

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.: 9:20-cv-81205-RAR**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**COMPLETE BUSINESS SOLUTIONS GROUP,  
INC. d/b/a/ PAR FUNDING, et al.,**

**Defendants.**

---

**DEFENDANT DEAN VAGNOZZI'S RESPONSE IN OPPOSITION TO  
RECEIVER RYAN K. STUMPHAUZER'S MOTION TO COMPEL THE PRODUCTION  
OF OPINION LETTERS AND COMPLIANCE MATERIALS FROM LAW FIRMS**

Defendant DEAN VAGNOZZI (hereinafter "Defendant" or "Vagnozzi"), by and through his undersigned counsel, hereby responds to The Receiver's Motion to Compel the Production of Opinion Letters and Compliance Materials from Law Firms, and respectfully states as follows:

**I. Introduction and Background**

Mr. Vagnozzi understands that this Court has entered an Amended Order Appointing Receiver which held that "[t]he Receiver hereby holds, and is therefore empowered to waive, all privileges, including the attorney-client privilege, held by all Receivership Entities." D.E. 141. However, that Order does not, and cannot, allow the Receiver to waive attorney-client privilege as to documents and communications in which the individual Defendants sought representation in an entirely individual and personal capacity.

According to the Receiver, his primary objective is to obtain legal memoranda to ascertain the legality of CBSG's business. However, Mr. Vagnozzi does not have access to his files (they are in the possession of the Receiver), and Mr. Vagnozzi's counsel at the Eckert Seamans law firm

have not identified to him any legal memoranda that address the legality of CBSG's business.

Nevertheless, the Receiver is attempting to use this Court's order to compel Mr. Vagnozzi to turn over an internal legal memorandum (the "Legal Memorandum") on a different subject which was prepared by Eckert Seamans for Dean Vagnozzi in his individual capacity. The Legal Memorandum addresses financial statement requirements for a startup company with limited financial history under Rule 502(b) of Regulation D, 17 C.F.R. 230.502(b).

The Legal Memorandum has nothing to do with CBSG's business; Eckert Seamans never provided any legal service to CBSG. Thus, any attempts from the Receiver to learn about CBSG through this legal memorandum would be futile. The Legal Memorandum does not concern Mr. Vagnozzi's role and functions within the Receivership entities under the control of the Receivership, nor does it concern corporate matters involving said entities. Instead, it involves analysis of disclosure issues under Regulation D. Furthermore, Eckert Seamans recorded its time and expense (the "Eckert Seamans Invoice") for the work to Dean Vagnozzi's individual general matter and provided an individual engagement letter (the "Individual Engagement Letter") addressed to him personally.<sup>1</sup> Accordingly, this Court should deny the Receiver's Motion.

## **II. Argument**

Mr. Vagnozzi is attempting to assert his rights under federal law, which allows him to shield his confidential communications with counsel from other parties. *See* Fed. R. Evid. 501; *In re Teleglobe Communications Corp.*, 493 F.3d 345, 359-60 (3d Cir. 2007); *see also SmithKline Beecham Corp. v. Apotex Corp.*, 232 F.R.D. 467, 481 (E.D. Pa. 2005) (finding that the attorney-client privilege attaches to inter-attorney communications, including internal memoranda, which include legal advice or confidential information received from the client). Mr. Vagnozzi and his

---

<sup>1</sup> The Eckert Seamans Invoice is attached hereto as "Exhibit A." The Individual Engagement Letter is attached hereto as "Exhibit B."

counsel are both located in Philadelphia, Pennsylvania. Federal common-law conflict-of-laws rules dictate that the Restatement (Second) of Conflict of Laws should determine which conflict-of-laws rules should be applied to a particular case. *Hoy v. Sandals Resorts Int'l, Ltd.*, No. 11-24580-CIV, 2013 WL 6385019, at \*2 (S.D. Fla. Dec. 6, 2013); *see also Piamba Cortes v. Am. Airlines, Inc.*, 177 F.3d 1272, 1296 (11th Cir. 1999) (finding that Florida's conflict-of-laws rules are the same as federal common-law conflict-of-laws rules, because both have adopted the Restatement (Second) of Conflict of Law and "Therefore, the same rules would be applied under either diversity jurisdiction or federal question jurisdiction."); *In re Coll. Landings Ltd. P'ship*, 248 B.R. 619, 622 (Bankr. M.D. Fla. 1998) ("Federal common law recognizes an attorney-client privilege"); *Matter of Bevill, Bresler & Schulman Asset Mgmt. Corp.*, 805 F.2d 120, 124 (3d Cir. 1986) ("Privileges in federal court are governed by the principles of common law as they may be interpreted."). Thus, the Court must analyze privilege choice of law rules under the Restatement (Second) of Conflict of Laws Section 139 and look to the state which has the "most significant relationship" with the privileged communication. Specifically, under Section 139, courts look to the state where the communication occurred to determine which state has the most significant relationship to the communication; in this case it is Pennsylvania. *See Anas v. Blecker*, 141 F.R.D. 530, 532 (M.D. Fla. 1992).

The Legal Memorandum concerns a personal privilege only as to Mr. Vagnozzi; none of the Receivership entities hold this privilege.<sup>2</sup> The time and expense spent in preparing the Legal

---

<sup>2</sup> Initially when undersigned counsel first discussed the Legal Memorandum with the Receiver's counsel, we discussed that it appeared to be a privileged document under the joint-client privilege at a minimum based on the face of the document. We advised the Receiver's counsel that we would be willing to provide a copy of the Legal Memorandum to him on that basis, provided the Receiver acknowledges that he does not have the unilateral power to waive privilege on the document to the SEC. *See In re Teleglobe Commc'ns Corp.*, 493 F.3d 345, 364-366 (3d Cir. 2007), *as amended* (Oct. 12, 2007) ("[W]aiving the joint-client privilege requires the consent of all joint clients.") The Receiver was not willing to agree. After further review of the engagement letter and invoices, as well as further legal research, it now appears clear that the Legal Memorandum is subject to Mr. Vagnozzi's individual privilege only. If the Court were to determine that there is a joint-client privilege with a Receivership entity, Mr. Vagnozzi would

Memorandum was billed to a general matter number for Mr. Vagnozzi personally, rather than other specific corporate billing numbers that the Eckert Seamans law firm used for other matters for him and his companies.

Even assuming that there may be some privilege that attaches to the Receivership entities, Mr. Vagnozzi still satisfies the Third Circuit's test in order to assert a personal claim of attorney-client privilege as to the document. *See Bevill*, 805 F.2d at 123. Thus, under the governing test, Mr. Vagnozzi's privilege still exists and is not waived.

While corporate officers and directors may not claim a privilege for communications made to counsel in their corporate capacities, the Third Circuit has provided an analytical framework through which courts address competing claims of attorney-client privilege asserted by both a corporation and a corporation's agent.<sup>3</sup> *See Bevill*, 805 F.2d at 123; *see also Gary Miller Imports, Inc. v. Doolittle*, No. 11-178, 2014 WL 3891629, at \*1-3 (W.D. PA. Aug. 7, 2014) (applying *Bevill* test to determine whether minority shareholders in a closely-held corporation established a personal attorney-client privilege with corporation's counsel). The cornerstone of this framework is whether the communication was done on behalf of Mr. Vagnozzi's individual capacity, and whether the substance of the communication concerns matters within the companies or the general affairs of the companies. *See id.*

The Legal Memorandum was prepared for Mr. Vagnozzi individually and because it does not concern matters within the Receivership entities or the general affairs of said entities, he clearly

---

remain willing to provide the document to the Receiver subject to the Receiver agreeing, or this Court clarifying, that the joint-client privilege cannot be waived by only one party to the privilege.

<sup>3</sup> The federal law of privilege provides the rule of decision in a pending civil action where the Federal Court's jurisdiction is premised mainly upon a federal question. *Ubiquiti Networks, Inc. v. Kozumi USA Corp.*, 295 F.R.D. 517, 525 (N.D. Fla.), *objections overruled*, 981 F. Supp. 2d 1207 (N.D. Fla. 2013); Fed. R. Evid. 501; *see also Wm. T. Thompson Co. v. Gen. Nutrition Corp.*, 671 F.2d 100, 103 (3d Cir. 1982) (“[I]n federal question cases the federal common law of privileges applies.”).

satisfies the five part test adopted in *Bevill* “that a corporate officer must satisfy...to assert a personal claim of attorney-client privilege as to communications with corporate counsel.” *See Bevill*, 805 F.2d at 123. There, the Court stated that the party must:

First, they must show they approached [counsel] for the purpose of seeking legal advice. Second, they must demonstrate that when they approached [counsel] they made it clear that they were seeking legal advice in their individual rather than in their representative capacities. Third, they must demonstrate that the [counsel] saw fit to communicate with them in their individual capacities, knowing that a possible conflict could arise. Fourth, they must prove that their conversations with [counsel] were confidential. And, fifth, they must show that the substance of their conversations with [counsel] did not concern matters within the company or the general affairs of the company.

*Id.*

A personal attorney-client relationship with corporate counsel can be established by implication or through circumstantial evidence, but in those situations, the court must view the record as a whole to determine whether the officer has met his or her burden of proof. *See United States v. Trombetta*, No. CRIM. 13-227-01, 2015 WL 4406426, at \*18 (W.D. Pa. July 20, 2015) (noting that “billing statements” and “whether the attorney established a relationship with the corporation or with the officer first” as factors) (citing *Gary Miller Imports*, 2014 WL 3891629, at \*2–4). Here, as shown by his engagement letter, Mr. Vagnozzi had a pre-existing attorney-client relationship with Eckert Seamans prior to any work Mr. Vagnozzi did with PAR Funding. Even after the Receivership entities were formed, Mr. Vagnozzi continued to ask Eckert Seamans for legal advice in an individual capacity. Accordingly, these facts satisfy the first four prongs of the *Bevill* test. *See Bevill*, 805 F.2d at 123.

Furthermore, specifically as to the Legal Memorandum in question, the Eckert Seamans Invoice and the Individual Engagement Letter also satisfy the first four prongs of the *Bevill* test. *Id.* First, the Individual Engagement Letter demonstrates that: (1) Mr. Vagnozzi personally “asked our firm to represent you in connection with general business matters, the Pillar Life Settlement

Fund and such other matters as you may request from time to time”; (2) Eckert Seamans will “not disclose privileged or confidential information regarding our representation of your interests”; and (3) there was a “mutual understanding of the basis on which we have agreed to undertake such representation.” Second, the Eckert Seamans Invoice demonstrates that the time to research and prepare the Legal Memorandum was billed to Mr. Vagnozzi's general matter. These two documents, along with Mr. Vagnozzi's history of seeking individual counseling from Eckert Seamans demonstrates that (1) Mr. Vagnozzi approached counsel for the purpose of seeking legal advice, (2) Mr. Vagnozzi made it clear that he was seeking advice in an individual capacity and not in a representative capacity on behalf of his companies, (3) Eckert Seamans saw fit to communicate with him in his individual capacities, and (4) the communication was confidential, thus satisfying the first four prongs. *C.f. Bevill*, 805 F.2d at 123-124, 126 (affirming lower court finding that (1) certain communications were privileged after counsel was formally retained to represent the company after client met with the law firm when they became aware of the financial distress of the corporations, and (2) certain communications were privileged when the law firm advised the principals that they should retain separate representation).

Mr. Vagnozzi also satisfies the final prong of the analysis because the substance of any communication between Mr. Vagnozzi and Eckert Seamans does not concern matters within the companies controlled by the Receiver or the general affairs of said companies. *See Bevill*, 805 F.2d at 123. First, the Individual Engagement Letter specifically details the scope of the legal advice as “general business matters, the Pillar Life Settlement Fund and such other matters as you may request from time to time”; it did not contemplate doing any legal work for the Receivership entities. Further, it was sent to Mr. Vagnozzi individually, not to any company. Second, the Eckert Seamans Invoice describes the work done as legal advice on startup companies. It does not specify

any work done for the Receivership entities nor was work billed on matters for said entities. *C.f. Applied Technology Intern., Ltd. v. Goldstein*, No. 03-848, 2005 WL 318755, \*3 (E.D. Pa. Feb. 7, 2005) (applying *Bevill* and finding that corporate officer did not seek legal advice as an individual and officer made no showing that communications related to personal matters).

Furthermore, the Legal Memorandum does not relate to Mr. Vagnozzi's role and functions within the receivership entities. *See Gary Miller Imports, Inc.*, 2014 WL 3891629, at \*1 (stating that any privilege that exists as to a corporate officer's role and functions within a corporation belongs to the corporation, not the officer). Importantly, even if any of the Receivership entities are mentioned in the communication, which they are not,<sup>4</sup> courts have held that talking about the corporation in relation to protecting an official's individual rights and interests is entirely different from communicating with counsel about matters within the company or the general affairs of the company. *See Gary Miller Imports, Inc.*, 2014 WL 3891629, at \*3 (“[t]o be more specific, with respect to the withheld documents, it appears that the substance of the Doolittles conversations with counsel concerned matters related to the Doolittles personal rights and interest as minority shareholders and did not concern matters within the company or the general affairs of the company.”).

To the extent that this Court finds that the Legal Memorandum at issue concerns the Receivership entities, any information in the Legal Memorandum concerning communications prior to the creation of any corporate receivership entities also would be privileged. *See Bevill*, 805 F.2d at 123, 126 (affirming the lower court's finding that as to certain communications that occurred prior to the time that the law firm agreed to represent the company were privileged); *Montgomery Acad. v. Kohn*, 82 F. Supp. 2d 312, 316 (D.N.J. 1999) (explaining that in *Bevill*, “the

---

<sup>4</sup> Mr. Vagnozzi is of course willing to provide a copy of the Legal Memorandum to the Court for *in camera* review.

court found that communications to counsel by the officers prior to retention of the law firm by the corporation were privileged, but those made after retention by the corporation may not have been privileged once the corporation had waived the privilege.”). As to that point, the Eckert Seamans Invoice demonstrates that the Legal Memorandum involves legal advice before the creation of some of the Receivership entities. Additionally, the Eckert Seamans Invoice describe work as done for startup companies, which in itself, demonstrates that the work was done before the creation of such companies.

Lastly, any local policy that Florida or the Eleventh Circuit might have in favoring admission is outweighed by countervailing considerations. *See* Restatement (Second) of Conflict of Laws § 139, Comment D. First, the entire communication occurred in Pennsylvania. Second, the communication is completely immaterial to any of the causes of actions sought by Plaintiff and has no effect on the outcome of the case; in fact, it is the Receiver, not Plaintiff who is seeking the communication. *See Anas*, 141 F.R.D. at 532 (the relative materiality of the evidence sought, indicates that the forum will be more likely to give effect to the foreign privilege if the evidence would “be unlikely to affect the result of the case or could be proved in some other way.”). Finally, the parties relied on the Third Circuit’s attorney-client privilege rules when making the communication. *Id.* at 533 (“[T]he comment emphasizes that the forum court will be more likely to give effect to the foreign privilege if it was relied upon by the parties. The parties need not know of the existence of the specific legal privilege; it is sufficient if the communications were made in reliance on the fact that communications of the sort involved are treated in strict confidence in the state of the most significant relationship.”).



### **III. Conclusion**

As mentioned above, the Receiver's primary objective in filing this motion was to obtain legal memorandum to ascertain the legality of CBSG's business. However, this Legal Memorandum does not address the legality of CBSG or the merchant cash business or how CBSG conducted its business. Further, as demonstrated by the Individual Engagement Letter and the Eckert Seamans Invoice, the Legal Memorandum does not detail how any of the Receivership's ABFP entities conducted their business. Lastly, Mr. Vagnozzi is prepared to submit the Legal Memorandum for *in camera* review if necessary.

For all the reasons stated above this Court should deny the Receiver's Motion to Compel the Production of Opinion Letters and Compliance Materials from Law Firms as to Defendant Dean Vagnozzi.

Dated: August 31, 2020

#### **AKERMAN LLP**

Three Brickell City Centre, Suite 1100  
98 Southeast Seventh Street  
Miami, Florida 33131  
Telephone: (305) 374-5600  
Facsimile: (305) 374-5095

By: /s/ Brian P. Miller

Brian P. Miller, Esq.

Florida Bar No. 980633

E-mail: [brian.miller@akerman.com](mailto:brian.miller@akerman.com)

E-mail: [Kelly.connolly@akerman.com](mailto:Kelly.connolly@akerman.com)

Alejandro J. Paz, Esq.

Florida Bar No. 1011728

E-mail: [Alejandro.paz@akerman.com](mailto:Alejandro.paz@akerman.com)

Secondary: [marylin.herrera@akerman.com](mailto:marylin.herrera@akerman.com)

*Attorneys for Dean Vagnozzi*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 31st day of August 2020, a true and correct copy of the foregoing brief was served via the Court's CM/ECF System upon all counsel of record.

/s/ Alejandro Paz  
Alejandro Paz

# EXHIBIT A



Eckert Seamans Cherin & Mellott, LLC  
U.S. Steel Tower  
600 Grant Street, 44th Floor  
Pittsburgh, PA 15219

TEL 412 566 6000  
FAX 412 566 6099  
www.eckertseamans.com

DEAN VAGNOZZI  
234 MALL BOULEVARD  
SUITE 270  
KING OF PRUSSIA, PA 19406

MATTER: 302153-00001

INVOICE: 1386539

MARCH 15, 2018

PAYMENT DUE WITHIN 30 DAYS  
OF INVOICE DATE

REGARDING: GENERAL

TOTAL FEES FOR PROFESSIONAL SERVICES THROUGH:	02/28/18	\$4,557.00
TOTAL EXPENSE ADVANCES MADE TO YOUR ACCOUNT THROUGH:	02/28/18	\$943.82
<b>TOTAL BILL AMOUNT FOR INVOICE # 1386539</b>		<b>\$5,500.82</b>

PLEASE INCLUDE THE INVOICE # ON YOUR REMITTANCE AND MAIL TO:

ECKERT SEAMANS CHERIN & MELLOTT, LLC  
P.O. BOX 643187  
PITTSBURGH, PA 15264-3187  
TELEPHONE 412/566-6000 FACSIMILE 412/566-6099  
TAX I.D. #25-1056909



Eckert Seamans Cherin & Mellott, LLC  
U.S. Steel Tower  
600 Grant Street, 44th Floor  
Pittsburgh, PA 15219

TEL 412 566 6000  
FAX 412 566 6099  
www.eckertseamans.com

DEAN VAGNOZZI  
RE: GENERAL  
MARCH 15, 2018  
PAGE: 2

CLIENT: 302153  
MATTER: 302153-00001  
INVOICE: 1386539 JWP

DATE	ATTY	DESCRIPTION	HOURS
12/05/17	JWP	TELEPHONE CALL WITH CLIENT RE: OFFERINGS AND STRUCTURE OF RELATIONSHIP WITH AGENTS	0.50
12/06/17	JWP	DRAFT REPLY TO EMAIL RE: FINDERS AND MCA SALES (2X)	0.20
12/18/17	JWP	MEETING WITH CLIENT RE: NEW FUNDS	NO CHARGE
12/20/17	JWP	REVIEW MCA STRUCTURE CHARTS; TELEPHONE CALL WITH CLIENT; CREATE ORGANIZATIONAL CHARTS	0.80
01/18/18	JWP	TELEPHONE CALL WITH CLIENT RE: PA INSURANCE DEPARTMENT	0.20
01/29/18	SXM	RESEARCH WHETHER A FINANCIAL STATEMENT IS REQUIRED FOR A STARTUP COMPANY WITH LIMITED FINANCIAL HISTORY TO QUALIFY FOR 502(B) AND, IF REQUIRED, THE REQUIRED ELEMENTS OF A FINANCIAL STATEMENT FOR A STARTUP COMPANY WITH LIMITED FINANCIAL HISTORY	2.20
01/31/18	SXM	RESEARCH WHETHER A FINANCIAL STATEMENT IS REQUIRED FOR A STARTUP COMPANY WITH LIMITED FINANCIAL HISTORY TO QUALIFY FOR 502(B) AND, IF REQUIRED, THE REQUIRED ELEMENTS OF A FINANCIAL STATEMENT FOR A STARTUP COMPANY WITH LIMITED FINANCIAL HISTORY	2.90
02/12/18	SXM	CONTINUE RESEARCHING WHETHER A FINANCIAL STATEMENT IS REQUIRED FOR A STARTUP COMPANY WITH LIMITED FINANCIAL HISTORY TO QUALIFY FOR 502(B) AND, IF REQUIRED, THE REQUIRED ELEMENTS OF A FINANCIAL STATEMENT FOR A STARTUP COMPANY WITH LIMITED FINANCIAL HISTORY; RESEARCH CASES DISCUSSING THE PENALTIES FOR FAILURE TO COMPLY WITH THE INFORMATION REQUIREMENTS OF 502(B); DRAFT MEMO REFLECTING RESULTS OF RESEARCH	3.40



Eckert Seamans Cherin & Mellott, LLC  
U.S. Steel Tower  
600 Grant Street, 44th Floor  
Pittsburgh, PA 15219

TEL 412 566 6000  
FAX 412 566 6099  
www.eckertseamans.com

DEAN VAGNOZZI  
RE: GENERAL  
MARCH 15, 2018  
PAGE: 3

CLIENT: 302153  
MATTER: 302153-00001  
INVOICE: 1386539 JWP

DATE	ATTY	DESCRIPTION	HOURS
02/22/18	SXM	RESEARCH SEC NO-ACTION LETTERS IN WHICH THE SEC ADVISED NEWLY FORMED BUSINESSES ON SECTION 502(B) COMPLIANCE; UPDATE PRIOR MEMORANDUM WITH ADDITIONAL FINDINGS	5.20
02/23/18	SXM	RESEARCH SEC NO-ACTION LETTERS IN WHICH THE SEC ADVISED NEWLY FORMED BUSINESSES ON SECTION 502(B) COMPLIANCE; UPDATE PRIOR MEMORANDUM WITH ADDITIONAL FINDINGS AND CASE DESCRIPTIONS; PREPARE BOOKMARKED PDF OF ALL MATERIALS CITED IN MEMORANDUM	6.30
		FEES:	4,557.00

TIME SUMMARY

TIMEKEEPER	HOURS	RATE	AMOUNT
JOHN W PAUCIULO	1.50	560.00	840.00
JOHN W PAUCIULO	0.20	585.00	117.00
SHARI MAYNARD	20.00	180.00	3,600.00
TOTAL FEES FOR PROFESSIONAL SERVICES RENDERED THROUGH: 02/28/18	21.70	HRS	\$4,557.00



Eckert Seamans Cherin & Mellott, LLC  
U.S. Steel Tower  
600 Grant Street, 44th Floor  
Pittsburgh, PA 15219

TEL 412 566 6000  
FAX 412 566 6099  
www.eckertseamans.com

DEAN VAGNOZZI  
RE: GENERAL  
MARCH 15, 2018  
PAGE: 4

CLIENT: 302153  
MATTER: 302153-00001  
INVOICE: 1386539 JWP

DESCRIPTION OF EXPENSE ADVANCES:

DESCRIPTION	AMOUNT
SERVICE - - VENDOR: AMERICAN EXPRESS KROLL DISCOVERY SERVICES, DATA MANGEMENT (HOSTING) & SERVICES - NOVEMBER, 2017	319.82
SERVICE - - VENDOR: AMERICAN EXPRESS KROLL DISCOVERY SERVICES, DATA MANGEMENT (HOSTING) & SERVICES- DECEMBER 2017	312.00
SERVICE - - VENDOR: AMERICAN EXPRESS KROLL DISCOVERY SERVICES, DATA MANGEMENT (HOSTING) & SERVICES - JANUARY 2018	312.00
TOTAL EXPENSE ADVANCES:	\$943.82
<b>TOTAL BILL:</b>	<b>\$5,500.82</b>

# EXHIBIT B



John W. Pauciolo  
215.851.8480  
jpauciolo@eckertseamans.com

September 19, 2010

Via Regular Mail

Dean Vagnozzi  
114 Ithan Lane  
Collegeville, PA 19426

Re: Legal Representation

Dean:

We are pleased that you have asked our firm to represent you in connection with general business matters, the Pillar Life Settlement Fund and such other matters as you may request from time to time. The purpose of this engagement letter is to set forth our mutual understanding of the basis on which we have agreed to undertake such representation. Under the Pennsylvania Rules of Professional Conduct, we are required to inform you in writing of the basis of the fee and expense reimbursement arrangement that will be applicable to our representation of the Company.

The charges for our services will be based upon our regular hourly rates in effect at the time the services are rendered. My rate currently is \$425 per hour. If other members in the firm work on this matter, their time will be billed on the basis of their regular hourly rate. If associate attorneys in the firm work on this matter, their time will be billed on the basis of their regular hourly rate. Associate hourly rates currently range from \$155 to \$320 per hour depending on their experience. If firm paralegals perform services, their time will be billed on the basis of their hourly rate which is in the \$110 to \$190 range. All of our current rates will be in effect for the calendar year 2010 but are subject to change thereafter. Unless otherwise specified, any additional services requested to be provided by our firm beyond the scope of the above matter also will be billed in accordance with our hourly rates in effect at the time those services are rendered.

Our firm normally requires an advance retainer before undertaking the representation of a new client, however, due to our existing relationship, we are not requiring an advance retainer. Should our estimate of the resources required materially increase, we may require an advance retainer. In addition, we will not enter our appearance in any arbitration, litigation or other proceeding without obtaining an advance retainer. If we are unable to agree upon the terms of an advance retainer in these circumstances, you authorize us to withdraw as counsel.

Dean Vagnozzi  
September 19, 2010  
Page 2

Bills will be submitted on a monthly basis and will be itemized showing all time expended by each lawyer or paralegal involved as well as a description of all expenditures incurred on its behalf. We reserve the right to terminate our representation of you and any entity which we organize for you if such bills are not paid in a timely manner. Similarly, we will promptly respond to any questions which you may have concerning any item on a bill submitted to you. We also reserve the right to charge interest on the amount of any bill remaining unpaid after expiration of a thirty day period at a rate of one per cent (1%) a month.

Some of our clients use electronic mail ("E-Mail") to conduct communications between them and the firm. During 1999 the ethics committee of the American Bar Association issued a Formal Opinion in which it concluded that an attorney could transmit information relating to the representation of a client by use of unencrypted E-Mail sent over the Internet without violating the attorney's responsibilities under the Rules of Professional Conduct because such a mode of information transmission afforded a reasonable expectation of privacy from a technological and legal standpoint. For greater protection of client information, our firm has the capability to encrypt E-Mail. If you would like to request the use of encrypted E-Mail, please contact me so I can notify the appropriate personnel in our Information Systems department. However, no system of encryption provides absolute protection of the confidentiality of information communicated by E-Mail. If you do not want the firm to use E-Mail for some, or all, of its communication with you, please advise us promptly to that effect. We will follow your instructions as to the manner in which you want to communicate with the firm.

Clients are entitled to request and receive client-owned files unless the firm asserts a legally cognizable right to retain all or a portion of the files. No client files can be removed from the firm and transmitted to any person or entity without the client's written authorization. After a legal representation has ended, client-owned files will either be returned to the client or kept in the possession of the firm in accordance with its client file retention policy. Under that policy, client files are retained by the firm for a fixed time period after which the files may be destroyed. No client files will be destroyed unless approved by the responsible firm attorney on that legal representation or by the firm's Executive Director. Files released to a client are no longer subject to the firm's client file retention policy.

While we will not disclose privileged or confidential information regarding our representation of your interests, you authorize us to disclose your identity or name to persons outside this firm and the fact that we represent you as legal counsel.

If this letter accurately sets forth our agreement, kindly execute a copy and return it to me at your earliest opportunity.

Dean Vagnozzi  
September 19, 2010  
Page 3

We appreciate the opportunity to be of service to you and look forward to working with you. Should you have any questions concerning this letter, please do not hesitate to let me know.

Very truly yours,

ECKERT SEAMANS CHERIN & MELLOTT, LLC

By: \_\_\_\_\_  
John W. Pauciulo

JWP/mzg

Acknowledged, agreed to and accepted this \_\_\_\_ day of \_\_\_\_\_, 2010:

\_\_\_\_\_  
Dean Vagnozzi