that there would be a full stipulation in numerous
21 cases, which as this case demonstrates did not
22 occur.

23 Paragraph C (1), which Ms. Chaitman
24 refers to in her letter, related only to the
25 particular defense concerning payment of taxes on

1 fictitious profits, the 16th affirmative defense.
2 So, and I also said that if there was a less than
3 complete stipulation and the dispute which seems
4 to be the circumstance here under paragraph A (4),
5 I said I would rule, it's quite clear, and I don't
6 see any ambiguity in my order, that other
7 affirmative defenses were not covered by the
8 order. It's also clear that the documents weren't
9 finally produced because notwithstanding what I
10 may have said or not said in January, the document
11 requests were served on April 1 of 2016, so the
12 responses were due and the documents were due long
13 before I got involved in the case.

14 So my ruling is going to be that
15 the subsequently produced or recently produced
16 documents not be used to support their affirmative
17 defenses in the case, but that obviously does not
18 preclude Ms. Chaitman from using the Trustee's own
19 documents for whatever purpose she sees fit during
20 the trial of this case or in connection with
21 motion practice.

22 And in terms of the other relief
23 sought, the request for production of documents is
24 mooted because the documents have been produced.

25 As to the request for a further

Page 17

1 deposition, I question whether there's really a
2 need for one, but should there be a need for one,
3 I will permit such a further deposition to be
4 taken. So those are my rulings.

5 Is there anything else I haven't
6 addressed today, Ms. Chaitman?

7 MS. CHAITMAN: Just in terms of --

8 JUDGE MAAS: Ms. Chaitman?

9 MS. CHAITMAN: Just in terms of
10 whether there's a need for a ruling, can we -- can
11 you require the Trustee to put in writing what the
12 need is? Because if it's that we have to admit
13 that the letters were sent, we will admit that.
14 It doesn't have to be another deposition. This is
15 a woman who's in her eighties. She's a stroke
16 victim and I hate to put her through that again.

17 JUDGE MAAS: Well, I'm not going to
18 make that ruling, but as I said, I question
19 whether there's a need for a further deposition.
20 If there is a need, perhaps it can be obviated
21 through stipulations. If the parties can't agree
22 on whether or not a further deposition is
23 warranted, I certainly am willing to rule on that
24 issue, but I don't think I should impose a
25 requirement now. It seems to me that the parties

1 should confer about that, and if there's an issue,
2 you can bring it before me.

3 MR. HUNT: So, Your Honor, this is
4 Dean Hunt again. With respect to the deposition,
5 we have had, as Your Honor is aware, difficulty
6 getting deposition dates from Ms. Chaitman and her
7 firm. We're currently scheduled to be in Florida
8 for a deposition related to one of her cases on
9 May 23rd, I think. We believe that we can handle
10 Ms. Digiulian's deposition relatively quickly
11 during that same trip and would ask that you order
12 her to appear again in the location where we took
13 her deposition before, which were the
14 accommodations that we made at -- you know, in her
15 hometown on the 24th or 25th of May.

16 JUDGE MAAS: Ms. Chaitman?

17 MS. CHAITMAN: I would ask that the
18 Trustee do what you just suggested, which is
19 submit in writing --

20 MR. HUNT: No.

21 MS. CHAITMAN: -- the issues that
22 they need to address because I believe we can
23 stipulate to them.

24 MR. HUNT: No. I've been -- Your
25 Honor, I've been trying to stipulate with

1 Ms. Chaitman for five years on things and I'm not
2 willing to do it anymore. If we need to take this
3 deposition, that's -- you know, we have to decide
4 what we need to do to present our case at trial.
5 We've looked at the documents. We believe that a
6 further deposition is needed on all of this new
7 stuff that we've got and we're going to be in her
8 hometown or within an hour of her hometown at the
9 end of May, and we could do this deposition
10 certainly within the four-hour window that, you
11 know, we talked about before. We've been
12 prejudiced. She allowed us to fly all the way to
13 Florida, take this deposition knowing she had the
14 documents in her office while she was sitting in
15 the office, in her office back in New York, and so
16 now we're going to have to fly to Florida again,
17 so --

18 JUDGE MAAS: Well, whether
19 Ms. Chaitman knew or not, the salient fact is that
20 the documents were only produced after the
21 deposition, which is a rather unconventional
22 timing schedule for discovery.

23 MR. HUNT: I agree.

24 JUDGE MAAS: I am not going to
25 require that the Trustee provide you in advance in

1 effect with an outline of what it is he wishes to
2 pursue so that there can be a discussion about
3 whether those issues can be stipulated away. I
4 would encourage the two sides to talk about that.

5 As to the deposition, I would
6 imagine that there has to be considerable overlap
7 between what Ms. Chaitman produced to you and what
8 the Trustee already had and produced to
9 Ms. Chaitman, so what I'm tempted to do is -- how
10 long was the actual deposition of Ms. Digiulian?

11 MS. CHAITMAN: Approximately four
12 hours.

13 MR. HUNT: It wasn't four hours.

14 MS. CARLISLE: I was going to --
15 I'm sorry.

16 JUDGE MAAS: Yes, Ms. Carlisle.
17 Were you starting to say something?

18 MS. CARLISLE: Your Honor, this is
19 Ms. Carlisle. I can guarantee it was less than
20 four hours because I was there, but I'm currently
21 pulling up the deposition transcript to see if I
22 have the times. If not, I can certainly get with
23 the court reporting service.

24 JUDGE MAAS: Well, that's not
25 critical. I take it from what you're saying in

1 your uncertainty is that it was someplace between
2 three and four hours. Is that your statement?

3 MS. CARLISLE: Yes. Your Honor, it
4 actually concluded at 12:24 p.m. and let me see if
5 I can find the time that it started. My
6 apologies. It's taking my computer a moment. We
7 went on the record at 10 a.m. so, Your Honor, it
8 was two hours -- two hours and 24 minutes not just
9 deposition because we had a couple of breaks, but
10 I would be willing to say it was about two hours
11 and 24 minutes according to the transcript.

12 JUDGE MAAS: Any objection to my
13 saying that the continued deposition should be
14 limited to two hours?

15 MR. HUNT: No, Your Honor. I think
16 that, you know, that on-the-record time of two
17 hours would be sufficient based upon our
18 preliminary review of the documents. I guess if
19 there was some reason that it took longer, we
20 could call you as you indicated in the past.

21 JUDGE MAAS: Okay. And I'm going
22 to direct, Ms. Chaitman, that it occur on May 24th
23 unless I otherwise direct. So if there's some
24 extraordinary problem and you can't work it out
25 with the Trustee, you can bring it to my

1 attention. But it seems to me in particular in
2 this situation, they should be back-to-back
3 depositions which also presumably serves your
4 interest in not having a second trip to Florida or
5 third I guess it would be.

6 MS. CHAITMAN: The only issue is I
7 just have to confirm it with the client, Your
8 Honor. I don't know if --

9 JUDGE MAAS: That's why I said if
10 you can't -- if for some reason that date doesn't
11 work and you can't work it out with the Trustee,
12 you can let me know that.

13 Anything else from either side?

14 MR. HUNT: Your Honor, we also
15 have -- this is Dean Hunt again for the court
16 reporter.

17 JUDGE MAAS: Yes.

18 MR. HUNT: We also have -- in your
19 file are letters related to Edyne Gordon.
20 Ms. Chaitman's firm, they had indicated that they
21 were going to respond to our letters on a couple
22 of different occasions, the most recently being by
23 May 1st, but no response has been received.
24 Again, this is one that we noticed a deposition
25 back in August of 2016, and your order indicated

1 that Ms. Gordon could be deposed. We're now again
2 faced with this stipulation with additional
3 requirements specifically saying that if they
4 stipulate to certain things, we're not allowed to
5 take any discovery on any other things. That
6 seemed inconsistent with your ruling and we would
7 just like you to reaffirm that Ms. Gordon's
8 deposition can go forward.

9 MS. CHAITMAN: Your Honor, this is
10 a similar situation. It's a woman in her eighties
11 who had nothing to do with her deceased husband's
12 account. We have conceded the accuracy of
13 Exhibit B. It was my understanding that if we did
14 that, there was no need for the deposition. But
15 if I misunderstood Your Honor, then I will
16 obviously take that into consideration as we go
17 forward in terms of what I stipulate to, because
18 if there's no benefit to the client in making that
19 stipulation, there's no reason to relieve the
20 Trustee of his burden of proof.

21 JUDGE MAAS: Well, that's your
22 decision to make. But, clearly, as I said
23 earlier, my ruling in paragraphs A (2) and (3) had
24 nothing to do with depositions or document
25 requests. It related only to interrogatories and,

1 therefore, first of all, if the Trustee wishes to
2 depose Mr. Gordon's widow, he's entitled to do
3 that and, obviously, from the discussion today, if
4 there are documents that have not been produced,
5 they need to be produced forthwith.

6 MS. CHAITMAN: We will do that,
7 Your Honor.

8 JUDGE MAAS: And given that, thank
9 you for calling to my attention, Mr. Hunt, that
10 there was no response by May 1st. But given that,
11 is there any further need to address the Gordon
12 case?

13 MR. HUNT: No. I think the only
14 issue there is going to be the timing of the
15 deposition. And, again, this is one we've been
16 waiting on for a long time. So if we could get a
17 deposition date sometime in June, Ms. Carlisle?

18 MS. CARLISLE: Actually, this is
19 Ms. Carlisle. How would it -- could you -- does
20 Ms. Gordon still in Sante Fe, New Mexico?

21 MS. CHAITMAN: Yes, she does.

22 MS. CARLISLE: I just would like to
23 offer we will be in Sante Fe deposing her
24 accountant on August 10th, so I would prefer a
25 date either the day before or the day after that,

1 if possible, so we could try to have them --
2 again, do all this in one trip instead of having
3 to make multiple trips to Sante Fe.

4 JUDGE MAAS: Is that a deposition
5 you plan to attend in person, Ms. Chaitman?

6 MS. CHAITMAN: No. No. We've been
7 doing these by telephone, but I will try to
8 arrange that, Marie.

9 MS. CARLISLE: Okay.

10 JUDGE MAAS: Then why don't I say
11 that within one week, you'll notify the Trustee as
12 to whether you are able to do that.

13 MS. CHAITMAN: Sure.

14 JUDGE MAAS: Anything else from the
15 Trustee?

16 MR. HUNT: No, sir. That concludes
17 our items for today.

18 JUDGE MAAS: Okay. Anything from
19 Ms. Chaitman?

20 MS. CHAITMAN: No. Thank you so
21 much, Judge.

22 JUDGE MAAS: Okay. Thank you all.
23 Have a good day.

24 MR. HUNT: Thank you, your Honor.

25 JUDGE MAAS: Bye now.

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MS. CARLISLE: Thank you.

(Conference concluded at 8:58 a.m.)

- - - -

1 REPORTER'S CERTIFICATION

2

3 I, SUSAN R. CHASTEK, Certified
4 Court Reporter and Notary Public of the State of
5 New Jersey, do hereby certify that the foregoing
6 is a true and accurate transcript of the telephone
7 conference as taken stenographically by and before
8 me at the time, place, and on the date
9 hereinbefore set forth.

10 I DO FURTHER CERTIFY that I am
11 neither a relative nor employee nor attorney nor
12 counsel of any party in this action and that I am
13 neither a relative nor employee of such attorney
14 or counsel, and that I am not financially
15 interested in the event nor outcome of this
16 action.

17

18

19

20 SUSAN R. CHASTEK, CCR, RMR
Certificate No. 30XI00079100

21

22 Dated: May 10, 2017

23

24

25

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