

DOCKET NO.: FST CF 15-5014808-S

WILLIAM A. LOMAS,

Plaintiff,

versus

PARTNER WEALTH MANAGEMENT, LLC
KEVIN G. BURNS, JAMES PRATT-HEANEY,
AND WILLIAM P. LOFTUS

Defendants.

) SUPERIOR COURT
)
) JUDICIAL DISTRICT OF
) STAMFORD/NORWALK
)
) AT STAMFORD
)
)
)
) AUGUST 11, 2016
)
)
)

**MOTION FOR A PROTECTIVE ORDER PURSUANT TO
PRACTICE BOOK §§ 13-4(b)(3) and 13-5**

PRELIMINARY STATEMENT

Practice Book § 13-4(b)(3) is equivocal with respect to the protection it affords (1) drafts of a testifying expert's reports or disclosures; and (2) attorney-expert communications. Work-product, by definition, comes into existence solely in anticipation of litigation or trial. A testifying expert's draft reports and communications between attorneys and testifying experts are quintessential work-product. Such drafts and communications come into being solely in anticipation of trial.

Of course, attorneys can and will go to great lengths – which are both time-consuming and expensive – in order to prevent such communications from ever being memorialized or draft reports from coming into existence if they know that a jurisdiction fails to provide work-product protection for such communications and drafts. **Defendants are entitled to know – in advance of causing such work-product to be created – whether or not such work-product is protected from discovery in Connecticut's courts.** Thus, the sole issue raised by this motion is whether Connecticut protects such work-product or denies litigants in its courts this basic protection that is essential to the adversarial process.

Because Practice Book § 13-4(b)(3) is ambiguous, Defendants and (soon-to-be) Counterclaim Plaintiffs, hereby move under Practice Book §§ 13-4(b)(3) and 13-5 for a protective order that mirrors the provisions of Fed. Rs. Civ. P. 26(b)(4)(B)-(C). (The text of Rule 26 and the 2010 Advisory Committee Notes are attached hereto as Ex. A). In 2010, Rules 26(b)(4)(B)-(C) were amended to clarify that work-product protection did indeed cover a testifying expert's draft reports or draft disclosures and, subject to three exceptions, also protected attorney-expert communications from discovery.

As demonstrated below, because Practice Book § 13-4 should be interpreted so as to harmonize it with Rules 26(b)(4)(B)-(C), Defendants respectfully request that the proposed protective order submitted herewith be granted.

BACKGROUND

In the coming weeks, Defendants will likely disclose two testifying experts: (1) a damages expert; and (2) an industry expert. While no discoverable work-product has been created in connection with the probable retention of these experts, Defendants should not have to wait until after they have caused such work-product to come into existence to find out whether Connecticut affords protection to such work-product.

A. Bona Fide Attempts at Good Faith Resolution of the Issues Raised Herein

The disclosure requirements found in Practice Book § 13-4(b)(3) are merely default provisions. The Court or the parties by agreement are free, within reason, to establish different disclosure requirements in connection with testifying experts. Thus, 13-4(b)(3) is prefaced by the statement: "...unless otherwise ordered by the judicial authority or agreed upon by the parties..." Since the parties are free to design their own disclosure regime by agreement, on or about August 1, 2016, Defendants' counsel provided a proposed stipulation to Plaintiff's counsel that was modelled on, but somewhat broader than, the work-product protections set forth in Rules 26(b)(4)(B)-(C). Counsel met and conferred on the matter in good faith, but Plaintiff's counsel indicated he was disinclined to enter into such a stipulation. Defendants' counsel subsequently offered to enter into a narrower stipulation that perfectly mirrored Rules 26(b)(4)(B) and (C). Defendants' also provided Plaintiff with recent authority from this Court, *Meleney-Distassio v. Weinstein*, FSTCV136018746, 2016 WL 570048 (Jan. 19, 2016), which harmonized Rules 26(b)(4)(B) and (C) with Practice Book § 13-4.

On August 10, 2016, Plaintiff, through his counsel, declined to enter into any such stipulation that would clarify the scope of the work-product protection for work-product created by or in connection with the retention of testifying experts. Counsel for the Defendants' submits that the foregoing constitutes bona fide attempts to resolve the differences concerning the subject of this motion and that counsel have been unable to reach an accord.

B. Plaintiff's Pending Document Demands

In the course of counsels' good faith meet-and-confers, Plaintiff suggested that any possible motion for a protective order would be moot as there is no live case or controversy here. As Defendants' explained, this is simply not true. On July 22, 2016, Plaintiff served his Second Set of Requests for Production ("RFPs") and First Set of Interrogatories. (*See* Exs. B & C). Some of these discovery requests unquestionably seeks materials that – if they were caused to come into existence – would potentially be discoverable in the absence of a clear protective order that shields such work-product.

For example, Plaintiff's RFP No. 8 seeks: "All documents and communications relating to Defendants' draft seventh affirmative defense that the relief sought by Plaintiff is barred by contractual set off." The contractual set off provisions at issue in this case are broad.¹ Defendants' set off rights are triggered if and when Plaintiff breaches the operating agreement or by any acts of negligence, gross negligence, or willful misconduct. If Defendants' rights are triggered, they have the right to set off the damage caused by Plaintiff's acts against the purchase

¹ See 2015 PWM Agreement § 7.8(d) ("The Company or the remaining Members shall be entitled to set off against any installment payments pursuant to its purchase of Interests under this Agreement an amount equal to all costs, expenses (including attorneys' fees) and damages incurred as a result of (i) a breach by the Member of this Section 7.8 or any other section of this Agreement, (ii) the negligence, gross negligence or willful misconduct of the Member, or (iii) any provision of any non-competition, confidentiality and/or non-solicitation agreement to which the Member is a party. All Members shall, not later than the date of execution and delivery hereof, execute the Company's Non-Competition Agreement or equivalent thereof. The rights of set off as set forth herein shall be in addition to any and all remedies available to the Company or the remaining Members under law or resulting from the Member's violation of any agreement with the Company."); *accord* 2009 PWM Agreement § 8.9(d).

price of his equity. Thus, RFP No. 8 implicates subjects that both the industry expert and the damages expert would likely testify about. The industry expert would likely offer an opinion as to whether certain conduct constitutes negligence or other dereliction of duty, and the damages expert would likely offer an opinion as to the amount of the set off.

If attorney-expert communications (excepting the three special classes of communications) and draft reports are discoverable, and if such materials were ever caused to come into existence, such materials would arguably need to be produced to the Plaintiff.

The same concern is true for other RFPs and Interrogatories propounded by the Plaintiff, which arguably would sweep within their ambit attorney-expert communications and draft reports were they to ever come into existence. (*See, e.g.*, RFP Nos. 10, 25, 56, 63, 64, 75, 76; Interrogatory Nos. 8-14, 25-30).

Thus, there is a live case or controversy here that requires adjudication. And for the reasons set forth below, Defendants respectfully request a protective order be issued.

ARGUMENT

I. The Court Has the Authority to Grant the Requested Protective Order

This Court has wide discretion to fashion an appropriate protective order for work-product. Practice Book § 13-5 provides in pertinent part:

Upon a motion by a party from whom discovery is sought, and for good cause shown, the judicial authority may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; * * *; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters

As demonstrated above, Plaintiff's discovery requests implicate attorney-expert

communications and draft reports that might be created. Under § 13-5, the Court has broad discretion to fashion an appropriate protective order to ensure that this work-product is protected.

Additionally, as alluded to above, Practice Book § 13-4(b)(3) also provides an independent basis upon which the Court can issue the requested protective order. Section 13-4(b)(3) provides in pertinent part:

*** * * unless otherwise ordered by the judicial authority or agreed upon by the parties, the party disclosing an expert witness shall, upon the request of an opposing party, produce to all other parties all materials obtained, created and/or relied upon by the expert in connection with his or her opinions in the case * * ***

(emphasis added). There is nothing contained in this provision, or any other provision of § 13-4, that limits the judicial authority's power to craft an appropriate protective order to protect work-product. *See also* Practice Book § 13-4(c)(1) ("nor shall anything contained herein impair the right of a party to raise any objections to any request for production of documents sought here under to the extent that a claim of privilege exists."). Nor is there any express standard contained in the provision according to which the judicial power should be exercised. Thus, the Court has wide discretion and the limits of that discretion are set by reason and experience.

II. The Nature and Scope of the Protective Order Sought

As set forth in the proposed protective order accompanying this motion, Defendants seek a protective order that mirrors Rules 26(b)(4)(B) and (C), which provides:

(B) *Trial-Preparation Protection for Draft Reports or Disclosures.* Rules 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded.

(C) *Trial-Preparation Protection for Communications Between a Party's Attorney and Expert Witnesses.* Rules 26(b)(3)(A) and (B) protect communications between the party's attorney and any witness required to provide a report under Rule 26(a)(2)(B), regardless of the form of the communications, except to the extent that the communications:

- (i) relate to compensation for the expert's study or testimony;
- (ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or
- (iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

Both Rules 26(b)(4)(B) and (C) refer to Rules 26(b)(3)(A) and (B), which is the Federal Rules' codification of the work-product doctrine.² Rules 26(b)(3)(A) and (B) are **virtually identical** to Connecticut's codification of the work-product doctrine found in Practice Book § 13-3(a).³

The 2010 Advisory Committee Notes explain that Rules 26(b)(4)(B)-(C) provide "work-

² Rules 26(b)(3)(A) and (B) codify the work-product doctrine:

(A) *Documents and Tangible Things*. Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

- (i) they are otherwise discoverable under Rule 26(b)(1); and
- (ii) the party shows that it has **substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.**

(B) *Protection Against Disclosure*. If the court orders discovery of those materials, it **must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.**

(emphasis added).

³ Connecticut's work-product rule provides:

Subject to the provisions of Section 13-4, a party may obtain discovery of documents and tangible things otherwise discoverable under Section 13-2 and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative only upon a showing that the party seeking discovery has **substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means.** In ordering discovery of such materials when the required showing has been made, the judicial authority shall **not order disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.**

(emphasis added).

product protection against discovery regarding draft expert disclosures or reports and – with three specific exceptions – communications between expert witness and counsel.” (See Ex. A, pp. 13); see also *United States v. Vonn*, 535 U.S. 55, 64 n.6 (2002) (noted that Advisory Comm. Notes are “a reliable source of insight into the meaning of a rule...”).

The three exceptions set forth in Subsection (C)(i)-(iii) are consistent with Practice Book §13-4. Thus, information relating to: (i) the expert’s compensation; (ii) facts and data actually relied upon by the expert in forming his opinion; and (iii) assumptions supplied by an attorney to the expert and relied upon by the expert in forming his opinion are all discoverable.

III. The Only Connecticut Authority On Point Harmonized Practice Book § 13-4(b)(3) with Rules 26(b)(4)(B)-(C)

The only Connecticut court that appears to have squarely confronted the precise issue raised here held that: (1) attorney-expert communications (except for the three special classes of communications set forth in Rule 26(b)(4)(C)(i)-(iii)); and (2) draft expert reports were work-product and, therefore, shielded from discovery. In *Meleney-Distassio v. Weinstein*, Judge Adams held, after examining earlier Connecticut authority on the issue and the 2010 Amendments to Rules 26(b)(4)(B) and (C) that:

[b]ased on the cases and considerations noted above, the court finds that Connecticut law protects disclosures of attorney-expert communications except those involving compensation, facts, data and assumptions provided to the expert and used by the expert in forming an opinion. Furthermore, earlier drafts of the [the expert’s] opinion are protected.

Meleney-Distassio v. Weinstein, FSTCV136018746, 2016 WL 570048, at *3 (Jan. 19, 2016) (emphasis added); see also *id.* at *2 (“[b]ecause there are strong similarities between Connecticut discovery rules and the discovery rules contained in the Federal Rules of Civil Procedure, Connecticut courts often look to federal court interpretations.”).

IV. There Is No Prejudice to Plaintiff from the Issuance of the Requested Protective Order

Communications between Defendants' counsel and the experts likely to be disclosed as well as any draft reports by such experts, will only come into being – to the extent they ever come into being at all – as a result of this litigation and Defendants' trial preparation. Before Rules 26(b)(4)(B) and (C) were amended in 2010, there was a split of authority in the federal courts as to whether attorney-expert communications and drafts of expert's reports were discoverable. Thus, parties and their attorneys either stipulated to the protections now expressly set forth in Rules 26(b)(4)(B)-(C), or they took great care to ensure that no discoverable documents and memorialized communications ever came into being.

As this Court is no doubt aware, where attorney-expert communications are potentially subject to discovery, no such communications will ever be memorialized. The attorney will insist that all communications be by phone or in person. And of course, there are a variety of clever ways to ensure that a draft version of an expert's final report never comes into existence.

But neither Defendants', nor their counsel, nor their experts should have to go to such expensive and time consuming lengths to guard such trial preparation materials and mental impressions. Absent some compelling justification, Plaintiff simply has no legitimate need to see Defense counsel's communications with its experts nor draft versions of reports prepared by those experts.

As the 2010 Advisory Committee noted, if work-product protection is denied to attorney expert communications and an expert's draft reports, then **attorneys will "feel compelled to adopt a guarded attitude towards their interaction with testifying experts that impedes effective communication, and experts [will] adopt strategies that protect against discovery but also interfere with their work."** (Ex. A, pp. 13; emphasis added). Such guarded attitudes

and strategies to protect against discovery unfairly prejudice a party's ability to present a defense or to make its case.

But no prejudice will result to the Plaintiff here from the issuance of the requested protective order. The Plaintiff will be provided with a final report or disclosure by any expert that the Defendants' intend to have testify at trial. Plaintiff will have the opportunity to review that report or disclosure with his own experts and to prepare an expert rebuttal. Plaintiff will then have the opportunity to depose the expert before trial and to cross-examine the expert at trial. Moreover, under the proposed protective order, the Plaintiff remains entitled to discovery of: (i) the experts' compensation; (ii) all of the information and data relied upon by the expert in forming his or her opinion; and (iii) any assumptions provided by the attorney to the expert that the expert relied upon in forming his or her opinion.

Thus, it is difficult to see any legitimate basis upon which Plaintiff could oppose the request for a protective order.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that a protective order issue that makes clear that litigants in Connecticut are entitled to work-product protection in connection with their attorneys and testifying experts preparation for trial.

Dated: August 11, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of August 2016, I caused the foregoing, Defendants' Motion for a Protective Order (and exhibits thereto), to be served via electronic mail and by U.S. mail on counsel as follows:

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EXHIBIT A

United States Code Annotated

Federal Rules of Civil Procedure for the United States District Courts (Refs & Annos)

Title V. Disclosures and Discovery (Refs & Annos)

Federal Rules of Civil Procedure Rule 26

Rule 26. Duty to Disclose; General Provisions Governing Discovery

Currentness

<Notes of Decisions for 28 USCA Federal Rules of Civil Procedure Rule 26 are displayed in two separate documents. Notes of Decisions for subdivisions I to III are contained in this document. For Notes of Decisions for subdivisions IV to end, see second document for 28 USCA Federal Rules of Civil Procedure Rule 26.>

(a) Required Disclosures.

(1) Initial Disclosure.

(A) In General. Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information--along with the subjects of that information--that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy--or a description by category and location--of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party--who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(B) *Proceedings Exempt from Initial Disclosure.* The following proceedings are exempt from initial disclosure:

(i) an action for review on an administrative record;

(ii) a forfeiture action in rem arising from a federal statute;

(iii) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;

(iv) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;

(v) an action to enforce or quash an administrative summons or subpoena;

(vi) an action by the United States to recover benefit payments;

(vii) an action by the United States to collect on a student loan guaranteed by the United States;

(viii) a proceeding ancillary to a proceeding in another court; and

(ix) an action to enforce an arbitration award.

(C) *Time for Initial Disclosures--In General.* A party must make the initial disclosures at or within 14 days after the parties' Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in this action and states the objection in the proposed discovery plan. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure.

(D) *Time for Initial Disclosures--For Parties Served or Joined Later.* A party that is first served or otherwise joined after the Rule 26(f) conference must make the initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.

(E) Basis for Initial Disclosure; Unacceptable Excuses. A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) Disclosure of Expert Testimony.

(A) In General. In addition to the disclosures required by Rule 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.

(B) Witnesses Who Must Provide a Written Report. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report--prepared and signed by the witness--if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

(i) a complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) the facts or data considered by the witness in forming them;

(iii) any exhibits that will be used to summarize or support them;

(iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and

(vi) a statement of the compensation to be paid for the study and testimony in the case.

(C) Witnesses Who Do Not Provide a Written Report. Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:

(i) the subject matter on which the witness is expected to present evidence under Federal Rule of Evidence 702, 703,

or 705; and

(ii) a summary of the facts and opinions to which the witness is expected to testify.

(D) Time to Disclose Expert Testimony. A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures must be made:

(i) at least 90 days before the date set for trial or for the case to be ready for trial; or

(ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B) or (C), within 30 days after the other party's disclosure.

(E) Supplementing the Disclosure. The parties must supplement these disclosures when required under Rule 26(e).

(3) Pretrial Disclosures.

(A) In General. In addition to the disclosures required by Rule 26(a)(1) and (2), a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

(i) the name and, if not previously provided, the address and telephone number of each witness--separately identifying those the party expects to present and those it may call if the need arises;

(ii) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and

(iii) an identification of each document or other exhibit, including summaries of other evidence--separately identifying those items the party expects to offer and those it may offer if the need arises.

(B) Time for Pretrial Disclosures; Objections. Unless the court orders otherwise, these disclosures must be made at least 30 days before trial. Within 14 days after they are made, unless the court sets a different time, a party may serve and promptly file a list of the following objections: any objections to the use under Rule 32(a) of a deposition designated by another party under Rule 26(a)(3)(A)(ii); and any objection, together with the grounds for it, that may be made to the admissibility of materials identified under Rule 26(a)(3)(A)(iii). An objection not so made--except for one under Federal

Rule of Evidence 402 or 403--is waived unless excused by the court for good cause.

(4) Form of Disclosures. Unless the court orders otherwise, all disclosures under Rule 26(a) must be in writing, signed, and served.

(b) Discovery Scope and Limits.

(1) Scope in General. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(2) Limitations on Frequency and Extent.

(A) When Permitted. By order, the court may alter the limits in these rules on the number of depositions and interrogatories or on the length of depositions under Rule 30. By order or local rule, the court may also limit the number of requests under Rule 36.

(B) Specific Limitations on Electronically Stored Information. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(C) When Required. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).

(3) Trial Preparation: Materials.

(A) Documents and Tangible Things. Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

(i) they are otherwise discoverable under Rule 26(b)(1); and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) Protection Against Disclosure. If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.

(C) Previous Statement. Any party or other person may, on request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and Rule 37(a)(5) applies to the award of expenses. A previous statement is either:

(i) a written statement that the person has signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, mechanical, electrical, or other recording--or a transcription of it--that recites substantially verbatim the person's oral statement.

(4) Trial Preparation: Experts.

(A) Deposition of an Expert Who May Testify. A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26(a)(2)(B) requires a report from the expert, the deposition may be conducted only after the report is provided.

(B) Trial-Preparation Protection for Draft Reports or Disclosures. Rules 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded.

(C) Trial-Preparation Protection for Communications Between a Party's Attorney and Expert Witnesses. Rules 26(b)(3)(A) and (B) protect communications between the party's attorney and any witness required to provide a report under Rule 26(a)(2)(B), regardless of the form of the communications, except to the extent that the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(D) Expert Employed Only for Trial Preparation. Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

(i) as provided in Rule 35(b); or

(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(E) Payment. Unless manifest injustice would result, the court must require that the party seeking discovery:

(i) pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A) or (D); and

(ii) for discovery under (D), also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts and opinions.

(5) Claiming Privilege or Protecting Trial-Preparation Materials.

(A) Information Withheld. When a party withholds information otherwise discoverable by claiming that the information

is privileged or subject to protection as trial-preparation material, the party must:

(i) expressly make the claim; and

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed--and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) Information Produced. If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(c) Protective Orders.

(1) In General. A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending -- or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the disclosure or discovery;

(B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery;

(C) prescribing a discovery method other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

(E) designating the persons who may be present while the discovery is conducted;

(F) requiring that a deposition be sealed and opened only on court order;

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

(H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(2) *Ordering Discovery.* If a motion for a protective order is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit discovery.

(3) *Awarding Expenses.* Rule 37(a)(5) applies to the award of expenses.

(d) Timing and Sequence of Discovery.

(1) *Timing.* A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.

(2) Early Rule 34 Requests.

(A) *Time to Deliver.* More than 21 days after the summons and complaint are served on a party, a request under Rule 34 may be delivered:

(i) to that party by any other party, and

(ii) by that party to any plaintiff or to any other party that has been served.

(B) *When Considered Served.* The request is considered to have been served at the first Rule 26(f) conference.

(3) *Sequence.* Unless the parties stipulate or the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice:

(A) methods of discovery may be used in any sequence; and

(B) discovery by one party does not require any other party to delay its discovery.

(e) Supplementing Disclosures and Responses.

(1) *In General.* A party who has made a disclosure under Rule 26(a)--or who has responded to an interrogatory, request for production, or request for admission--must supplement or correct its disclosure or response:

(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the court.

(2) *Expert Witness.* For an expert whose report must be disclosed under Rule 26(a)(2)(B), the party's duty to supplement extends both to information included in the report and to information given during the expert's deposition. Any additions or changes to this information must be disclosed by the time the party's pretrial disclosures under Rule 26(a)(3) are due.

(f) Conference of the Parties; Planning for Discovery.

(1) *Conference Timing.* Except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B) or when the court orders otherwise, the parties must confer as soon as practicable--and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b).

(2) *Conference Content; Parties' Responsibilities.* In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26(a)(1); discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan. The court may order the parties or attorneys to attend the conference in person.

(3) *Discovery Plan.* A discovery plan must state the parties' views and proposals on:

(A) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement of when initial disclosures were made or will be made;

(B) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

(C) any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced;

(D) any issues about claims of privilege or of protection as trial-preparation materials, including -- if the parties agree on a procedure to assert these claims after production -- whether to ask the court to include their agreement in an order under Federal Rule of Evidence 502;

(E) what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed; and

(F) any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c).

(4) *Expedited Schedule.* If necessary to comply with its expedited schedule for Rule 16(b) conferences, a court may by local rule:

(A) require the parties' conference to occur less than 21 days before the scheduling conference is held or a scheduling order is due under Rule 16(b); and

(B) require the written report outlining the discovery plan to be filed less than 14 days after the parties' conference, or excuse the parties from submitting a written report and permit them to report orally on their discovery plan at the Rule 16(b) conference.

(g) *Signing Disclosures and Discovery Requests, Responses, and Objections.*

(1) *Signature Required; Effect of Signature.* Every disclosure under Rule 26(a)(1) or (a)(3) and every discovery request, response, or objection must be signed by at least one attorney of record in the attorney's own name--or by the party

personally, if unrepresented--and must state the signer's address, e-mail address, and telephone number. By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:

(A) with respect to a disclosure, it is complete and correct as of the time it is made; and

(B) with respect to a discovery request, response, or objection, it is:

(i) consistent with these rules and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

(ii) not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(iii) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

(2) *Failure to Sign.* Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention.

(3) *Sanction for Improper Certification.* If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney's fees, caused by the violation.

CREDIT(S)

(Amended December 27, 1946, effective March 19, 1948; January 21, 1963, effective July 1, 1963; February 28, 1966, effective July 1, 1966; March 30, 1970, effective July 1, 1970; April 29, 1980, effective August 1, 1980; April 28, 1983, effective August 1, 1983; March 2, 1987, effective August 1, 1987; April 22, 1993, effective December 1, 1993; April 17, 2000, effective December 1, 2000; April 12, 2006, effective December 1, 2006; April 30, 2007, effective December 1, 2007; April 28, 2010, effective December 1, 2010; April 29, 2015, effective December 1, 2015.)

ADVISORY COMMITTEE NOTES

*** [PRIOR ADVISORY COMMITTEE NOTES EXPURGATED] ***

2010 Amendment

Rule 26. Rules 26(a)(2) and (b)(4) are amended to address concerns about expert discovery. The amendments to Rule 26(a)(2) require disclosure regarding expected expert testimony of those expert witnesses not required to provide expert reports and limit the expert report to facts or data (rather than “data or other information,” as in the current rule) considered by the witness. Rule 26(b)(4) is amended to provide work-product protection against discovery regarding draft expert disclosures or reports and—with three specific exceptions—communications between expert witnesses and counsel.

In 1993, Rule 26(b)(4)(A) was revised to authorize expert depositions and Rule 26(a)(2) was added to provide disclosure, including—for many experts—an extensive report. Many courts read the disclosure provision to authorize discovery of all communications between counsel and expert witnesses and all draft reports. The Committee has been told repeatedly that routine discovery into attorney-expert communications and draft reports has had undesirable effects. Costs have risen. Attorneys may employ two sets of experts—one for purposes of consultation and another to testify at trial—because disclosure of their collaborative interactions with expert consultants would reveal their most sensitive and confidential case analyses. At the same time, attorneys often feel compelled to adopt a guarded attitude toward their interaction with testifying experts that impedes effective communication, and experts adopt strategies that protect against discovery but also interfere with their work.

Subdivision (a)(2)(B). Rule 26(a)(2)(B)(ii) is amended to provide that disclosure include all “facts or data considered by the witness in forming” the opinions to be offered, rather than the “data or other information” disclosure prescribed in 1993. This amendment is intended to alter the outcome in cases that have relied on the 1993 formulation in requiring disclosure of all attorney-expert communications and draft reports. The amendments to Rule 26(b)(4) make this change explicit by providing work-product protection against discovery regarding draft reports and disclosures or attorney-expert communications.

The refocus of disclosure on “facts or data” is meant to limit disclosure to material of a factual nature by excluding theories or mental impressions of counsel. At the same time, the intention is that “facts or data” be interpreted broadly to require disclosure of any material considered by the expert, from whatever source, that contains factual ingredients. The disclosure obligation extends to any facts or data “considered” by the expert in forming the opinions to be expressed, not only those relied upon by the expert.

Subdivision (a)(2)(C). Rule 26(a)(2)(C) is added to mandate summary disclosures of the opinions to be offered by expert witnesses who are not required to provide reports under Rule 26(a)(2)(B) and of the facts supporting those opinions. This disclosure is considerably less extensive than the report required by Rule 26(a)(2)(B). Courts must take care against requiring undue detail, keeping in mind that these witnesses have not been specially retained and may not be as responsive to counsel as those who have.

This amendment resolves a tension that has sometimes prompted courts to require reports under Rule 26(a)(2)(B) even from witnesses exempted from the report requirement. An (a)(2)(B) report is required only from an expert described in (a)(2)(B).

A witness who is not required to provide a report under Rule 26(a)(2)(B) may both testify as a fact witness and also provide expert testimony under Evidence Rule 702, 703, or 705. Frequent examples include physicians or other health care professionals and employees of a party who do not regularly provide expert testimony. Parties must identify such witnesses under Rule 26(a)(2)(A) and provide the disclosure required under Rule 26(a)(2)(C). The (a)(2)(C) disclosure obligation does not include facts unrelated to the expert opinions the witness will present.

Subdivision (a)(2)(D). This provision (formerly Rule 26(a)(2)(C)) is amended slightly to specify that the time limits for

disclosure of contradictory or rebuttal evidence apply with regard to disclosures under new Rule 26(a)(2)(C), just as they do with regard to reports under Rule 26(a)(2)(B).

Subdivision (b)(4). Rule 26(b)(4)(B) is added to provide work-product protection under Rule 26(b)(3)(A) and (B) for drafts of expert reports or disclosures. This protection applies to all witnesses identified under Rule 26(a)(2)(A), whether they are required to provide reports under Rule 26(a)(2)(B) or are the subject of disclosure under Rule 26(a)(2)(C). It applies regardless of the form in which the draft is recorded, whether written, electronic, or otherwise. It also applies to drafts of any supplementation under Rule 26(e); *see* Rule 26(a)(2)(E).

Rule 26(b)(4)(C) is added to provide work-product protection for attorney-expert communications regardless of the form of the communications, whether oral, written, electronic, or otherwise. The addition of Rule 26(b)(4)(C) is designed to protect counsel's work product and ensure that lawyers may interact with retained experts without fear of exposing those communications to searching discovery. The protection is limited to communications between an expert witness required to provide a report under Rule 26(a)(2)(B) and the attorney for the party on whose behalf the witness will be testifying, including any "preliminary" expert opinions. Protected "communications" include those between the party's attorney and assistants of the expert witness. The rule does not itself protect communications between counsel and other expert witnesses, such as those for whom disclosure is required under Rule 26(a)(2)(C). The rule does not exclude protection under other doctrines, such as privilege or independent development of the work-product doctrine.

The most frequent method for discovering the work of expert witnesses is by deposition, but Rules 26(b)(4)(B) and (C) apply to all forms of discovery.

Rules 26(b)(4)(B) and (C) do not impede discovery about the opinions to be offered by the expert or the development, foundation, or basis of those opinions. For example, the expert's testing of material involved in litigation, and notes of any such testing, would not be exempted from discovery by this rule. Similarly, inquiry about communications the expert had with anyone other than the party's counsel about the opinions expressed is unaffected by the rule. Counsel are also free to question expert witnesses about alternative analyses, testing methods, or approaches to the issues on which they are testifying, whether or not the expert considered them in forming the opinions expressed. These discovery changes therefore do not affect the gatekeeping functions called for by *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and related cases.

The protection for communications between the retained expert and "the party's attorney" should be applied in a realistic manner, and often would not be limited to communications with a single lawyer or a single law firm. For example, a party may be involved in a number of suits about a given product or service, and may retain a particular expert witness to testify on that party's behalf in several of the cases. In such a situation, the protection applies to communications between the expert witness and the attorneys representing the party in any of those cases. Similarly, communications with in-house counsel for the party would often be regarded as protected even if the in-house attorney is not counsel of record in the action. Other situations may also justify a pragmatic application of the "party's attorney" concept.

Although attorney-expert communications are generally protected by Rule 26(b)(4)(C), the protection does not apply to the extent the lawyer and the expert communicate about matters that fall within three exceptions. But the discovery authorized by the exceptions does not extend beyond those specific topics. Lawyer-expert communications may cover many topics and, even when the excepted topics are included among those involved in a given communication, the protection applies to all other aspects of the communication beyond the excepted topics.

First, under Rule 26(b)(4)(C)(i) attorney-expert communications regarding compensation for the expert's study or testimony may be the subject of discovery. In some cases, this discovery may go beyond the disclosure requirement in Rule

26(a)(2)(B)(vi). It is not limited to compensation for work forming the opinions to be expressed, but extends to all compensation for the study and testimony provided in relation to the action. Any communications about additional benefits to the expert, such as further work in the event of a successful result in the present case, would be included. This exception includes compensation for work done by a person or organization associated with the expert. The objective is to permit full inquiry into such potential sources of bias.

Second, under Rule 26(b)(4)(C)(ii) discovery is permitted to identify facts or data the party's attorney provided to the expert and that the expert considered in forming the opinions to be expressed. The exception applies only to communications "identifying" the facts or data provided by counsel; further communications about the potential relevance of the facts or data are protected.

Third, under Rule 26(b)(4)(C)(iii) discovery regarding attorney-expert communications is permitted to identify any assumptions that counsel provided to the expert and that the expert relied upon in forming the opinions to be expressed. For example, the party's attorney may tell the expert to assume the truth of certain testimony or evidence, or the correctness of another expert's conclusions. This exception is limited to those assumptions that the expert actually did rely on in forming the opinions to be expressed. More general attorney-expert discussions about hypotheticals, or exploring possibilities based on hypothetical facts, are outside this exception.

Under the amended rule, discovery regarding attorney-expert communications on subjects outside the three exceptions in Rule 26(b)(4)(C), or regarding draft expert reports or disclosures, is permitted only in limited circumstances and by court order. A party seeking such discovery must make the showing specified in Rule 26(b)(3)(A)(ii)—that the party has a substantial need for the discovery and cannot obtain the substantial equivalent without undue hardship. It will be rare for a party to be able to make such a showing given the broad disclosure and discovery otherwise allowed regarding the expert's testimony. A party's failure to provide required disclosure or discovery does not show the need and hardship required by Rule 26(b)(3)(A); remedies are provided by Rule 37.

In the rare case in which a party does make this showing, the court must protect against disclosure of the attorney's mental impressions, conclusions, opinions, or legal theories under Rule 26(b)(3)(B). But this protection does not extend to the expert's own development of the opinions to be presented; those are subject to probing in deposition or at trial.

Former Rules 26(b)(4)(B) and (C) have been renumbered (D) and (E), and a slight revision has been made in (E) to take account of the renumbering of former (B).

*** * * [SUBSEQUENT ADVISORY COMMITTEE NOTES EXPURGATED] * * ***

Fed. Rules Civ. Proc. Rule 26, 28 U.S.C.A., FRCP Rule 26
Including Amendments Received Through 6-1-16

End of Document

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EXHIBIT B

DOCKET NO. FST-CV15-5014808-S)	SUPERIOR COURT
)	
WILLIAM A. LOMAS)	JUDICIAL DISTRICT OF
	)	STAMFORD/NORWALK
Plaintiff,)	
)	
v.	)	AT STAMFORD
)	
PARTNER WEALTH MANAGEMENT, LLC,)	
KEVIN G. BURNS, JAMES PRATT-HEANEY,)	
WILLIAM P. LOFTUS)	
	)	JULY 22, 2016
Defendants.)	

PLAINTIFF’S SECOND SET OF REQUESTS FOR PRODUCTION

Pursuant to Connecticut Practice Book § 13-9 *et seq.*, the Plaintiff, William A. Lomas (“Lomas”), hereby requests that the Defendants, Partner Wealth Management, LLC (“PWM”), Kevin G. Burns (“Burns”), James Pratt-Heaney (“Pratt-Heaney”), and William P. Loftus (“Loftus”)(collectively, “Defendants”) respond in writing to this Second Set of Requests for Production (collectively, the “Requests”), and produce for inspection and photocopying the following documents at the offices of McCarter & English, LLP, CityPlace I, 185 Asylum Street, Hartford, CT 06103 within thirty (30) days from the date of service hereof.

These Requests are of a continuing nature. If additional documents within the scope of any request become available to Defendants after they serve documents upon Lomas, Defendants shall furnish such additional documents and things by way of supplemental production. Further, Lomas reserves his right to supplement these Requests and to propound additional requests as needed. The answers to these Requests are subject to the following definitions and instructions.

DEFINITIONS

1. The “Action” refers to the above-captioned action.
2. “Lomas” refers individually to William A. Lomas as well as any of his agents or representatives, including counsel.
3. “PWM” refers to Partner Wealth Management, LLC and all persons acting or who have acted at its direction, or on its behalf, including Kevin G. Burns, James Pratt-Heaney, and William P. Loftus (collectively, the “Individual Defendants”), its related entities, subsidiaries, parents, subsidiaries of subsidiaries, divisions, affiliates in which it owns a majority or a controlling interest, organizational or operating units, predecessors and successors, employees, officers, directors, managers, attorneys, agents, representatives, and all persons acting on its behalf.
4. “Focus” refers to Focus Financial Partners, LLC.
5. The “Complaint” refers to Lomas’ Complaint filed in the Action dated June 26, 2015.
6. The “draft answer” refers to Defendants’ draft answer emailed to Plaintiff and attached to various pleadings filed with the Court but not yet filed.
7. The “draft counterclaim” refers to Defendants’ draft counterclaim emailed to Plaintiff and attached to various pleadings filed with the Court but not yet filed.

8. The “Agreement” refers to the Partner Wealth Management, LLC, Agreement of Limited Liability Company entered into by the Individual Defendants and Lomas on November 30, 2009.

9. The “Management Agreement” refers to the agreement between Focus, LLBH Private Wealth Management, LLC (“LLBH Private”), the Individual Defendants and Lomas to provide management services to LLBH Private.

10. The “LLBH Private Agreement” refers to the LLBH Private Wealth Management, LLC Limited Liability Company Agreement dated October 17, 2008.

11. “Company Value” shall have the meaning defined in Section 8.8 of the Agreement.

12. “Management Fee” shall have the meaning defined in Section 3.1 of the Management Agreement.

13. “Management Committee” shall have the meaning defined in Sections 3.1 and 3.2 of the Agreement and as set forth in Schedule B of the Agreement.

14. The term “document” as used herein shall be used in its broadest sense and shall mean and include:

(a) the original and each copy differing from the original of the following: agreements, writings, drawings, graphs, sound recordings, applications, articles, audiocassette tapes, audits, bank statements, bills, data or information responsive to the document demands and interrogatories, books, brochures, calendars, canceled checks, charts, compilations, computer files (wherever stored), confirmations, contracts, conversations, correspondence, diaries, disks, “electronic mail,” financial statements, film, graphs, illustrations, Internet “chat room”

comments, information stored upon or retrieved from the Internet, invoices, letters, lists, loan documents, magnetic tapes, magazine articles, memoranda, microfiche, microfilm, newsletters, newspaper articles, notebooks, notes, notices, paraphrased statements, photographs, plans, radiograms, receipts, records, regulations, reports, rules, schedules, solicitations, statements, studies, summaries of documents, summaries of oral communications, tables, tabulations, tax returns and work-papers, telegrams, telephone message slips or logs, teletypes, telexes, information located at World Wide Web sites, worksheets, and all carbon copies, marked copies and other types and versions of these documents and other data or data compilations stored in any medium from which information can be obtained that is in the care, custody or control of Defendants, any of their agents, their employees and, except as determined by a court to be protected by applicable privileges, their counsel;

(b) emails (including any and all content of such messages, routing identifiers, addresses of all recipients, Internet Protocol addresses, and attachments), instant mail messages, recordings of voicemails (including "WAVE" files), social media pages (including Facebook and MySpace), and all electronically stored information and other data or data compilations of any kind, in any medium, from which information can be obtained, translated, if necessary, by Defendants into reasonably usable form; and

(c) all files from any mainframe computer, file server, minicomputer, personal computer, smartphone, workstation, notebook or laptop computer, personal digital assistant or any other electronic storage device, including but not limited to hard drive disks, flash drives, backup or archive tapes (whether stored on-site or at an off-site facility), as well as all files that are erased but recoverable.

15. The term “communication” refers to any contact between two or more persons including but not limited to written contact by means such as letters, memoranda, telegrams, teletypes, telexes, or other documents, any permanent record of electronic messages (including e-mails and attachments) sent or received via computer, and oral contacts including meetings, telephone and face-to-face conversations.

16. The term “person” or “persons” means both natural persons and corporate entities (including Defendants), and the acts and knowledge of a “person” as used herein are defined to include acts and knowledge of employees, officers, directors, managers, attorneys, agents, representatives, and all persons acting on behalf of such “person.”

17. The term “or” shall mean “and/or,” the term “and” shall mean “and/or,” and both shall be read as such to give the request the broadest possible meaning.

18. “Concerning” or “relating to” means in any way referring to, alluding to, responding to, regarding, connected to, commenting on, in respect of, with respect to, about, regarding, reflecting, memorializing, discussing, evidencing, describing, mentioning, analyzing, reflecting, and/or constituting.

INSTRUCTIONS

1. These Requests extend to documents available to Defendants, or in Defendants’ possession, custody, or control from any source, wherever situated, including without limitation, from any employees, representatives, or agents of Defendants.

2. If any documents cannot be produced in full, produce to the extent possible, specifying the reasons for the inability to produce the remainder. If any of the documents have

been destroyed or lost, please state the circumstances under which such destruction or loss occurred and the location of any copy or duplicate of such document.

3. For each Request, a complete response is required to each part or portion with the same effect as if such part or portion were propounded as a separate request. Should an objection to any request be asserted, such objection should clearly state to which part or portion of the Request it is directed and the nature of such objection, and Defendants shall respond to any part or portion of the Request not objected to.

4. In the event that any document, or any portion of any document, within the scope of these Requests is withheld from production upon a claim of privilege, work product, or for any other reason, Defendants shall provide the following information in the form of a privilege log:

- (a) a statement constituting the basis for any claim of privilege, work product, or other ground of non-disclosure; and
- (b) a brief description of the document including:
 - (i) the date of the document;
 - (ii) the number of pages, attachments, and appendices;
 - (iii) the name(s) of its author(s) or preparer(s) and identification by employment and title of each such person;
 - (iv) the name(s) of each person to whom the document, or a copy thereof, was sent, shown or made accessible, or to whom it was explained, together with an identification of each such person;
 - (v) the subject matter of the document; and

(vi) the Requests (identified by number) to which the document relates or is otherwise responsive.

5. Whenever necessary to bring within the scope of these Requests information that might otherwise be construed outside the scope:

(a) the use of a verb in any tense shall be construed as the use of that verb in all other tenses; and

(b) the use of a word in the singular form shall be deemed to include within its use the plural form as well.

6. No Request, definition or instruction herein shall be construed with reference to any other provision herein for the purpose of limitation.

7. If the response to any Request consists in whole or in part of an objection based upon the burden of responding to such request, then with respect to such request Defendants shall:

(a) provide such documents as can be produced without undue burden;

(b) state with particularity the basis for such objection, including (i) a description of the method or process required to obtain the document(s); and (ii) the estimated cost and time required to obtain the document(s).

8. Each Request shall be deemed continuing, and Defendants are required to supplement information promptly upon obtaining additional responsive information.

REQUESTS FOR PRODUCTION

1. All documents and communications relied upon, referred to or reviewed in preparing the draft answer to Plaintiff's Amended Complaint.

2. All documents and communications relied upon, referred to or reviewed in preparing the draft counterclaim.

3. All documents and communications relating to or supporting Defendants' draft second affirmative defense that Plaintiff's breach of his contractual and/or fiduciary duties relieved the Defendants of any duty or obligation to tender performance.

4. All documents and communications relating to Defendants' draft third affirmative defense that the relief sought by Plaintiff is barred by the doctrine of waiver.

5. All documents and communications relating to Defendants' draft fourth affirmative defense that the relief sought by Plaintiff is barred by equitable estoppel.

6. All documents and communications relating to Defendants' draft fifth affirmative defense that the relief sought by Plaintiff is barred by the doctrine of unclean hands.

7. All documents and communications relating to Defendants' draft sixth affirmative defense that the relief sought by Plaintiff is barred by the doctrine of equitable setoff.

8. All documents and communications relating to Defendants' draft seventh affirmative defense that the relief sought by Plaintiff is barred by contractual setoff.

9. All documents and communications relating to Defendants' draft eighth affirmative defense that the damages sustained by Lomas were caused by a third party and not the Defendants.

10. All documents and communications relating to Defendants' draft ninth affirmative defense that Plaintiff is barred from recovering the relief requested because the damages he sustained were caused by his own conduct.

11. All documents and communications relating to Defendants' draft tenth affirmative defense that Plaintiff is barred from recovering the relief requested because none of the Defendants owed any fiduciary duties to Plaintiff.

12. All documents and communications relating to Defendants' draft eleventh affirmative defense that Plaintiff is barred from recovering the relief requested because the relief sought by the Plaintiff is deferrable at the sole discretion of the Defendants pursuant to Section 7.7(a) of the 2015 PWM Agreement and/or Section 8.12(a) of the 2009 PWM Agreement.

13. All documents and communications relating to Defendants' draft twelfth affirmative defense that Defendants are entitled to recoupment.

14. All documents and communications relating to Defendants' draft thirteenth affirmative defense that the buyout provisions upon which Plaintiff relies are unenforceable because they would result in a forfeiture to Defendants.

15. All documents and communications relating to Focus Financial Partners LLC's offer to buy Plaintiff's cash flow and/or equity interest in PWM from January 1, 2013 to the present.

16. All documents reflecting the work schedule, including the frequency of absences or tardiness, by Lomas, Pratt-Heaney, Loftus or Burns between January 1, 2013 and January 15, 2015.

17. All documents and communications showing all vacations and trips that Pratt-Heaney, Loftus or Burns took, for business or personal reasons, between January 1, 2013 and January 15, 2015.

18. All documents reflecting continuing education efforts by Lomas, Pratt-Heaney, Loftus or Burns, including conferences and seminars attended, articles written and speaking engagements.

19. All documents reflecting conferences and seminars at which Lomas, Pratt-Heaney, Loftus or Burns made presentations concerning financial planning, wealth management, asset management, investment advisory services, insurance, and/or financial products or financial services, or the compliance and regulation thereof.

20. All documents reflecting work activities recorded in Salesforce, including a print out of all entries made, by Lomas between January 1, 2013 and January 15, 2015.

21. All documents reflecting work activities recorded in Salesforce, including a print out of all entries made, by Loftus between January 1, 2013 and January 15, 2015.

22. All documents reflecting work activities recorded in Salesforce, including a print out of all entries made, by Burns between January 1, 2013 and January 15, 2015.

23. All documents reflecting work activities recorded in Salesforce, including a print out of all entries made, by Pratt-Heaney between January 1, 2013 and January 15, 2015.

24. All documents and communications relating to Pratt-Heaney, Loftus or Burns' contemplation, discussion or efforts to terminate Lomas for cause at any time after PWM was founded.

25. All documents and communications relating to Lomas' alleged negligent performance of his duties.

26. All documents and communications relating to Lomas' alleged breach of his obligations to cooperate in the transition of clients.

27. All documents and communications relating to Lomas' alleged breach of the non-solicitation covenants.

28. All documents and communications relating to the meeting attended by Pratt-Heaney, Lomas and Louis J. Briskman relating to Lomas' retirement.

29. All documents and communications between Pratt-Heaney, Loftus or Burns and Louis J. Briskman from October 14, 2014 through the present.

30. All documents and communications between Pratt-Heaney, Loftus or Burns and Warren J. Strausser from October 14, 2014 through the present.

31. All documents and communications between Pratt-Heaney, Loftus or Burns and any other clients of PWM alleged to have been solicited in any way by Lomas.

32. All documents and communications relating to efforts to retain the clients listed on Schedule E of the 2009 or 2015 PWM Agreement that have a "yes" notation in the column heading with the initials "WAL" after Lomas noticed his retirement in October 2015.

33. Copies of all Power Point presentations made at any meeting attended by Burns, Pratt-Heaney, Loftus or Lomas regarding PWM between January 2012 and January 15, 2015.

34. All documents and communications relating to Defendants' alleged compensation shortfall.

35. All documents that form the basis for the compensation shortfall analysis referenced in the Affidavit of Jeff Fuhrman dated June 3, 2016.

36. All documents and communications (including any and all drafts) relating to PWM's announcement that Lomas was retiring from PWM and/or LLBH, including communications to clients.

37. All documents, including photographs, relating to Lomas' appearance while he worked at PWM.

38. All documents, including photographs, relating to the manner in which Lomas dressed while he worked at PWM.

39. All documents, including photographs, relating to Lomas' facial hair while working at PWM.

40. All documents relating to travel expenses, including but not limited to, airfare, car service, meals, and lodging expensed by Pratt-Heaney, Loftus or Burns to PWM.

41. All documents and communications concerning Lomas' purported solicitation of clients listed on Schedule E to the 2009 and 2015 PWM Agreement.

42. All documents concerning each Member's contribution to the growth to PWM's Management Fee in 2013 and 2014.

43. All documents concerning business originated by each Member during the period January 1, 2012 to January 15, 2014.

44. All documents and communications relating to any referral agreement PWM, Pratt-Heaney, Loftus or Burns provided, contemplated, or drafted relating to Lomas.

45. All documents and communications relating to Lomas' notice of withdrawal in October 2014.

46. All documents concerning Defendants' allegation that Lomas watched YouTube videos in his office.

47. All documents concerning the YouTube viewing history of Loftus, Burns or Pratt-Heaney during work hours between January 1, 2012 and January 15, 2015.

48. A copy of any video created or distributed regarding Lomas' retirement from January 1, 2013 to February 28, 2015.

49. All documents reflecting articles that Lomas drafted, wrote or co-authored on behalf of PWM between January 1, 2013 and January 15, 2015.

50. All documents and communications between Burns and Uliana Rymar, including emails from work or personal e-mail accounts, text messages, and telephone communications.

51. All documents and communications concerning PWM's sexual harassment policy.

52. All documents and communications concerning PWM's employee fraternization policy.

53. All documents and communications between Loftus and any other person regarding a criminal complaint or charges filed against him for domestic violence including but not limited to assault, disturbing the peace or battery.

54. All documents sufficient to show the amount of time Burns dedicated to his restaurant business.

55. All documents concerning personnel files maintained by PWM or LLBH for Loftus, Burns, Pratt-Heaney, Lomas and Uliana Rymar.

56. All documents and communications concerning evaluations of Lomas' performance.

57. All documents reflecting PWM's policies regarding its dress code, including any policy regarding facial hair.

58. All documents and communications between Pratt-Heaney, Loftus, Burns and Lomas regarding PWM's dress code including communications regarding facial hair.

59. All documents reflecting PWM's policies regarding time away from the office, including but not limited to vacation policies, personal time policies, FMLA policies, and illness policies, as it applies to PWM members.

60. All documents and communications between Pratt-Heaney, Loftus, Burns and Lomas regarding Lomas' failure to materially contribute to the development and growth of PWM and the RIA it manages, LLBH, between January 1, 2013 and January 15, 2015, including documents and communications regarding Lomas' alleged failure to develop himself as an advisor, Lomas' frequent absenteeism, Lomas' failure to originate any meaningful business since 2013, and Lomas' unnecessary delays in the implementation of wealth management strategies.

61. All documents sufficient to show the wealth management strategies PWM implemented between January 1, 2013 and January 15, 2015.

62. All documents and communications concerning Focus' expression of its intention to buy a withdrawing Principal's equity.

63. All documents and communications reflecting that Lomas actively damaged PWM or any member thereof.

64. All documents and communications reflecting Lomas' performance as Chief Financial Officer of PWM, including all documents and communications related to Lomas' failure to adequately perform this role.

65. All documents concerning any complaints made by anyone at PWM, including clients listed on Schedule E, regarding Lomas' demeanor, negative impact on morale, or his professional conduct and behavior in any manner.

66. All documents concerning any complaints made by anyone at PWM, including clients listed on Schedule E, regarding Burns' professional conduct and behavior in any manner.

67. All documents and communications regarding Lomas' detrimental impact on client meetings.

68. All documents and communications that reflect why FA Insight was hired by PWM.

69. All documents and communications regarding PWM's offer to buyout Lomas' interest in 2013.

70. All documents and communications between Loftus, Burns, Pratt-Heaney or Fuhrman and Focus regarding Focus' unwillingness buy Lomas' equity interest in PWM.

71. All documents and communications between Loftus, Burns, Pratt-Heaney and any other person regarding their efforts to obtain funds to finance a buy-out of Lomas' equity interest.

72. All PowerPoint presentations between January 1, 2013 and January 15, 2015 reflecting Burns, Loftus, Pratt-Heaney or Lomas' performance.

73. All documents and communications reflecting Lomas' transition of clients following his notice of withdrawal.

74. All documents and communications from clients on Schedule E reflecting their concern for Lomas' health, well-being or withdrawal from PWM.

75. All documents and communications concerning Defendants' damages claims.

76. All documents showing Defendants' computation of damages.

77. All documents reviewed or relied upon by Jeff Fuhrman to draft his affidavit attached to Defendants' Application to Vacate the Prejudgment Remedy Imposed Upon Defendants.

78. All documents reviewed or relied upon by James Pratt-Heaney to draft his affidavit attached to Defendants' Application to Vacate the Prejudgment Remedy Imposed Upon Defendants.

79. All personnel or employee handbooks that have existed or governed employee affairs since PWM was founded in 2009.

80. All documents concerning the email analysis conducted by PWM of each Member's computer or email usage including all data, analysis, conclusions drawn, or reports from such data.

81. All documents related to Defendants' investigation of Lomas by a private investigator.

82. All documents showing the involvement of Burns, Loftus, Pratt-Heaney and/or Lomas in the negotiation and/or drafting of the 2009 Agreement.

Dated: July 22, 2016
Hartford, Connecticut

THE PLAINTIFF,
WILLIAM A. LOMAS

By: /s/ Thomas J. Rechen
Thomas J. Rechen
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His Attorneys

CERTIFICATE OF SERVICE

This is to certify that on July 22, 2016, a copy of the foregoing was served by e-mail and first class mail, postage prepaid, to all counsel of record as follows:

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/s/Thomas J. Rechen
Thomas J. Rechen

EXHIBIT C

DOCKET NO. FST-CV15-5014808-S)	SUPERIOR COURT
)	
WILLIAM A. LOMAS	)	JUDICIAL DISTRICT OF
	)	STAMFORD/NORWALK
Plaintiff,)	
)	
v.	)	AT STAMFORD
)	
PARTNER WEALTH MANAGEMENT, LLC,)	
KEVIN G. BURNS, JAMES PRATT-HEANEY,)	
WILLIAM P. LOFTUS)	
	)	JULY 22, 2016
Defendants.)	

**PLAINTIFF’S FIRST SET OF
INTERROGATORIES DIRECTED TO PWM**

Pursuant to Connecticut Practice Book § 13-6 *et seq.*, the Plaintiff, William A. Lomas (“Lomas”), hereby requests that the Defendant, Partner Wealth Management, LLC (“PWM”) provide answers to the following interrogatories (“Interrogatories”), in writing and under oath within thirty (30) days from the date of service hereof.

These Interrogatories are of a continuing nature so as to require supplemental responses as additional information responsive to these Interrogatories is discovered or becomes available. Further, Lomas reserves his right to supplement these Interrogatories and to propound additional interrogatories as needed. The answers to these Interrogatories are subject to the following definitions and instructions.

DEFINITIONS

1. The “Action” refers to the above-captioned action.
2. “Lomas” refers individually to William A. Lomas as well as any of his agents or representatives, including counsel.

3. “PWM” refers to Partner Wealth Management, LLC and all persons acting or who have acted at its direction, or on its behalf, including Kevin G. Burns, James Pratt-Heaney, and William P. Loftus (collectively, the “Individual Defendants”), its related entities, subsidiaries, parents, subsidiaries of subsidiaries, divisions, affiliates in which it owns a majority or a controlling interest, organizational or operating units, predecessors and successors, employees, officers, directors, managers, attorneys, agents, representatives, and all persons acting on its behalf.

4. “Focus” refers to Focus Financial Partners, LLC.

5. The “Complaint” refers to Lomas’ Complaint filed in the Action dated June 26, 2015.

6. The “draft answer” refers to Defendants’ draft answer emailed to Plaintiff and attached to various pleadings filed with the Court but not yet filed.

7. The “draft counterclaim” refers to Defendants’ draft counterclaim emailed to Plaintiff and attached to various pleadings filed with the Court but not yet filed.

8. The “Agreement” refers to the Partner Wealth Management, LLC, Agreement of Limited Liability Company entered into by the Individual Defendants and Lomas on November 30, 2009.

8. The “Management Agreement” refers to the agreement between Focus, LLBH Private Wealth Management, LLC (“LLBH Private”), the Individual Defendants and Lomas to provide management services to LLBH Private.

9. The “LLBH Private Agreement” refers to the LLBH Private Wealth Management, LLC Limited Liability Company Agreement dated October 17, 2008.

10. "Company Value" shall have the meaning defined in Section 8.8 of the Agreement.

11. "Management Fee" shall have the meaning defined in Section 3.1 of the Management Agreement.

12. "Management Committee" shall have the meaning defined in Sections 3.1 and 3.2 of the Agreement and as set forth in Schedule B of the Agreement.

13. The term "document" as used herein shall be used in its broadest sense and shall mean and include:

(a) the original and each copy differing from the original of the following: agreements, writings, drawings, graphs, sound recordings, applications, articles, audiocassette tapes, audits, bank statements, bills, data or information responsive to the document demands and interrogatories, books, brochures, calendars, canceled checks, charts, compilations, computer files (wherever stored), confirmations, contracts, conversations, correspondence, diaries, disks, "electronic mail," financial statements, film, graphs, illustrations, Internet "chat room" comments, information stored upon or retrieved from the Internet, invoices, letters, lists, loan documents, magnetic tapes, magazine articles, memoranda, microfiche, microfilm, newsletters, newspaper articles, notebooks, notes, notices, paraphrased statements, photographs, plans, radiograms, receipts, records, regulations, reports, rules, schedules, solicitations, statements, studies, summaries of documents, summaries of oral communications, tables, tabulations, tax returns and work-papers, telegrams, telephone message slips or logs, teletypes, telexes, information located at World Wide Web sites, worksheets, and all carbon copies, marked copies and other types and versions of these documents and other data or data compilations stored in

any medium from which information can be obtained that is in the care, custody or control of Defendants, any of their agents, their employees and, except as determined by a court to be protected by applicable privileges, their counsel;

(b) emails (including any and all content of such messages, routing identifiers, addresses of all recipients, Internet Protocol addresses, and attachments), instant mail messages, recordings of voicemails (including “WAVE” files), social media pages (including Facebook and MySpace), and all electronically stored information and other data or data compilations of any kind, in any medium, from which information can be obtained, translated, if necessary, by Defendants into reasonably usable form; and

(c) all files from any mainframe computer, file server, minicomputer, personal computer, smartphone, workstation, notebook or laptop computer, personal digital assistant or any other electronic storage device, including but not limited to hard drive disks, flash drives, backup or archive tapes (whether stored on-site or at an off-site facility), as well as all files that are erased but recoverable.

14. The term “communication” refers to any contact between two or more persons including but not limited to written contact by means such as letters, memoranda, telegrams, teletypes, telexes, or other documents, any permanent record of electronic messages (including e-mails and attachments) sent or received via computer, and oral contacts including meetings, telephone and face-to-face conversations.

15. The term “person” or “persons” means both natural persons and corporate entities (including Defendants), and the acts and knowledge of a “person” as used herein are defined to

include acts and knowledge of employees, officers, directors, managers, attorneys, agents, representatives, and all persons acting on behalf of such “person.”

16. The term “or” shall mean “and/or,” the term “and” shall mean “and/or,” and both shall be read as such to give the request the broadest possible meaning.

17. “Concerning” or “relating to” means in any way referring to, alluding to, responding to, regarding, connected to, commenting on, in respect of, with respect to, about, regarding, reflecting, memorializing, discussing, evidencing, describing, mentioning, analyzing, reflecting, and/or constituting.

18. “Describe” means to explain and set forth by reference to underlying facts rather than by ultimate facts or conclusions of law and to particularize with respect to time, place and manner.

19. To “identify” a natural person means to state:

- (a) the person’s full name;
- (b) the person’s present position and business affiliation (if known), or the last known position and business position;
- (c) past business affiliations, if any, with any party to the above-captioned case; and
- (d) the person’s present business or home address and telephone number.

20. To “identify” any entity other than a natural person means to state:

- (a) the entity’s name;
- (b) the entity’s address;
- (c) the entity’s principal place of business;

- (d) the entity's place of incorporation; and
- (e) a contact person at the entity.

21. To "identify" a document means to state:

- (a) the name of the person who prepared it;
- (b) the name of the person who signed it;
- (c) the name of the person to whom it was addressed or distributed;
- (d) the nature and substance of the document with sufficient particularity to

enable it to be identified;

- (e) the date of the document, and if it bears no date, the date when it was

prepared;

- (f) the present location of the document and the name and address of its

custodian or custodians;

- (g) if the document is the basis for any allegation or assertion of a pleading

filed in the above-captioned case, state such allegation or assertion;

- (h) if the document has been produced in this litigation, to state the Bates

ranges of the document; and

- (i) if it has not been previously produced, whether it will be made available

voluntarily to counsel for inspection and copying or produced in response to the document demands served concurrently with these Interrogatories.

22. To "identify" an oral communication means to state:

- (a) the speaker(s) and actual or intended recipient(s) or witnesses of the

communication;

- (b) the date of the communication; and
- (c) the substance of the communication.

23. To “identify” a file or business record means to state:

- (a) the name, number or other means by which it is known and can be located;
- (b) its present location and the name of its custodian or custodians; and
- (c) whether it will be made available voluntarily to counsel for inspection and

copying.

24. To “identify” an expert witness means to state:

- (a) the person’s name;
- (b) the person’s business and residential address;
- (c) the person’s professional qualifications;
- (d) the person’s position and the name and address of the company, firm or

entity to which he or she is connected in his or her other business, profession or occupation; and

(e) the subject matter on which the person is expected to testify and the substance of the facts and opinions as to which he or she is expected to testify and a summary of the grounds for each opinion.

INSTRUCTIONS

1. These Interrogatories seek all information available to PWM or in PWM’s possession, custody, or control from any source, wherever situated.

2. For each Interrogatory a complete response is required to each part or portion with the same effect as if such part or portion were propounded as a separate Interrogatory. Should an objection to any Interrogatory be asserted, such objection should clearly state to which

part or portion of the Interrogatory it is directed and the nature of such objection, and PWM shall respond to any part or portion of the Interrogatory not objected to.

3. If PWM does not respond to any Interrogatory, or subpart thereof, on the basis of any claim of privilege, work product, or for any other reason, PWM shall provide the following information in the form of a privilege log: (a) the type of facts or information withheld; (b) the general subject matter of the facts or information withheld; and (c) a statement constituting the basis for any claim or privilege, work product, or other ground of non-disclosure. If information relating to an oral communication is claimed as privilege, PWM shall also include in the privilege log the name of the person making the communication (including identification by employment and title of such person), the names of the persons present while the communication was made (including identification by employment and title of each such person) and, where not apparent, the relationship of the persons present to the person making the communications, as well as the date and place of the communication, the general subject matter of the communication and the nature of the privilege or protection asserted. Privileged communications occurring on or after PWM was served with the Complaint are not required to be included on the requested privilege log.

4. If the response to any Interrogatory consists in whole or in part of an objection based upon the burden of responding to such Interrogatory, then with respect to such Interrogatory:

- (a) provide such information as can be ascertained without undue burden;

(b) state with particularity the basis for such objection, including (i) a description of the method or process required to obtain the information or document(s); and (ii) the estimated cost and time required to obtain the information or document(s)

5. Each Interrogatory shall be deemed continuing, and PWM is required to supplement information promptly upon obtaining additional responsive information.

INTERROGATORIES

1. Identify each person who has assisted in the preparation of, or provided information or documents for the purpose of preparing, any of your responses to these Interrogatories or First and/or Second Set of Requests for Production, and, for each such person, identify the Interrogatories and First and/or Second Set of Requests for Production for which he or she assisted in the preparation of or provided information or documents.

RESPONSE:

2. Identify all persons having knowledge of any facts relating to the allegations of the Complaint and any defenses PWM may have thereto and, for each such person, the general subject matter of such facts.

RESPONSE:

3. Identify each person whom you expect to call as a fact witness at trial. With respect to each fact witness, state the substance of the facts on which the witness is expected to testify.

RESPONSE:

4. Identify each person you intend to call as an expert witness and state the subject matter on which the expert is expected to testify.

RESPONSE:

5. Describe all efforts made by Defendants to retain Lomas' clients notated on Schedule E after PWM received notice of Lomas' withdrawal in 2014.

RESPONSE:

6. Identify all communications PWM had with Lomas' clients notated on Schedule E after PWM received notice of Lomas' withdrawal in 2014.

RESPONSE:

7. Describe all efforts made to obtain funds to finance the buy-out of Lomas' equity interest in PWM.

RESPONSE:

8. State each element of the damages claimed by Defendants (alleged to be no less than \$3,000,000.00) for Lomas' alleged breach of the implied covenant of good faith and fair dealing, including in your response a quantification of each element of the damages claimed.

RESPONSE:

9. State each element of the damages claimed by Defendants (alleged to be no less than \$3,000,000.00) for Lomas' alleged breach of the PWM Agreement for negligent performance of duties, including in your response a quantification of each element of the damages claimed.

RESPONSE:

10. State the basis for Defendants' claim that they are entitled to damages in an amount believed to be no less than \$1,000,000.00 for Lomas' alleged breach of his obligation to employ good faith efforts in connection with transitioning clients.

RESPONSE:

11. State each element of the damages claimed by Defendants (alleged to be no less than \$3,000,000.00) for Lomas' alleged fraud by false promise, including in your response a quantification of each element of the damages claimed.

RESPONSE:

12. State each element of the damages claimed by Defendants (alleged to be no less than \$5,000,000.00) for Lomas' alleged breach of his non-solicitation covenant, including in your response a quantification of each element of the damages claimed.

RESPONSE:

13. State each element of the damages claimed by Defendants (alleged to be no less than \$5,000,000.00) for Lomas' alleged breach of his fiduciary duties, including in your response a quantification of each element of the damages claimed.

RESPONSE:

14. State each element of the damages claimed by Defendants (alleged to be no less than \$3,000,000.00) for Lomas' alleged willful and wanton misconduct, including in your response a quantification of each element of the damages claimed.

RESPONSE:

15. State the facts that support Defendants' willful and wanton misconduct claim.

RESPONSE:

16. State that facts that support Defendants' claim for a preliminary and permanent injunction extending the time of Lomas' non-solicitation covenant beyond the period stated in the 2009 PWM Agreement.

RESPONSE:

17. State the methodology used and conclusions reached by Defendants to analyze Lomas' e-mail and computer usage, including the identification of all individuals involved in determining the analysis and conclusions.

RESPONSE:

18. State each element of the calculation in order to determine the repurchase price to be paid by PWM to Lomas if calculated under the terms of 8.7(b) of the 2009 PWM Agreement.

RESPONSE:

19. State each element of the calculation in order to determine the repurchase price to be paid by PWM to Lomas if calculated under the terms of the 2015 PWM Agreement.

RESPONSE:

20. State the Company Value as defined in the 2009 PWM Agreement for the year ending 2014.

RESPONSE:

21. State Lomas' Percentage Interest as defined in the 2009 PWM Agreement for the year ending 2014.

RESPONSE:

22. State the Management Fee as such term is defined in the Management Agreement for the year ending 2014.

RESPONSE:

23. State the EBPC (as defined in the Purchase Agreement) for the year ending 2014.

RESPONSE:

24. State the EBPC Target for the year ending 2014.

RESPONSE:

25. State all facts and evidence in support of Defendants' breach of contract claim related to the implied covenant or good faith and fair dealing as stated in the First Count of the draft counterclaim.

RESPONSE:

26. State all facts and evidence in support of Defendants' breach of contract claim related to Lomas' negligence performance of duties as stated in the Second Count of the draft counterclaim.

RESPONSE:

27. State all facts and evidence in support of Defendants' breach of contract claim related to the breach of the obligation to employ good faith efforts in connection with transitioning clients as stated in the Third Count of the draft counterclaim.

RESPONSE:

28. State all facts and evidence in support of Defendants' fraud by false promise claim as stated in the Fourth Count of the draft counterclaim.

RESPONSE:

29. State all facts and evidence in support of Defendants' breach of contract claim related to the breach of the non-solicitation covenant as stated in the Fifth Count of the draft counterclaim.

RESPONSE:

30. State all facts and evidence in support of Defendants' breach of fiduciary duty to PWM claim as stated in the Sixth Count of the draft counterclaim.

RESPONSE:

31. State all facts and evidence in support of Defendants' breach of fiduciary duty to the principals claim as stated in the Seventh Count of the draft counterclaim.

RESPONSE:

32. State all facts and evidence in support of Defendants' willful and wanton misconduct claim as stated in the Eighth Count of the draft counterclaim.

RESPONSE:

33. State all facts and evidence in support of Defendants' claim for a preliminary and permanent injunction as stated in the Ninth Count of the draft counterclaim.

RESPONSE:

30. State all facts and evidence in support of Defendants' declaratory judgment claim as stated in the Tenth Count of the draft counterclaim.

RESPONSE:

Dated: July 22, 2016
Hartford, Connecticut

THE PLAINTIFF,
WILLIAM A. LOMAS

By: /s/ Thomas J. Rechen
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His Attorneys

CERTIFICATE OF SERVICE

This is to certify that on July 22, 2016, a copy of the foregoing was served by e-mail and first class mail, postage prepaid, to all counsel of record as follows:

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/s/Thomas J. Rechen
Thomas J. Rechen

EXHIBIT D

2016 WL 570048

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES
BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Stamford–Norwalk.

Anne MELENEY–DISTASSIO et al.

v.

David WEINSTEIN, M.D. et al.

No. FSTCV136018746.

Jan. 19, 2016.

Synopsis

Background: In medical malpractice action, defendant doctor filed motion to compel production of correspondence between plaintiffs' counsel and expert witness.

Holding: The Superior Court, Judicial District of Stamford–Norwalk, Taggart D. Adams, Judge Trial Referee, held that work-product doctrine protected attorney-expert communications except those involving compensation, facts, data, and assumptions.

Ordered accordingly.

West Headnotes (1)

[1] Pretrial Procedure

Work Product Privilege: Trial Preparation Materials

Connecticut's work-product doctrine protects disclosures of attorney-expert communications except those involving compensation, facts, data and assumptions provided to the expert and used by the expert in forming an opinion. Fed.Rules Civ.Proc.Rules 26(a)(2)(B)(ii), 26(b)(4)(B), (C), 28 U.S.C.A.; Practice Book 1998, §§ 13–3(a),

13–4(b)(3).

Cases that cite this headnote

Attorneys and Law Firms

Andrew J. Maloney III, Kreindler & Kreindler LLP, New York, NY, for Anne Meleney-Distassio et al.

Danaherlagnese PC, Hartford, Neubert Pepe & Monteith PC, New Haven, for David Weinstein, M.D. et al.

TAGGART D. ADAMS, Judge Trial Referee.

I. Discussion

*1 In this medical malpractice action, the plaintiffs have disclosed an expert witness, Dr. Marc Engelbert, who prepared a report, also disclosed, containing a discussion of the facts in the case and Dr. Engelbert's opinions on the appropriate standard of care. The report also described the materials he reviewed and relied upon in forming his opinions. See Exhibit A to Dkt. Entry 152.00. Subsequently, counsel for the defendant Weinstein, pursuant to Practice Book § 13–4(b)(3), sent a letter to plaintiffs' counsel requesting "production of all materials obtained/created and/or relied upon by [Engelbert] in connection with his opinions in this case." *Id.*, Exhibit B.¹

Plaintiff's counsel responded, sending Engelbert's CV, invoices rendered by Engelbert for his services as an expert, and setting forth a list of thirteen sets of records, test results and deposition transcripts, including his own experience and knowledge, that Engelbert relied upon for his opinions. *Id.* Exhibit C. Plaintiffs' counsel objected to the request for "correspondence and e-mails between counsel and Engelbert" and to the request for all "notes, statements or drafts prepared by Engelbert because they contain mental impressions of counsel and are protected as work product." *Id.* Counsel for Weinstein has moved to compel the production of the documents sought in the Section 13–4(b)(3) request, and co-defendant Stamford Hospital has joined that motion. The plaintiff opposes the motions.

Practice Book Section 13-3(a) which is the Connecticut version of the work-product doctrine provides for discovery of materials “prepared in anticipation of litigation or for trial” by another party only on a showing of “substantial need” and an inability to obtain the equivalent without undue hardship. However, even with this showing, the court may not order disclosure of the “mental impressions, conclusions, opinions or legal theories of an attorney” for a party. Practice Book 13-4(b)(3) requires a party disclosing an expert witness, upon request, to produce “all materials obtained, created and/or relied upon by the expert in connection with [the disclosed opinion].”

In support of the motion to compel, the defendant correctly contends that the burden of establishing that protections of work-product doctrine apply is on the party seeking the protection. *Lindholm v. Lindholm*, Superior Court, FA 98 0167299 (October 5, 1999, Hodgson, J.) 1999 WL 97095; *Carrier Corporation v. The Home Insurance Company*, Superior Court, judicial district of Hartford–New Britain at Hartford, Dkt. No. 35 23 83 (June 12, 1992, Shaller, J.) [6 Conn. L. Rptr. 478]. The defendant further asserts that Connecticut courts have found that the work-product doctrine does not protect communications from an attorney providing information to an expert witness citing several cases. In *Murchie v. Hurwitz*, Superior Court, judicial district of Stamford–Norwalk at Stamford, CV88 0095623 (April 8, 1992, Rush, J.) [6 Conn. L. Rptr. 300] 1992 WL 91675 the court stated,

*2 The communication of information to an expert witness who is to be used at trial would appear to be done for the purpose of providing information relevant to the opinions to be expressed by the expert. In appropriate situations, the attorney work product privilege does not prevent discovery of materials provided to such a witness.

The defendant shall not however, be required to discuss information concerning the mental impressions, conclusions, opinion, or legal theories by a party, the attorney for a party or other representative of a party concerning the litigation.” (Citations omitted.)

The plaintiff cites to *Quiros v. Elderhouse, Inc.*, Superior Court, judicial district of Stamford/Norwalk, CV13 6017788 (April 25, 2014, Truglia, J.) 58 Conn. L. Rptr. 90, 2014 WL 2255314, which held that all materials

encompassed in P.B. § 13-4 must be produced except “material inextricably linked with the mental impressions, conclusions, opinions or legal theories of counsel.”

Because there are strong similarities between Connecticut discovery rules and the discovery rules contained in the Federal Rules of Civil Procedure, Connecticut courts often look to federal court interpretations. See e.g. *Nobel v. Norwalk*, Superior Court, judicial district of Stamford–Norwalk at Stamford, CV 09 4016996, (August 3, 2012, Jennings, J.T.R.); *Garcia v. Yale New Haven Hospital*, Superior Court, judicial district of New Haven, CV 95 0373032 (July 2, 1999, Lager, J.) [25 Conn. L. Rptr. 78].

The defendants cite *Barbieri v. Pitney Bowes, Inc.*, Superior Court, judicial district of Stamford–Norwalk, CV 126014221 (Jennings, J.T.R., October 17, 2014). Judge Jennings, relying on *Capalbo v. Balf Company*, Superior Court, judicial district of Hartford–New Britain, CV 90 0377507 (February 3, 1994, Corradino, J.) reasoned:

Allowing discovery of information provided to a testifying expert, even if that information has been obtained by counsel in the course of trial preparation and would otherwise be protected as attorney work product, is grounded in fundamental fairness and represents the majority position of authority on the subject as expressed by the Sixth Circuit Court of Appeals in *Regional Airport Authority v. LFG, LLC*. [460 F.2d 697 (6th Cir.2006)]

In *Barbieri* Judge Jennings noted a split of authority in the Connecticut Superior Court, but declined to follow an earlier case, *Garcia v. Yale New Haven Hospital*, *supra*. Judge Jennings also noted that the *Barbieri* case did not involve disclosure of attorney opinion work product.

In *Regional Airport Authority* the federal Sixth Circuit Court of Appeals considered two lines of federal cases dealing with the issue of whether attorney work product, including attorney’s opinions, shared with experts should be disclosed, and held that Federal Rule of Civil Procedure 26 “creates a bright-line rule mandating disclosure of all documents, including attorney opinion work product, given to testifying experts.” 460 F.3d 697, 717.

*3 It does not appear to be often noted in Connecticut Superior Court cases that the 2010 amendments to Rule 26 of the Federal Rules of Civil Procedure were specifically aimed at overruling the holdings of some federal courts, specifically that of the Sixth Circuit in *Regional Airport Authority*. See *Republic of Ecuador v. Mackey*, 742 F.3d 860, 868–870 (9th Cir.2014).

The 2010 amendments altered Rule 26(a)(2)(B)(ii) to require disclosure of all “facts and data” considered by the expert witness in forming an opinion rather than what was formerly required: “data or other information.” As the Advisory Committee Notes on Rules–2010 Amendment state: “This amendment is intended to alter the outcome in cases that have relied on the [earlier language] in requiring disclosure of all attorney-expert communications and draft reports.”¹ Other changes wrought by the 2010 amendments were the provisions of Rule 26(b)(4)(B) that added work product protection for drafts of expert reports and Rule 26(b)(4)(C) which does the same for communications between the attorney and the expert, except for communications that (1) relate to the expert’s compensation, (2) identify facts or data provided by the attorney and used by the expert in forming an opinion, and (3) identify “assumptions” provided by the attorney to the expert and relied upon by the expert for the opinion. It appears to this court that under federal law and procedure, the protection given to attorney-expert communications has increased with the

advent of the 2010 amendments to F.R. Civ. P. 26.

Based on the cases and consideration noted above, the court finds that Connecticut law protects disclosures of attorney-expert communications except those involving compensation, facts, data and assumptions provided to the expert and used by the expert in forming an opinion. Furthermore, earlier drafts of Dr. Engelbert’s opinion are protected. *Powerweb Energy, Inc. v. Hubbell Lighting, Inc.*, (D.Conn.2014, USMJ Fitzsimmons) 2014 WL 655206.³

Conclusion

The court ORDERS that plaintiff’s counsel submit all documents and things covered by defendant’s P.B. 13–4(b)(3) request but withheld on the basis of the work-product doctrine, for an *in camera* review.

All Citations

Not Reported in A.3d, 2016 WL 570048, 61 Conn. L. Rptr. 657

Footnotes

- 1 In the event the request was not broad enough, the letter from plaintiff’s counsel elaborated to include: “Engelbert’s CV and a list of medical records, deposition testimony and any other materials ... provided to Dr. Engelbert for his review ... [and his] file materials and source materials.” Particularly this request encompasses:
 - All correspondence, emails and bills/invoices, to and from Dr. Engelbert from any person or entity regarding this case;
 - All notes and statements prepared by Dr. Engelbert;
 - All literature, articles, journals, research studies, books, papers or other scientific, technical or popular writings, data, correspondence, treaties, testimony or transcripts relied upon by Dr. Engelbert in conjunction with his review and opinions;
 - All documents provided to Dr. Engelbert by plaintiffs’ counsel;
 - All “other evidence” reviewed by Dr. Engelbert as referenced on page 1 of his report; and, Expert Disclosure dated September 1, 2015, up to and including the day of his deposition.”
- 2 Advisory Committee Notes are “a reliable source of insight into the meaning of a rule ...” *United States v. Vonn*, 535 U.S. 55, 64 n. 6, 122 S.Ct. 1043, 152 L.Ed.2d 90 (2002).
- 3 Earlier draft opinions were not explicitly sought in the defendant’s P.B. 13–4(b)(3) demand but their production was claimed in the motion to compel. Dkt. Entry 152.00, 6.

DOCKET NO.: FST CF 15-5014808-S	)	SUPERIOR COURT
)	
WILLIAM A. LOMAS,	)	JUDICIAL DISTRICT OF
	)	STAMFORD/NORWALK
Plaintiff,)	
	)	AT STAMFORD
versus)	
)	
PARTNER WEALTH MANAGEMENT, LLC)	
KEVIN G. BURNS, JAMES PRATT-HEANEY,	)	AUGUST 11, 2016
AND WILLIAM P. LOFTUS)	
)	
Defendants.)	

[PROPOSED] PROTECTIVE ORDER

Whereas, on August 11, 2016, Defendants in the above captioned action moved for a protective order pursuant to Practice Book §§ 13-4(b)(3) and 13-5; and

Whereas, after due notice and opportunity to be heard, and good cause appearing for the issuance of the requested protective order;

NOW THEREFORE, it is hereby **ORDERED** that:

1. The work-product doctrine codified in Practice Book § 13-3(a) – which provides in pertinent part that “a party may obtain discovery of documents and tangible things otherwise discoverable under Section 13-2 and prepared in anticipation of litigation or for trial by or for another party or by or for that other party’s representative only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means” – does and hereby protects drafts of any report or disclosure required under Practice Book § 13-4, regardless of the form in which the draft is recorded.

2. The work-product doctrine codified in Practice Book § 13-3(a), which is set forth above in paragraph 1 hereof, does and hereby protects communications between the party’s

attorney and any witness required to provide a report or disclosure under Practice Book § 13-4, regardless of the form of the communications, except to the extent that the communications:

- (i) relate to compensation for the expert's study or testimony;
- (ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or
- (iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

3. In the event that a party is able to show that it has substantial need of any materials prepared by the other party in anticipation of litigation or for trial by or for another party or by or for that other party's representative in the preparation of its case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means, pursuant to the last sentence of Practice Book § 13-3(a), in ordering discovery of such materials when the required showing has been made, the Court shall not order disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

Dated at Stamford Connecticut, this ____ day of _____, 2016.

Judge: Donna Nelson Heller