UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

CABLEVIEW COMMUNICATIONS OF JACKSONVILLE, INC., a Florida Corporation Plaintiff, v. TIME WARNER CABLE SOUTHEAST LLC a/k/a TIME WARNER CABLE ENTERPRISES LLC f/k/a TIME WARNER ENTERTAINMENT COMPANY, L.P. a/k/a TIME WARNER ENTERTAINMENT- ADVANCE/NEWHOUSE PARTNERSHIP d/b/a TIME WARNER CABLE Defendant.	)	Case No.: 3:13-cv-306-J-34 JRK

DEFENDANT TIME WARNER CABLE SOUTHEAST LLC'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS

I. INTRODUCTION

Plaintiff Cableview Communications of Jacksonville, Inc. ("CVC") seeks a court order requiring Defendant Time Warner Cable Southeast LLC[1] ("TWC-SE") to produce its "tax returns for the years from 2012-present" and "other documents sufficient to demonstrate [TWC's] ability to pay for purposes of [CVC's] punitive damages claim" under CVC's tortious interference claim. CVC fails, however, to present **any** evidence to the Court that shows a "reasonable basis" for its punitive damages claim. *See* Fla. Stat. § 768.72. Instead,

[1] As TWC-SE has repeatedly mentioned in papers served in this action, TWC-SE has been incorrectly sued as "Time Warner Cable Southeast LLC a/k/a Time Warner Cable Enterprises LLC f/k/a Time Warner Entertainment Company, L.P. a/k/a Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Cable."

CVC expressly eschews a presentation regarding the merits of its claim, incorrectly deeming such facts to be "largely irrelevant to the instant motion." (Mot. to Compel, at 1.)

CVC has gone out of its way to avoid a discussion of the merits because, as demonstrated below, discovery in this action has revealed that CVC's claims involve the wrong plaintiff, the wrong defendant and fail on the substance. The undisputed evidence shows that TWC-SE had no involvement whatsoever in the events giving rise to this lawsuit. CVC recently admitted in its deposition taken pursuant to Rule 30(b)(6) that: (a) CVC never asked TWC-SE to consent to assignment of the 2004 Installation Agreement[2]; (b) the sale of CVC's assets closed on time even though there was never any written consent by any Time Warner Cable ("TWC") entity to assignment of the 2004 Installation Agreement; and (c) CVC lacks standing to assert any claims in this action because the individual shareholders of CVC (rather than CVC itself) would have received the $560,000 sought as damages in this action if these funds had not been paid to TWC-SE's affiliate Time Warner Entertainment-Advance/Newhouse Partnership ("TWEAN"). Indeed, CVC's corporate representative admitted that he "[did] not know" why CVC had even sued TWC-SE in this case.

Regardless of which Cableview or Time Warner Cable entities are parties to this case, the undisputed evidence shows that Time Warner Cable acted reasonably and was well within its rights in insisting on a resolution of its claim for indemnity before it agreed to assign any contracts with CVC to a third party. Moreover, CVC ***voluntarily*** paid $560,000 (of the more than $600,000 owed on its indemnity obligation) over two months after the sale

[2] TWC-SE's alleged refusal to consent to the assignment of the 2004 Installation Agreement is the cornerstone of CVC's tortious interference claim. (Am. Compl. at ¶¶ 30-34, 45.)

of CVC's assets closed. The compromise which resulted in this payment also constitutes an accord and satisfaction of the claims now brought herein by CVC. Furthermore, CVC's claims are barred by the litigation privilege, as TWEAN had initiated a lawsuit against CVC for breach of its indemnification obligations, which was pending when demand for payment was made. Therefore, CVC has not and cannot demonstrate a reasonable basis for its punitive damages claim and its request for access to TWC-SE's sensitive financial information must be denied.

CVC's request to take discovery regarding TWC's privileged document retention policies is similarly baseless. As repeatedly communicated to CVC's counsel, there simply are no "missing" emails and any suggestion of "spoliation" is a complete fiction. As a result, TWC's privileged document retention policies are completely irrelevant to the claims and defenses presented in this action. Therefore, this Court should deny CVC's motion to compel in its entirety.

II. FACTUAL BACKGROUND

A. Key facts relevant to the merits of CVC's claims

CVC alleges that in 2004 it entered into an agreement to provide TWC-SE with cable installation and maintenance services (the "Installation Agreement"). (Am. Compl. (D.E. 47), ¶ 5; Ex. A.) The agreement, which is between CVC and TWEAN[3], required CVC to "**the fullest extent permitted by law . . . [to] indemnify, defend, protect, save and hold harmless [TWEAN], its agents, employees, affiliates and subsidiaries from and against all claims, damages actions, losses, and expenses arising out of or resulting from the**

[3] Although TWEAN is mentioned in the style of the case filed by CVC in a long (and incorrect) list of "aka's" and "fka's" for Defendant TWC-SE, TWEAN has never been a party to this action.

performance of the work" by CVC under the agreement. (Am. Compl., Ex. A., ¶ 12 (emphasis added).) Despite the clear language of the agreement, CVC refused to honor its indemnification obligations after one of CVC's employees was injured performing work under the agreement and filed suit against Duke Energy Carolinas, LLC ("Duke Power") (the "McLarty Action") who, in turn, made a claim for indemnity against TWEAN. (Declaration of Mark L. Block filed concurrently herewith ("Block Decl."), ¶ 2, Ex. A (Deposition of James Schieszer as CVC's Rule 30(b)(6) deponent), at 123:13-124:25.)

After expending over $600,000 defending and settling the McLarty Action, TWEAN learned that CVC intended to sell its assets and operations to a third party, FTS USA, LLC ("FTS"). (Block Decl., ¶ 3, Ex. B (Deposition of Dianne Blackwood), at 58:3-23, ¶ 4, Ex. C (Deposition of Brian Williams), at 217:8-218:12, 230:1-231:9.) By transferring its assets to FTS, but retaining liability for TWEAN's claim for indemnity – thus effectively leaving CVC as only a shell entity – CVC sought to leave TWEAN "holding the bag" for the McLarty Action. (Block Decl., Ex. A, at 30:5-8, Ex. B, at 63:16-19, 95:12-96:24.) CVC, however, could not assign its rights under the Installation Agreement to FTS without the express written consent of TWEAN, which was required by the plain terms of the Installation Agreement. (Am. Compl., Ex. A., ¶ 21.)

CVC had been in negotiations with FTS for several months regarding this transaction before it finally notified TWEAN of the sale. (Block Decl., ¶ 5, Ex. D (Deposition of James Schieszer taken on October 16, 2014), at 70:17-20, 132:5-133:20.) In fact, TWEAN first learned of the intended sale of CVC's assets and operations less than three weeks before the closing date. (Block Decl., Ex. B, at 58:3-23.) Upon learning of the sale, TWEAN promptly

commenced an action against CVC in the North Carolina General Court of Justice, Mecklenburg County to protect its indemnity rights (the "North Carolina Action"). (Block Decl., ¶ 6, Ex. E (Deposition of Walter Lewis Glenn), at 114:20-117:6, 141:15-143:4.) Thereafter, CVC began negotiating a settlement of TWEAN's indemnity claim. Ultimately, CVC agreed to pay TWEAN $560,000 from the proceeds of the asset sale to FTS. (Am. Compl., ¶ 39.) Approximately ten months later, CVC filed the instant action against TWC-SE in an effort to claw back the funds it voluntarily paid to TWEAN.

During the relevant time period, Anthony Sieiro was the Director of Technical Operations for TWEAN. CVC alleges that Mr. Sieiro verbally consented "to the Cableview-FTS transaction." (Am. Compl., ¶ 20.) Mr. Sieiro was deposed by CVC, but not asked whether he had verbally consented to the Cableview-FTS transaction (he had not). During the deposition, Mr. Sieiro denied that he had consented to the assignment of any contract with Cableview to FTS. (Block Decl., ¶ 7, Ex. F (Deposition of Anthony Sieiro), at 79:9-80:17.) Moreover, CVC recently admitted that it **never** asked Mr. Sieiro to consent to an assignment of the Installation Agreement between CVC and TWC-SE. (*Id.*, ¶ 2, Ex. A, at 018:10 - 019:12.) CVC has further admitted that it **never** obtained a written assignment of the Installation Agreement, but that it was still able to close on the sale of its assets. (*Id.*, ¶ 2, Ex. A, at 016:10 - 016:12; 092:04 - 092:08.) Therefore, the central allegations to CVC's claim for tortious interference and request for punitive damages have been conclusively disproven and CVC simply cannot support its request for discovery relating to its discredited claims.

B. CVC's baseless "spoliation" allegations

In its motion, CVC suggests – without any substantiation – that there may have been "spoliation" of evidence in this matter. (CVC's Mot. to Compel, at 4.) In support of its suggestion of malfeasance, CVC cites to testimony from Mr. Sieiro in which he indicated that he had not searched his emails for responsive documents. (*Id.* at 2.) Mr. Sieiro has explained, however, that he did not search for emails related to this lawsuit because he knew at that time that he no longer had any such emails. (Block Decl., ¶ 7, Ex. F, at 78:18-21, and errata sheet.) Moreover, TWC-SE's counsel informed CVC's counsel that any emails Mr. Sieiro may have had were deleted pursuant to document retention policies and any of his electronic calendar entries were also deleted long before this lawsuit was commenced. Webb Decl., Ex. C.

Subsequently, however, defense counsel learned that a **complete set** of Mr. Sieiro's emails from the relevant time period (and those of some other witnesses) were in a previously unknown set of archived emails. Webb Decl., Ex. F. These emails had been retained as a result of other unrelated litigation matters. (Block Decl., ¶ 9.) Thus, there are no "missing" emails and no "spoliation" of evidence. As such, CVC's document retention policies have nothing to do with the recovery and production of these emails. Therefore, CVC's motion to compel should be denied in its entirety.

III. THERE IS NO BASIS TO REQUIRE TWC-SE TO PRODUCE TAX RETURNS AND FINANCIAL INFORMATION FOR PURPOSES OF CVC'S PUNITIVE DAMAGES CLAIM

A. CVC has failed to make an evidentiary showing of a reasonable basis for its punitive damages claim as required to take discovery regarding TWC-SE's sensitive financial information

In this diversity action, CVC seeks punitive damages against TWC-SE based on its Florida state law claim for tortious interference. Pursuant to Fla. Stat. § 768.72, CVC must present evidence demonstrating a "reasonable basis" for its punitive damages claim before it is allowed any discovery regarding TWC-SE's sensitive and private financial information. *Haaf v. Flagler Constr. Equip., LLC*, No. 10-62321-CIV, 2011 WL 1871159, at *1 (S.D. Fla. May 16, 2011) (*citing Porter v. Ogden, Newell & Welch*, 241 F.3d 1334, 1340-41 (11th Cir. 2001)); *see also Soliday v. 7–Eleven, Inc.*, No. 2:09–cv–807–FtM–29SPC, 2010 WL 4537903, at *1–*2 (M.D.Fla. Nov.3, 2010) (relying on *Porter* in enforcing § 768.72's discovery component in federal court); *3 Royal Marco Point I Condo. Ass'n v. QBE Ins. Corp.*, No. 3:07 CV 16, 2010 WL 2609367, at *1–*2 (M.D.Fla. June 30, 2010) (same). As stated by the court in *Haaf*, "*Porter* and its progeny strongly suggest[ed] to [the court] that § 768.72's discovery component applies in federal court cases involving Florida state claims." *Id.*[4]

Financial worth discovery, which CVC seeks here, has been recognized by the courts "as an invasion of privacy that unduly pressures or coerces a defendant into settling

[4] *Haaf's* holding that § 768.72's discovery component applies in federal court is supported by Florida law. Indeed, "the Florida Supreme Court [has] concluded that section 768.72 creates 'a substantive legal right not to be subject to a punitive damages claim and ensuing financial worth discovery until **the trial court makes a determination that there is a reasonable basis for recovery of punitive damages**.'" *Royal Caribbean Cruises, Ltd. v. Doe*, 44 So. 3d 230, 232 (Fla. 3d DCA 2010) (quoting *Globe Newspaper Co. v. King*, 658 So.2d 518, 519 (Fla. 1995)) (emphasis in original).

unwarranted claims." *In re Johnson*, 453 B.R. 433, 438 (Bankr. M.D. Fla. 2011). Moreover, "tax returns are subject to at least some level of heightened protection from disclosure." *Pendlebury v. Starbucks Coffee Co.*, No. 04-80521-CIV, 2005 WL 2105024, *1 (S.D. Fla. Aug. 29, 2005). This is due to a "public policy against unnecessary public disclosure [of tax returns, which] arises from the need, if the tax laws are to function properly, to encourage taxpayers to file complete and accurate returns." *Premium Service Corp. v. Sperry & Hutchinson Co.*, 511 F.2d 225, 229 (9th Cir. 1975). "'Income tax returns are highly sensitive documents' that courts should be reluctant to order disclosed during discovery." *Pendlebury*, 2005 WL 2105024, at *2. This is especially true where, as here, the party seeking such discovery has made absolutely no evidentiary showing in support of its claim for punitive damages.

Indeed, CVC has failed to submit **any** evidence to the Court in support of its claim for punitive damages, let alone evidence demonstrating a "reasonable basis" therefore. In fact, CVC only submitted the following information with its motion: (a) copies of CVC's written discovery requests and TWC-SE's responses thereto; (b) correspondence between counsel regarding the instant discovery dispute; and (c) excerpts from Anthony Sieiro's deposition relating to the alleged "spoliation" issue. As a result, CVC has failed to meet the evidentiary threshold necessary to warrant an intrusion into TWC-SE's sensitive financial information and its unsubstantiated motion to compel should be denied on this basis alone. *See Haaf*, 2011 WL 1871159, at *1. Nonetheless, as demonstrated below, even a cursory review of the evidence relating to the merits of CVC's claims shows that there is no basis for punitive damages.

B. There is no evidence that TWC-SE was involved in the "tortious interference" alleged by CVC

CVC alleges that it was forced to pay TWC-SE $560,000 from the proceeds of the sale of CVC's assets to obtain consent to the assignment of the Installation Agreement to the purchaser of CVC's assets, FTS. (D.E. 47, ¶ 39.) CVC recently admitted in its deposition taken pursuant to Fed. R. Civ. P. 30(b)(6), however, that it **never** asked TWC-SE to consent to assignment of the Installation Agreement. (Block Decl., ¶ 2, Ex. A, at 18:02-09.) CVC also admitted that it **never** obtained written consent to the assignment of the Installation Agreement from TWC-SE. (*Id*. at 16:10-12.) CVC also admitted that it was able to close on the sale of its assets notwithstanding the lack of any assignment of the Installation Agreement from TWC-SE. (*Id*. at 16:01-12; 092:04 - 092:08.)

Unsurprisingly, CVC has no idea why it even sued TWC-SE in this action:

> Q Now, we've looked at the 2011 field services agreement, we've looked at the 2004 installation agreement, and we've looked at the written consent to assignment of the 2011 field services agreement, and Time Warner Cable Southeast, LLC is not anywhere in that picture, is it?
> A I do not know.
> Q Can you tell?
> A They have so many names. I just don't know.
> Q Can you tell me why you sued Time Warner Cable Southeast, LLC in this action?
> A I'm sorry?
> Q Can you tell me why you sued Time Warner Cable Southeast, LLC in this action instead of Time Warner Entertainment Advanced Newhouse Partnership?
> A That would be a question for an attorney. I don't know.

(Block Decl., ¶ 2, Ex. A at 21:1-17.) Thus, CVC has no evidence that TWC-SE had any involvement in any of the conduct complained of by CVC, and there is no basis for requiring

TWC-SE to divulge any of its confidential financial information for purposes of CVC's punitive damage claims (or otherwise).

C. CVC lacks standing to pursue its tortious interference claim

Even if CVC had evidence linking TWC-SE to any of the conduct complained of in this case, CVC lacks standing to assert its tortious interference claim. In this regard, CVC admits that: (1) all of the purchase price from the sale of its assets "went to the [individual] owners" of the various Cableview entities and **not** to any of the Cableview entities themselves (including CVC);[5] and (2) if the $560,000 had not been paid to TWEAN, it would have been paid to the individual owners of the various Cableview entities (**not** to CVC).[6] Therefore, CVC cannot show that it has suffered **any** damages as a result of any conduct by TWC-SE and lacks standing to assert claims for damages allegedly incurred by the owners of the various Cableview entities. *See Elandia Intern., Inc. v. Koy*, Civ. Action No. 09-20588, 2010 WL 2179770, *6-7 (S.D.Fla. Feb. 22, 2010) (holding that plaintiff lacked standing to pursue tortious interference claim belonging to corporate affiliate and noting "it is axiomatic that a plaintiff 'generally must assert his own legal rights and cannot rest his claim to relief on a legal rights [sic] or interests of third parties.'") (*quoting Warth v. Seldin*, 422 U.S. 490, 499 (1975)); *accord Titan5 Holding Ltd. v. Majuda Corp.*, Civ. Action No. 13-80130, 2013 WL 1664516, *2 (S.D.Fla. Apr. 17, 2013). Absent proper standing, CVC can neither support a claim for punitive damages nor obtain access to TWC-SE's

[5] Block Decl., ¶ 2, Ex. A at 25:19-25, 26:02-16.

[6] *Id*. at 26:17-27:08.

sensitive financial information. Therefore, CVC's motion to compel the production of such information must be denied.

D. CVC otherwise cannot show that it was damaged by any purported tortious interference by <u>any</u> Time Warner Cable entity

Regardless of which Cableview or Time Warner Cable entities are parties to this action, the undisputed facts show that CVC cannot prevail on its claim for tortious interference, much less prove by clear and convincing evidence that some Time Warner Cable entity was guilty of intentional misconduct.[7] For example:

- CVC's claim for tortious interference is premised on the allegation that Defendant refused to consent to the assignment of the 2004 Installation Agreement absent assurances of payment for the indemnity owed on the McLarty Action. (D.E. 47, ¶¶ 30-33.) However, CVC admits that it never asked **<u>any</u>** Time Warner Cable entity (including TWEAN) for written consent to assignment of the 2004 Installation Agreement. (Block Decl., ¶ 2, Ex. A at 18:02-19:12.);
- CVC also admits that its transaction with FTS closed on March 2, 2012, notwithstanding there was never any written consent to assignment of the 2004 Installation Agreement. (Block Decl., ¶ 2, Ex. A at 16:01-12.);

[7] Section 768.72 provides that a defendant may be held liable for punitive damages if the plaintiff proves, by "clear and convincing evidence, ... that the defendant was personally guilty of intentional misconduct or gross negligence." § 768.72(2), Fla. Stat. "[I]ntentional misconduct" requires the plaintiff to prove "that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that conduct, resulting in injury or damage." § 768.72(2)(a), Fla. Stat.

- CVC voluntarily agreed to joint wire instructions in May 2012, more than two months after the transaction with FTS closed, which increased the amount paid to TWEAN to $560,000 (from the $515,000 set forth in the Asset Purchase Agreement ("APA") between FTS and the various Cableview entities). Pursuant to this joint wiring instruction, TWEAN received $560,000, and CVC's shareholders received $1,340,000. CVC admits that it agreed to the joint wiring instructions because CVC's shareholders wanted to "get [their] money from FTS."[8] CVC's voluntary payment precludes its claim in this action for return of the $560,000. *Sundance Apartments I, Inc. v. Gen. Elec. Capital Corp.*, 581 F. Supp. 2d 1215, 1223 (S.D. Fla. 2008); *Collins v. Covert*, 98 S.E.2d 26, 29 (N.C. 1957);
- CVC's voluntary payment of the $560,000 was a compromise of the more than $600,000 which TWEAN claimed it was owed for CVC's obligation to indemnify it for the costs and settlement of the McLarty Action, and thus is also an accord and satisfaction of the claims brought by CVC.[9] *N.C. Monroe Const. Co v. Coan*, 228 S.E.2d 497, 501-02 (N.C.App. 1976); *Hassen v. Mediaone of Greater Florida, Inc.*, 751 So.2d 1289, 1290 (Fla. 2000); and

[8] Block Decl., ¶ 2, Ex. A at 97:15-98:12, ¶ 8, Ex. G (joint wiring instructions, marked as Exhibit 113a at the Rule 30(b)(6) deposition).

[9] Block Decl., ¶ 11, Ex. H (Deposition of Jack Webb) at 129:22-131:1, 136:19-137:20, 139:1-7, ¶ 12, Ex. I (email marked as Deposition Exhibit 57).

- CVC's claims are barred by the litigation privilege. TWEAN sued CVC in the North Carolina Action on February 17, 2012, for recovery of the defense and settlement costs incurred after CVC refused TWEAN's tender of defense of the McLarty Action.[10] All of the events complained of, including TWEAN's demand on CVC for assurance of payment of the defense and settlement costs incurred in the McLarty Action from the proceeds of the FTS transaction, occurred after TWEAN initiated the North Carolina Action.[11] Consequently, CVC's claims are barred by the litigation privilege. *Boca Investors Group, Inc. v. Potash*, 853 So.2d 273, 274-75 (Fla. 3rd DCA 2002); *Harris v. NCNB Nat. Bank of N. Carolina*, 355 S.E.2d 838, 842-43 (N.C. App. 1987).

Given CVC's above-described factual admissions, it does not even have a viable claim for tortious interference (or any other wrong) against any Time Warner Cable entity, much less a basis for an award of punitive damages. TWC-SE will file a motion for summary judgment on these and other grounds prior to the dispositive motion deadline. The Court should therefore deny CVC's Motion to Compel production of Defendant's financial records.

[10] This is admitted and alleged by CVC. (*See*, D.E.47, ¶ 25, and Ex. C thereto.)

[11] Block Decl., ¶ 2, Ex. A at 41:4-17, 43:15-47:10, 47:18-49:22.

E. The financial documents sought by CVC do not exist in the form requested

CVC seeks the production of: (i) "tax returns for the years from 2012-present"; and (ii) "other [unspecified] documents sufficient to demonstrate [TWC's] ability to pay for purposes of [CVC's] punitive damages claim." (CVC's Mot. to Compel, at 4.) TWC-SE, however, does **not** file separate income tax returns. Instead, its ultimate parent corporation, Time Warner Cable Inc., files consolidated income tax returns. Also, there are no pre-existing separate summary financial reports for TWC-SE. Instead, such reports would have to be created from a time-consuming review and pull from the general ledger for Time Warner Cable Inc. (Block Decl., ¶ 10.) Therefore, TWC-SE should not be required to create documents for the purpose of satisfying CVC's requests, especially considering the complete lack of any evidence establishing a reasonable basis for CVC's claim for punitive damages.

IV. THERE IS NO BASIS FOR PRODUCTION OF DEFENDANT'S DOCUMENT DESTRUCTION POLICIES

A. Defendant's document destruction policies are irrelevant because there was no spoliation of evidence

There is no "spoliation" issue and Defendant's document retention policies are not relevant to any issue in this case. CVC complains that Anthony Sieiro did not search for emails because he no longer had access to them. However, Defendant subsequently located **all** of Mr. Sieiro's emails from the relevant time period. Indeed, Defendant located emails from Mr. Sieiro and others which had been separately archived in connection with other (unrelated) matters. (Block Decl., ¶ 9.) So there simply are no "missing" emails. Moreover, Defendant has produced **all** of the responsive, relevant and non-privileged emails that were sent to or received by Mr. Sieiro (including by using search terms requested by CVC). (*Id*.)

Consequently Defendant's document retention policies are not relevant to any issue in this case and CVC's motion to compel the production of such information must be denied.

B. Defendant's document destruction policies are privileged.

Further, Defendant's document retention policies are protected from disclosure by the attorney-client privilege and/or the attorney work product doctrine as they contain legal advice concerning document retention duties. Privileged materials are not subject to production, even if relevant. Fed. R. Evid. 501; *Florida Marlins Baseball Club, LLC v. Certain Underwriter's at Lloyd's, etc.*, 900 So.2d 720, 721 (3rd DCA Fla. 2005). CVC's motion utterly fails to address this assertion of privilege. Thus, the privileged nature of these documents presents an independent basis for denying CVC's motion to compel the production of TWC-SE's document retention policies.

V. CONCLUSION

For the reasons set forth herein, TWC-SE respectfully requests that the Court deny CVC's motion to compel in its entirety.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 27, 2015, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record by transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ *Mark L. Block*
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