

# **EXHIBIT "E"**

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**SLK**

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September 17, 2008

Sent via e-mail

L. Lin Wood, 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 Lin:

As you know, we have filed a motion for extension of time for the service of our response to the punitive damage discovery, primarily because of the fact that the O'Quinn Firm has been largely out of commission for the past week or so, and their accountants' offices are still closed. Having said that, I believe that we can work out a frame work for the production of documentation which you are seeking with regard to the punitive damage claim.

As you know, the case law in the Southern District has indicated that punitive damage discovery should be limited to current net worth information about the defendant at the time of trial. In that regard, I would recommend a review of the decision in *Lane v. Capital Acquisitions*, 242 F.R.D. 667 (S.D. Fla. 2005). There would also be no apparent need to review this documentation more than thirty days prior to trial. In fact, one of our Federal District Court Judges here entered an order to that effect in another matter earlier this year. See *Bankest v. BDO Seidman*, 2008 WL746444.

I would propose to provide you with copies of financial statements from John and the Firm thirty days before trial, along with the current Firm balance sheets. We can discuss whether or not you might want anything else pursuant to this proposed stipulation.

In addition, I am concerned about the production of this information in accordance with the existing confidentiality agreement. Basically, I believe it is too broad. I don't personally see why or how it would be necessary to provide anyone other than Plaintiff's counsel (and perhaps an expert, assuming that you have one on this issue) with copies of what is obviously some rather sensitive personal information, and

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would prefer that it not be disseminated to Mr. Stern or anyone else outside of your Firm.

Please let me know if this proposal is acceptable to you, and we can file something with the court to that effect today.

I also have a question with regard to the comments which were relayed to me yesterday with regard to your opposition to motion for extension of time. My assistant Jessica told me that you advised her that you could not agree to the extension, because you would not then be able to move to compel a response, if we were to lodge any objections to your discovery. Clearly, I am missing something. I have never argued - and have never seen anyone argue - that you cannot move to compel a better response to discovery which was otherwise timely propounded, or to overrule objections, merely because the discovery responses were ultimately provided subsequent to the discovery cut off deadline. Theoretically, that would obviate any ongoing obligation to comply with existing discovery requests, and would essentially require all parties to propound discovery more than thirty days in advance of the discovery cut off. I should also point out that I would never argue that a motion to compel was untimely simply because the motion itself was filed after the discovery cut off, so long as the discovery itself was timely. Were it otherwise, and were I to now lodge objections to the discovery that you propounded last week, you would have no apparent recourse before the court.

If you have any case law to that effect that I need to be aware of, I would certainly appreciate it. It would also help me understand precisely why you objected to our request for an extension of time given the current circumstances in Houston.

Very truly yours,

*Robert M. Klein*

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