

# **EXHIBIT D**

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**SLK**

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May 23, 2008

**Sent via e-mail**

Eric P. Schroeder, Esq.  
Powell Goldstein LLP  
1201 West Peachtree Street, NW  
14th Floor One Atlantic Center  
Atlanta, GA 30309-3488

**Re: STERN V. O'QUINN**  
**Our File No: 07-9616**

Dear Eric:

Thank you for your letter dated May 21, 2008, regarding the various discovery issues. Rob Klein is currently in Houston, Texas. In order to expedite a response to your letter, per Rob Klein's direction, I am, writing this letter on his behalf.

As to the privilege log issue, Southern District, Local Rule 26.1.G.3(c), makes it very clear that a privilege log need not be produced where the documentation concerns written and oral communications between a party and its counsel after commencement of the action. The Rule also makes clear that a privilege log need not be produced with regard to work product material created after commencement of the action. A substantial amount of the materials that you seek from Wilma Vicedomine and Don Clark constitutes work product material which was created after the commencement of this action. Thus, pursuant to Southern District Local Rule 26.1.G.3(c), a privilege log need not be produced with regard to this material.

Additionally, contrary to your opinion that Defendants have an obligation to list every document created by Ms. Vicedomine and other investigators, Southern District Local Rule 26.1.G3(b)(ii) provides that discovery need not be produced where "divulgence of

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such information would cause disclosure of the allegedly privileged information." Disclosure of information with regard to a substantial amount of the materials that you seek would, indeed, cause the disclosure of privileged information. *Developers Surety and Indemnity Co. v. Harding Village, Ltd.*, 2007 WL 2021939 \*5 S.D. Fla. 2007), a decision that you, yourself, cite in your May 21, 2008 letter is illustrative. The Southern District, in that case, specifically determined that documentation and communications did not have to be produced and that a privilege log merely had to describe the things not produced or disclosed "in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection."

As far as our filing of a Motion For Protective Order with regard to some of the documents requested from Ms. Vicedomine is concerned, we stand by our original assessment that we have thirty (30) days from the date that Ms. Vicedomine was served with the Subpoena (April 30, 2008), and commanded, therein, to produce the subject documentation. Southern District Local Rule 26.1.H(1) provides, as follows:

1. Time for Filing. All motions related to discovery, including but not limited to motions to compel discovery and motions for protective order, shall be filed withing thirty days of the occurrence of grounds for the motion. Failure to file discovery motion within thirty days, absent a showing of reasonable cause for a later filing, may constitute a waiver of the relief sought.

Although it is quite true, as you state in your letter, that Fed. R. Civ. P. 45 allows a subpoenaed party fourteen days to object and that Ms. Vicedomine made timely objections, Mr. O'Quinn and the Firm are, nevertheless, not prohibited from filing a Motion For Protective Order since Mr. O'Quinn and the Firm have the right to assert their rights and their privileges with respect to the subject matter requested in the Subpoena. While Ms. Vicedomine wasn't an employee of the Firm, the fact remains that she was asked to perform certain tasks for the Firm. Some of the requested documentation, therefore, falls within the work-product privilege. We, therefore, plan on filing a Motion For Protective Order with regard to certain documents requested in the Subpoena next week.

We remain committed to working together with you to resolve these issues as well as drafting a proposed confidentiality/non-distribution order with regard to the pending deposition.

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If you have any questions regarding any of the above, please don't hesitate to contact me.

Very truly yours,

/ s / (e-mail transmission)

ROBERTA G. MANDEL

cc: (by e-mail):

Robert M. Klein, Esq.  
Neil McCabe, Esq.  
John O'Quinn, Esq.  
Reagan Pratt, Esq.  
Don Clark  
Houston S. Park, Esq. (in the Firm, WPB office)  
Lucy Marques, Paralegal (in the Firm)

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