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From: Terry Jacobson <tjacobson@sbcglobal.net>
Date: December 2, 2016 at 5:05:10 PM EST
To: "Martens, Matthew T." <Matthew.Martens@wilmerhale.com>
Cc: <amore@CCSB.com>, "Neal J. Suit" <nsuit@CCSB.com>
Subject: Cook and Hochberg Subpoenas

Matt

I write in response to your letter of November 30, 2016.

In lieu of producing phone records, we agreed to send you (via e-mail) the phone numbers for Byron Cook and Joel Hochberg. I will do it by separate email, probably on Monday and subject to the Protective Order we discussed.

We will be reproducing Mr. Cook's file on Servery, including tabs that were part of the file but were apparently omitted from the original production. I will get it mailed today or Monday at the latest.

We understand your request for a categorical privilege log has been put aside for the time being.

We will make a good faith effort to provide a list of investment projects (as opposed to, for example, miscellaneous public stock investments) in which several of Byron Cook, Kay Cook, Joel Hochberg, Robert Griggs, William Sandford, Ken Paxton, BK Cook Family Limited Partnership, L.P., and BCC & HKC, LLC participated in the past. The list will, to the extent it can, identify the entity that (if any) was involved. Our ability to generate this list is limited by the recollection of our clients and the readily accessible documents retained by our clients that memorialize such matters. As we previously mentioned, many of the documents related to older transactions are likely not available or readily available. Therefore, the best chance of finding anything will involve transactions entered into over the last 3-7 years or so.

We didn't discuss this, but I would like to put an ending date on the list we are preparing and described above. They might be thinking about an investment today, I don't know. We will use April 15, 2016 as an end date for purposes of this search. If there is a disagreement as to the end date, we can discuss it further.

For those transactions on the list mentioned above, to the extent we have not already produced private placement memoranda, membership agreements, and similar documents for such investment projects, we will make a good faith effort to collect and provide such documents as are reasonably available.

With regard to your requests related to our clients' broker relationships, we have confirmed that Mr. Cook and Mr. Hochberg did not consider Mr. Paxton to be their broker, provided this is not intended to be a comment or opinion as to whether Mr. Paxton did in fact act as a broker under Federal or Texas law. We will leave that for the lawyers and Judge to deal with. And, given that, it is my understanding that we do not need to produce (or disagree with you about whether to produce) brokerage agreements.

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And, as we discussed, the term “group” may be a little ambiguous, at least to me. So, without knowing whether that term has any legal significance, let me explain what I believe the facts will be and the lawyers and Judge can decide what the facts may mean. There was no formal group that existed. Instead, there was an ad hoc arrangement where, from time to time, good friends might invest in the same transaction—or were at least offered the opportunity to invest in the same transaction. The persons who invested differed from transaction to transaction, and the length of time they had invested all differed from person to person. Mr. Hochberg and Mr. Cook go back 25 or so years. Other people were involved at different times. General Paxton’s involvement was more recent. At various times, people who participated in a transaction or transactions might include Mr. Cook, Mr. Hochberg, Mr. Griggs, Mr. Sandford, General Paxton and perhaps a host of other people. It differed from transaction to transaction.

I will get Alex to put together a standard Protective Order that covers this information and the documents already produced.

I believe this memorializes our discussions. If I have overlooked anything, please feel free to contact me. Thank you for your courtesies.

Sincerely,

Terry Jacobson

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