IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

BANK OF MONGOLIA,	)	
	)	
Plaintiff,	)	
	)	**CASE NO.08-CV-60623**
v.	)	**Dimitrouleas-Rosenbaum**
	)	
M&P GLOBAL FINANCIAL SERVICES, INC., M&P GLOBAL FINANCIAL SERVICES EUROPE, AG, BURTON D. GREENBERG, JOEL E. GREENBERG, STONELEIGH INTERNATIONAL LIMITED, JAMES R. HALPERIN AND GEORGE E. CHALMERS,	)	
	)	
Defendants.	)	
	)	

PLAINTIFF'S RESPONSE TO MOTION TO COMPEL

Pursuant to instructions included in this Court's March 16, 2009 Order to Show Cause, Plaintiff, Bank of Mongolia ("BOM" or "Plaintiff"), by and through its undersigned counsel, files this Response to Motion to Compel (the "Reply") in support of Bank of Mongolia's Memorandum of Law in Support of its Ex Parte Motion to Compel Response to Plaintiff's Request for Documents From Defendants M&P Global Financial Services, Inc., M&P Global Financial Services Europe, AG, Burton D. Greenberg and Joel E. Greenberg, filed on March 16, 2009 (the "Motion to Compel"). The Motion to Compel sought an Order pursuant to Federal Rules of Civil Procedure ("FRCP") 34 and 37, and Rule 26.1 of the Local Civil Rules of the United States District Court for the Southern District of Florida, compelling Defendants, M&P Global Financial Services, Inc. ("M&P"), M&P Global Financial Services Europe, AG ("M&P Europe"), Burton D. Greenberg, and Joel E. Greenberg (Messrs. Greenberg, together with M&P and M&P Europe, the "M&P Defendants") to respond to outstanding discovery requests (each a

"Request," and collectively the "Requests").

Plaintiff's Requests, which were served on the M&P Defendants on January 7, 2009 and later attached to the Motion to Compel, seek highly relevant documents and materials within the scope of FRCP 26(b)(1). These documents and materials relate to Plaintiff's claims against the M&P Defendants for, *inter alia*, acts of racketeering to defraud Plaintiff of US$23 million in violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"). Specifically, M&P Defendants were members of a RICO enterprise that fraudulently induced Plaintiff to issue financial instruments for the benefit of M&P Defendants, which M&P Defendants claimed were necessary to secure funding for an "Affordable Housing Initiative" in Ulaanbaatar, Mongolia. M&P Defendants and other members of the RICO enterprise then diverted the financial instruments, specifically documentary letters of credit, for their own benefit in unrelated commodities transactions.

ADDITIONAL BACKGROUND

On January 7, 2009, Plaintiff served the Requests on the M&P Defendants, which set the M&P Defendants' response deadline for February 11, 2009.[1] This deadline passed without a response from M&P Defendants.

On February 12, 2009, Plaintiff's counsel sent an email to M&P Defendants' counsel requesting information regarding when Plaintiff could expect a response.[2] Upon receiving no response, Plaintiff's counsel left M&P Defendants' counsel a voicemail on February 17, 2009, requesting the same information.[3] M&P Defendants' counsel again failed to respond.[4] On

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1 *See* Motion to Compel, Docket Entry Nos. 51 and 52, dated March 16, 2009, at 1.

2 *See* Motion to Compel, Docket Entry Nos. 51 and 52, dated March 16, 2009, at 3 (certifying compliance with Local Rule 7.1.A.3).

3 *See id.*

4 *See id.*

March 16, 2009, over one month past the deadline for M&P Defendants' response to the Requests, Plaintiff filed the Motion to Compel.

On March 16, this Court issued an Order to Show Cause, which instructed M&P Defendants to "show cause in writing by no later than Monday, March 23, 2009, at 5:00 p.m., why Plaintiff's Motion to Compel [D.E. 51, 52] should not be granted for the reasons set forth therein, including Plaintiff's request for attorney's fees and costs."[5] The Order to Show Cause also provided Plaintiff with the opportunity to file the present Reply by March 30, 2009.[6]

Only after receiving the Order to Show Cause did M&P Defendants respond to the Plaintiff's Requests on March 20, 2009 (the "Discovery Response") – 72 days after their receipt of such Requests.[7] In that Discovery Response, M&P Defendants produced not a single document. The following business day, on March 23, 2009, M&P Defendants responded to the Court's Order to Show Cause (the "OSC Response") by providing the false excuse that "Defendant's [*sic*] incorrectly assumed that their Initial Disclosure, which was filed on January 22, 2009, was a response to Plaintiff's Request to Produce," and that the Motion to Compel "should be denied based upon Defendant's response to it's [*sic*] Initial Disclosures and the fact that Defendant's [*sic*] responded to the Request to Produce on or about March 20, 2009."[8] M&P Defendants provided no further explanation or justification.

As discussed further herein, M&P Defendants' purported excuse for their failure to respond to the Requests is demonstrably false and contradicted their March 20 Discovery Response. Further, Plaintiff's review of M&P Defendants' January 22, 2009 initial disclosures

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5 *See* Order to Show Cause, Docket Entry No. 57, dated March 16, 2009, at ¶ 1.

6 *See id.*, at ¶ 2.

7 *See* M&P Global Financial Services, Inc., M&P Global Financial Services Europe, AG, Burton D. Greenberg and Joel E. Greenberg's Response to Request for Production, Docket Entry No. 58, dated March 20, 2009.

8 *See* Defendant's Response to Order to Show Cause, Docket Entry No. 59, dated March 23, 2009, at ¶¶ 3-4.

(the "Rule 26(a) Disclosures") and their Discovery Response indicates that M&P Defendants have failed to comply with their discovery obligations and are withholding further responsive documents and materials. Accordingly, Plaintiff accepts this Court's invitation to supplement its Motion to Compel and files the present Reply.

DISCUSSION

A. BOM is Entitled to Attorney's Fees and Costs Based On M&P Defendants' Failure to Provide a Valid Explanation for Ignoring BOM's Requests

Pursuant to FRCP 37(d)(1)(A)(ii) and 37(d)(3), the Court may order sanctions if a party fails to serve its answers, objections, or a written response to a request for inspection under Rule 34, and the Court "***must require*** the party failing to act, the attorney advising that party, or both to pay reasonable expenses, including attorney's fees caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust." (emphasis added) This rule creates a rebuttable presumption in favor of sanctions. *See, e.g., Devaney v. Continental Am. Ins. Co.,* 989 F.2d 1154, 1161-62 (11th Cir. 1993); 7 MOORE'S FEDERAL PRACTICE § 37.23[1], at 37-41 (3d ed. 2007).

As mentioned above, M&P Defendants' OSC Response makes the incredible assertion that the Court should excuse their failure to participate in discovery because M&P Defendants purportedly thought that their Rule 26(a) Initial Disclosures satisfied their discovery obligations. This explanation is false and in any event would not serve as an adequate justification to avoid sanctions for several reasons.

First, M&P Defendants' purported "assumption" cannot be reconciled with the FRCP's clear temporal requirements for discovery responses. Specifically, FRCP 35(b)(2)(B) instructs the party receiving document requests to respond to each item in the document request and, in doing so, "must either state that inspection and related activities will be permitted as requested or

state an objection to the request, including the reason."[9] M&P Defendants provided no such response with their Rule 26(a) Disclosures.

Second, several of the specific statements in the Discovery Response contradict M&P Defendants' assertions that they "assumed" their discovery obligations were satisfied by the Rule 26(a) Disclosures. Plaintiff's Request Nos. 6 and 7, and the M&P Defendants' corresponding response, provide a useful illustration. Plaintiff's requests are as follows:

> 6. Documents identifying all accounts to which money was deposited, either directly or in subsequent transactions, in connection with the Financial Instruments issued by BOM, including but not limited to the name of the financial institution, account numbers, and the name of the account holder.
>
> 7. All documents, information, or things reflecting money paid to any person, including but not limited to all of the above-captioned Defendants, in connection with the Financial Instruments Issued by BOM.

M&P Defendants' Discovery Response responds as follows: "The documents requested in paragraph(s) 6 and 7 will be provided in the near future, obtaining them from foreign country."[10]

As M&P Defendants' Discovery Response indicates, such documents are in existence, but are allegedly located in an undisclosed foreign country. This begs the question of how M&P Defendants could have believed that their Rule 26(a) Disclosures were a proper and complete response to the Discovery Requests, if the documents responsive to Request Nos. 6 and 7 were not a part of that Rule 26(a) Disclosures.[11] Rather, based on M&P Defendants' response, it is apparent that until Plaintiff filed its Motion to Compel and this Court issued its Order to Show

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[9] In contrast, the initial disclosures merely requires a party to produce those documents "that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses . . . ." FRCP 26(a)(1)(A)(ii).

[10] Discovery Response, Docket No. 58, at ¶ 3.

[11] The same reasoning applies to M&P Defendants' response to Request No. 16, to which, as discussed *infra*, they objected to as "too vague and burdensome." *See* Discovery Response, Docket No. 58, at ¶ 4. If M&P Defendants' truly believe that their Rule 26(a) Disclosures were adequate, why did they not communicate this objection to Plaintiff at the time of such Disclosures?

Cause, M&P Defendants' had no intention of responding to the Requests.[12]

Lastly, M&P Defendants' purported excuse is simply untenable given the fact that they ignored an email and a voicemail from Plaintiff's counsel in February 2009, both of which inquired into when Plaintiff could expect M&P Defendants' response.[13] Had M&P Defendants truly believed that their Rule 26(a) Disclosures satisfied their discovery obligations, such a belief should have been communicated to Plaintiffs' counsel so as to potentially avoid the Motion to Compel.

M&P Defendants' wholesale, unexcused failure to comply with its discovery obligations pursuant to FRCP 35(b)(2)(B) resulted in Plaintiff needlessly expending time and resources in (i) attempting to contact M&P Defendants' counsel regarding the Requests, (ii) filing the Motion to Compel, and (iii) filing the present Reply. Plaintiffs, therefore, are entitled to all related attorney's fees and costs pursuant to FRCP 37(d)(3).

B. BOM is Entitled to Additional Sanctions Based Upon the Incomplete Nature of M&P Defendants' Production

Plaintiff is entitled to further sanctions pursuant to FRCP 37(d)(1)(A)(ii), 37(d)(3), and this Court's inherent power based on the fact that, despite the M&P Defendants' representations otherwise in the OSC Response and the Discovery Response, the M&P Defendants' Rule 26(a) Disclosures (i) represent only a partial disclosure of responsive documents in M&P Defendants possession, custody, and control, and (ii) otherwise do not address many of Plaintiff's Requests. Whether the incomplete nature of M&P Defendants' production is based on a failure to conduct a good faith search for responsive documents or spoliation, such discovery conduct is patently

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[12] Such a conclusion is further supported by the fact that M&P Defendants do not attempt to explain why they are still "obtaining [documents response to Request Nos. 6 and 7] from foreign country" over 72 days after originally being served with the Requests.

[13] *See* Motion to Compel, Docket Entry Nos. 51 and 52, dated March 16, 2009, at 3 (certifying compliance with Local Rule 7.1.A.3).

improper and this Court should sanction M&P Defendants' accordingly, including the issuance of an order requiring M&P Defendants to submit their computers, servers, back-up tapes, and any other data storage devices to a forensic expert for "mirror imaging."

1. M&P Defendants Have, For Approximately Two Years, Been Obligated to Retain Documents that are Relevant to the Current Litigation

"The obligation to preserve evidence arises when the party has notice that the evidence is relevant to litigation or when a party should have known that the evidence may be relevant to future litigation." *See Fujitsu Ltd. v. Federal Express Corp.,* 247 F.3d 423, 436 (2d Cir. 2001). In determining the "trigger date" upon which a party "should have known" that evidence may be relevant to a future litigation, courts have held that the duty to preserve attaches "at the time that litigation was reasonably anticipated." *See Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 216 (S.D.N.Y. 2003). Although a potential litigant need not retain every document in its possession, custody, and control, it must preserve what it reasonably should know is relevant to the potential action, is reasonably calculated to lead to the discovery of admissible evidence, or is reasonably likely to be requested during discovery. *See id.*, at 217 (citing *Turner v. Hudson Transit Lines*, 142 F.R.D. 68, at 72 (S.D.N.Y. 1991)); *see also Telectron, Inc. v. Overhead Door Corp.,* 116 F.R.D. 107, 126 (S.D. Fla. 1987) (citing *Wm. T. Thompson v. General Nutrition,* 593 F .Supp. 1443, 1455 (C.D. Cal.1984)).

In the present dispute, the M&P Defendants should have reasonably anticipated litigation as early as June 13, 2007, the date on which Plaintiff made its first of several demands for repayment on the documentary letters of credit related to the Affordable Housing Initiative and issued to M&P Defendants' benefit.[14] Additionally, on June 29, 2007 and July 9, 2007, Plaintiff

[14] *See* Letter from M. Amgalan, Director of Accounting and IT Department, BOM, to M&P Europe, dated June 13, 2007, Exhibit 1; *see also* Letter from B. Enhhuyag, First Deputy Governor, BOM, to M&P Europe, dated

sent a similar demand letter to Stoneleigh International Ltd. ("Stoneleigh") requesting reimbursement for the documentary letters of credit and stating that Plaintiff considered M&P Defendants' and Stoneleigh's actions with respect to the documentary letters of credit to be an "affair of financial fraud."[15] Stoneleigh's July 13, 2007 response to Plaintiff's letters, which copied M&P and M&P Europe, provided further reason for the parties to anticipate litigation, as Stoneleigh "reserve[d] all legal right to institute legal proceedings" against for libel, slander, defamation, and breach of contract.[16] One of the M&P Defendants, M&P Europe, even responded directly to Plaintiff on August 30, 2007 and stated that Plaintiff was "fail[ing] to honor it's [*sic*] contractual obligations with Stoneleigh in which M&P was a third party beneficiary."[17]

2. Instances of M&P Defendants' Discovery Response Omitting Responsive Communications That Should Have Been Retained

Despite being on notice of Plaintiff's claims against them since June 2007, a comparison of M&P Defendants' Rule 26(a) Disclosures to documents obtained from third-parties reveals that M&P Defendants either withheld responsive documents or engaged in spoliation. The following is a sampling of some of the evidence of documents withheld or destroyed by M&P Defendants:

Example 1:

> **Request No. 8:** "All documents, information or things reflecting communications or other materials sent to Defendants, George Chalmers and/or Stoneleigh

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June 25, 2007, Exhibit 2; Letter from B. Enhhuyag, First Deputy Governor, BOM, to M&P Europe, dated June 29, 2007, Exhibit 3.

[15] *See* Letter from B. Enhhuyag, First Deputy Governor, BOM, to George E. Chalmers, Stoneleigh, dated June 29, 2007, Exhibit 3.

[16] *See* Letter from George E. Chalmers, Stoneleigh, to A. Batsukh, Governor, BOM, dated July 13, 2007, Exhibit 4.

[17] Letter from Burton D. Greenberg, M&P Europe, to A. Batsukh, Governor, BOM, dated August 30, 2007, Exhibit 5.

International Limited, by M&P Defendants."[18]

M&P Defendants' Discovery Response: Documents responsive to Request No. 8 "were previously provided with Initial Disclosure [*sic*]."[19]

Evidence Not Produced in the Rule 26(a) Disclosures:

- Email from Burton Greenberg to George Chalmers of Stoneleigh, dated December 13, 2007 discussing Chalmers detention in Mongolia and Greenberg's communications with Deutsche Forfait and Rosbank regarding the documentary letters of credit.[20]

- Email from Burton Greenberg to George Chalmers of Stoneleigh, dated July 20, 2007, discussing describing the documentary letters of credit and Plaintiff's purported "breach" or "non-performance" on a contract.[21]

Example 2:

Request No. 12: "All documents, information or things reflecting the transport and sale of crude sunflower oil and molasses (the "Commodities") or anything else in connection with the Financial Instruments[22] issued by BOM to M&P Defendants, including but not limited to Documents sufficient to understand the location of these Commodities and/or Documents reflecting the terms of the transactions involving the Commodities."[23]

M&P Defendants' Discovery Response: Documents responsive to Request No. 12 "were previously provided with Initial Disclosure [*sic*]."[24]

Evidence Not Produced in the Rule 26(a) Disclosures:

- Letter from Burton Greenberg to Plaintiff, dated November 10, 2006, regarding a BOM documentary letter of credit related to a shipment of marble to Iran.[25]

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18 *See* Plaintiff's Requests, Exhibit 6, at ¶ 8.

19 *See* Discovery Response, Docket No. 58, at ¶ 1.

20 *See* Email from Burt Greenberg to George Chalmers, Stoneleigh, and Alejandro Garcia, IXE Financial Group, dated December 13, 2007, Exhibit 7.

21 *See* Email from Burton Greenberg to George Chalmers, Stoneleigh, dated July 20, 2007, Exhibit 8.

22 Plaintiff defined "Financial Instruments" in the Requests as "a real or virtual document representing a legal agreement involving some sort of monetary value, including but not limited to letters of credit or guarantees.

23 *See* Plaintiff's Requests, Exhibit 6, at ¶ 12.

24 *See* Discovery Response, Docket No. 58, at ¶ 1.

25 *See* Letter from Burton Greenberg, IXE Mercantile AG, to A. Batsukh, Governor, BOM, dated November 10, 2006, Exhibit 9.

- Commercial Invoice from DUCOM DMCC to M&P Europe, dated October 10, 2006, reflecting the shipment of crude sun flower oil using one of the documentary letters of credit issued by Plaintiff.[26]

Example 3:

> **Request No. 11:** "All documents, information or things reflecting the terms and conditions by which the M&P Defendants transacted the Financial Instruments issued by BOM, including but not limited to the following Financial Instruments: (a) bank guarantees nos. 1-4, totaling US$200 million, issued on August 31, 2005 . . . ."[27]
>
> **M&P Defendants' Discovery Response:** Documents responsive to Request No. 11 "were previously provided with Initial Disclosure [*sic*]."[28]
>
> **Evidence Not Produced in the Rule 26(a) Disclosures:** Letter from Plaintiff to Stoneleigh, copying some of the M&P Defendants, dated January 7, 2008, which discusses the revocation of bank guarantees 1-4.[29]

As the dates of two of the above examples indicate, some of these documents (*i.e.*, examples 1 and 3) were created after the M&P Defendants should have reasonably anticipated litigation. In fact, one such example even references M&P Defendants' thoughts regarding Plaintiff's supposed breach of undisclosed contractual obligations.[30] The other examples (*i.e.*, example 2) although created before Plaintiff initiated its demands for repayment, are of the type that one would expect a party to reasonably maintain in their possession, especially if such documents were necessary to record a transaction for which payment was not due under the documentary letter of credit until July 24, 2007. Plaintiff could provide this Court with numerous other instances of materially relevant documents that M&P Defendants omitted from the Rule 26(a) Disclosures.

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[26] *See* Commercial Invoice from DUCOM DMCC to M&P Europe, dated October 10, 2006, Exhibit 10.

[27] *See* Plaintiff's Requests, Exhibit 6, at ¶ 11.

[28] *See* Discovery Response, Docket No. 58, at ¶ 1.

[29] *See* Letter from Alag Batsukh, Governor, BOM, to George E. Chalmers, Stoneleigh, dated January 7, 2008, Exhibit 11. Although this document was from Plaintiff, M&P Defendants did not raise the objection that it should not be required to produce documents in the purported possession of Plaintiff.

[30] *See* Email from Burton Greenberg to George Chalmers, Stoneleigh, dated July 20, 2007, Exhibit 8.

Even if some of the improperly excluded communications are no longer found in hard copy at M&P Defendants' offices or homes, electronic data, such as the referenced emails, or drafts of written documents, are discoverable. *See Wells v. Xpedx*, No. 8:05-cv-2193, 2007 WL 1200955, **1-2 (M.D. Fla. April 23, 2007) (citing the Advisory Committee Notes, FRCP 34); *see also Playboy Enterprises, Inc. v. Welles*, 60 F.Supp.2d 1050, 1053 -1054 (S.D.Cal. 1999). The discoverability of such documents is not limited by the fact that they may have been deleted at one time, because such files may remain on a computer hard drive, servers, or back-up tapes. *See Wells,* 2007 WL 1200955, at **1-2 (citing *Discoverability of Electronic Data Under the Proposed Amendments to the Federal Rules of Civil Procedure: How Effective Are Proposed Protections for "Not Reasonably Accessible" Data?*, 83 N.C.L.Rev. 984, 988-990 (2005); *see also Antioch Co. v. Scrapbook Borders, Inc.*, 210 F.R.D. 645, 651-652 (D. Minn. 2002) ("[I]t is a well accepted proposition that deleted computer files, whether they be e-mails or otherwise, are discoverable.") (citing *Rowe Entertainment, Inc. v. The William Morris Agency, Inc.*, 205 F.R.D. 421, 427, 431 (S.D.N.Y. 2002)). M&P Defendants have an obligation to search all available electronic systems for deleted emails and files. *See Wells,* 2007 WL 1200955, at **1-2 (citing *Peskoff v. Faber,* No. 04-256, 2007 U.S. Dist. Lexis 11623, at *13 (D.D.C. Feb. 21, 2007).

3. Instances of M&P Defendants Incorrectly Claiming to Have Produced Certain Categories of Responsive Documents

In addition to the misrepresentations regarding the supposed complete production of the above-referenced document categories, M&P Defendants' Discovery Response represents that documents responsive to several Requests "were previously provided with Initial Disclosures," but Plaintiff is unable to identify any such documents in the Rule 26(a) Disclosures. Specifically, Plaintiff has been unable to identify any documents in the Rule 26(a) Disclosures

responsive to Requests Nos. 4, 12, and 13.[31]

4. As a Result of M&P Defendants' Failure to Produce Responsive Documents and Their Lack of a Valid Excuse for Such Failure, This Court Should Sanction M&P Defendants and Allow Plaintiff to Access M&P Defendants' Electronic Records and Computer Hardware

FRCP 37(d)(3) states that sanctions for failing to respond to a discovery request "may include any of the orders listed in FRCP 37(b)(2)(A)(i)-(iv)" and/or an order to pay reasonable expenses, including attorney's fees, caused by such failure. Further, this Court possesses the inherent power to award sanctions for a litigant's bad faith conduct that delays or disrupts the litigation. *See Telectron, Inc.*, 116 F.R.D., at 126 -127; *see also Bray & Gillespie Management LLC v. Lexington Ins. Co.*, No. 6:07-cv-222, 2009 WL 546429, *17 (M.D. Fla. March 4, 2009) (citing *Byrne v. Nezhat,* 261 F.3d 1075, 1121 (11th Cir. 2001)). Thus, in addition to requesting that the Court award sanctions as it sees fit under FRCP 37(b)(2)(A)(i)-(iv), Plaintiff requests that this Court order relief designed to obtain the responsive documents that M&P Defendants have failed to produce.

Given the complete disregard that M&P Defendants have shown for their discovery obligations in this dispute (*i.e.*, initially failing to respond to discovery and providing an incomplete production of documents), and the significant nature of the fraud claims in this dispute (*i.e.*, US$23 million in direct damages to Plaintiff), the only means by which this Court can ensure that M&P Defendants have provided all responsive electronic records is the increasingly common sanction of ordering M&P Defendants to submit their computers, servers, back-up tapes, and any other data storage devices for "mirror imaging" by a forensic expert. *See U & I Corp. v. Advanced Medical Design, Inc.*, 251 F.R.D. 667, 675-677 (M.D. Fla. 2008) (ordering the plaintiff to produce hard drives for mirror imaging based, in part, on the fact that a

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[31] *See* Discovery Response, Docket No. 58, at ¶ 1.

third party was in possession of some of plaintiff's responsive emails that were not produced to defendant); *see also Simon Property Group L.P. v. mySimon, Inc.*, 194 F.R.D. 639, 641 - 642 (S.D. Ind. 2000) (noting "some troubling discrepancies with respect to defendant's document production" and ordering defendant to submit electronic records for duplication); *Playboy Enterprises, Inc.*, 60 F.Supp.2d at 1053-1054 (finding that the burden or mirror-imaging defendant's hard drive and attempting the recovery of deleted emails "must fall on Defendant as this process has become necessary due to Defendant's own conduct of continuously deleting incoming and outgoing e-mails, apparently without regard for this litigation."); *Antioch Co.*, 210 F.R.D. at 651-652 (permitting mirror imaging of a hard drive under Rule 34 in order to retrieve deleted computer records, including email); *Orrell v. Motorcarparts of America, Inc.*, No. 3:06-cv-418, 2007 WL 4287750, *7 (W.D.N.C. Dec. 5, 2007) (allowing a forensic examination of defendant's computer at defendant's expense after defendant failed to take proper measures to preserve responsive electronic evidence).

The importance of Plaintiff obtaining such electronic documents and materials cannot be understated, as the emails and other electronically produced written communications in Plaintiff's possession reflect that M&P Defendants were communicating with other enterprise members through such mediums in furtherance of their racketeering activities.[32] Indeed, it is precisely these communications that form the bases of the predicate acts of mail and wire fraud at the heart of Plaintiff's civil RICO claims. *See Balboa Threadworks, Inc. v. Stucky*, No. 05-1157, 2006 WL 763668, *4 (D. Kan. March 24, 2006) (allowing forensic duplication of defendant's computer and peripheral devices in copyright infringement case when defendant used his computers for business and the alleged wrongful conduct was claimed to have occurred

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[32] *See e.g.,* Email from Burton Greenberg to George Chalmers, Stoneleigh, dated July 20, 2007, Exhibit 8.

through the use of the computers). As such, this sanction is appropriate under the present circumstances.

C. M&P Defendants Have Waived All Objections to BOM's Document Requests

Lastly, based on M&P Defendants failure to timely raise objections to the Requests, any such objections are waived. *See Socas v. Northwestern Mut. Life Ins. Co.*, No. 07-20336, 2008 WL 619322, *6 (S.D. Fla. March 4, 2008) (waiving plaintiff's objections where such objections were untimely and raised for the first time in a response to defendant's motion to compel); *see also Plaintiff B v. Francis*, No. 5:08-cv-79, 2009 WL 347750, *1 (N.D. Fla. Feb. 11, 2009) ("The law is clear that when there has been no timely response to requests, ***all*** objections are waived.") (emphasis in original) (citing *Peat, Marwick, Mitchell & Co. v. West,* 748 F.2d 540 (10th Cir. 1984)); *Perry v. Golub*, 74 F.R.D. 360, 363 (N.D. Ala. 1976) (objection on grounds of privilege waived by failure to file timely objection). In the present matter, this applies to M&P Defendants' only objection, that Request No. 16[33] is "too vague and burdensome."[34] As such, this Court should compel M&P Defendants to produce immediately documents and materials responsive to Request No. 16.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that this Court award attorney's costs and fees for M&P Defendants' failure to respond to the Requests, which necessitated Plaintiff's Motion to Compel and the present Reply. In light of M&P Defendants improper withholding of responsive documents through spoliation or otherwise, Plaintiff's also respectfully request that this Court take measures to ensure that all available responsive data is

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[33] Request No. 16 states as follows: "All Documents, information or things relating to any or all of the Defendants [*sic*] transactions or projects with entities or persons in Laos, including but not limited to transactions or projects with the Bank of Lao."

[34] *See* Discovery Response, Docket No. 58, at ¶ 4.

produced to Plaintiff, specifically by ordering that M&P Defendants submit all computers, servers, back-up tapes, and any other data storage devices for "mirror imaging" by a forensic expert. Finally, Defendants respectfully request that this Court order M&P Defendants to immediately produce all documents and materials responsive to Request Nos. 6, 7, and 16.

Dated: March 30, 2009

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, pursuant to Rule 5 of the Federal Rules of Civil Procedure, on the 30th Day of March, 2009, a true and correct copy of the foregoing *Plaintiff's Response to Motion to Compel* was served on all counsel of record pursuant to Court's ECF system.

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Exhibit 1

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(THE CENTRAL BANK)
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SWIFT: BOMUMNUB, http://www.mongolbank.mn

M and P Global Financial Services
Europe, AG 4300
North University Drive, Suite D-106
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Fax: 1-954-749-3008

Date June 13, 2007
Ref. AITD/263

Dear Sir/Madam,

We refer to our DLC AITD 70007060717 issued in July 17, 2006 for Rosbank, Geneva. Please be informed that according to our records and terms of the DLC, you should cover first claim from Rosbank in amount of USD 4,970,995.42 with value June 1, 2007 and transfer it to our account 021088506 with Federal Reserve Bank of New York, New York.

Additionally, we demand you to send us all information related to utilized DLCs issued by your request, such as sales contract, shipment received confirmation and your proposals of repayment schedule.

We insist you to solve all misunderstandings accrued and strongly recommend you to bring to an end delays in repayment and non transparent activities.

Sincerely yours,

M. Amgalan
Director of Accounting and IT Department

Exhibit 2

BANK OF MONGOLIA
(THE CENTRAL BANK)
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Date June 25, 2007
Ref. AITD/280

Dear Sir/Madam,

We refer to our DLC No. AITD70002060717 in the amount of USD 16,500,000.00.

As of today, we haven't received any confirmation from Rosbank SA, Geneva on DLC maturity extension for 180 days. Please also note, that ING Belgium NV/SA, Brussels participated in this transaction for an amount of USD 3,000,000.00 and made several demands to the Bank of Mongolia to pay. Therefore, as an issuing bank we kindly ask you, buyer, to transfer immediately the amount of USD 3,000,000.00 to our account number 021088506 with the Federal Reserve Bank of New York, NY.

Sincerely yours,

B.Enhhuyag
First Deputy Governor

Exhibit 3

BANK OF MONGOLIA
(THE CENTRAL BANK)
210646 Baga toiruu9,
Chingeltei duureg, Ulaanbaatar, MONGOLIA
Tel: (976-11) 32-21-69, Fax: (976-11) 31-14-71, Tlx: 79333 BOMCB MH
SWIFT: BOMUMNUB, http://www.mongolbank.mn

Date June 29 2007
Ref. GOV/288

STONELEIGH INTERNATIONAL LIMITED
Unit level 13(E), Main Office Tower,
Financial Park Labuan
Jalan Merdeka 87000 Labual
FEDERAL TERRITORY OF MALAYSIA
Tel: 60-12-395-0892
Fax: 60-3-2611-1194

Dear George E. Chalmers,

We would like to draw your attention to the following:
First of all, as of today we haven't received any confirmation from Rosbank SA, Geneva on DLC maturity extension for 180 days. Secondly, we are daily receiving claims from ING Belgium NV/SA, Brussels insisting on payment of USD 3,000,000.00. The ING Belgium NV/SA is preparing to report this non-payment to the International Chamber of Commerce soon.

Therefore, if issues are not solved immediately we would have to consider treating whole this affair as a financial fraud and our further intention is to approach authorities in Malaysia such as Bank Negara or controllers in Labuan.

Sincerely yours,

B.Enhhuyag
First Deputy Governor

140549

Exhibit 4

STONELEIGH INTERNATIONAL LIMITED

Unit Level 13(E), Main Office Tower
Financial Park Labuan, Jalan Merdeka
87000 Labuan
FEDERAL TERRITORY OF MALAYSIA
Tel: 60-12-39540892 Fax: 60-3-2611-1194 Email:gc@stoneleighcapital.com

VIA EMAIL
July 13, 2007

BANK OF MONGOLIA
210646 Baga toiruu 9
Chingeltei duureg, Ulaanbaatar
MONGOLIA

Attn: A. BATSUKH, Governor

Re: Your Fax Letter dated July 9, 2007

Dear Mr. Batsukh,

We hereby acknowledge receipt of your facsimile dated 9 July 2007. We note your payment of BOM's obligations to ING Belgium under the said DLC in paragraph one (1) of your letter. We take great exception to your actions and allegations in paragraph two (2) and three (3) of your letter. Your demand for immediate payment from us equivalent to BOM's payment above is unjustified and arbitrary. Your allegation of *"financial fraud"* and your threat to *"approach the US Treasury, Bank Negara Malaysia and Controllers Office in Labuan"* with such allegations are similarly unreasonable. If you do carry out such threats your actions would amount to libel, slander and / or defamation to which we reserve all legal right to institute legal proceedings.

Do consider the following matters prior to threatening to have BOM *"treat this case as financial fraud"*

1. On 9 March 2006 Stoneleigh International Limited (SIL) and The Bank of Mongolia (BOM) properly and with full understanding and authority entered into and executed an Agreement (Mr. O. Chuluunbat as Governor) for the purpose of funding the "Affordable Housing Project" duly approved by the Mongolian Government.

2. Pursuant to the Agreement above, the Central Bank authorized issuance of DLC's that commenced on 17 July 2006 through 9 September 2006 to the Applicant; M&P Global Financial Services Europe AG and beneficiary; DUCOMM. Total amount issued USD55m.

3. In further support of the financing of the Approved Project, SIL entered into a Cooperative Agreement on 4 December 2006 with the Ministry of Construction and Urban Development for the project development and support.

4. Government support again was evidenced in SIL's Ground Breaking official opening of the Project on 29 September 2006 that was attended by the President and Senior

Government Officials. Further meetings and a press conference took place with Prime Minister M. Enkbold on the same day demonstrating support for the Project. Both events were widely published in the Mongolian Press and TV stations.

5. Since you were appointed Governor of BOM in October 2006 and throughout the months of November 2006 through to May 2007 numerous meetings to discuss the project and funding method were held with BOM, Government Officials and members of Parliament.

6. Abruptly, on 18 May 2007 at a meeting with First Deputy Governor of BOM Enhbuyag, we were advised that BOM would not continue supporting the project funding and, in effect, unilaterally breaching its covenants under the said Agreement.

7.1 At all times SIL remains ready and willing to carry out its obligations under the said Agreement in support of the approved "Affordable Housing Project". After BOM's actions of unilateral breach, SIL, reserving full legal rights, remains ready and willing to assist BOM to unwind the transactions by urging extension of maturing DLC's before first due date (June 1). However, despite repeated letters and communications, BOM only sent the SWIFT to request extension on 13 June 2007 well past maturity date of 1 June 2007. Without this extension of the DLC BOM had to pay ING Belgium as referred to in paragraph one (1) of your letter and in paragraph 7.4 below.

7.2 SIL, in good faith and not as a matter of obligation, assisted with negotiations with relevant parties in Europe, Switzerland, UK and USA to resolve outstanding issues and to minimize liabilities to BOM and other relevant parties. The request for extension from ING Belgium was originally rejected as BOM's request was made after due date, but we arranged assistance from other banks which enabled ING Belgium to reconsider an extension.

7.3 Accordingly, ING Belgium sent a representative from its Branch in Brussels to BOM in Mongolia to negotiate a mutually agreeable solution on 5 July 2007. That representative specifically requested to meet with you and the International Trade Department to resolve the situation. However, both meetings were not granted and the representative was only accorded a short meeting with First Deputy Governor Enhbuyag. Unable to discuss any resolution ING Belgium had no option but to revert to its original demand for immediate payment.

7.4 Since you held no discussions with ING Belgium to extend their portion of DLC number AFTD70007060717 for a further 180 days BOM had to pay ING Belgium USD 3,028,380.00 to close the position. **Without waiver of any of our legal rights and in good faith, we will assist (subject to paragraph 11 below) BOM to recover such monies from the relevant parties, but we require 360 days from July 9, 2007 to do so.**

8. Without waiver of any of our legal rights in view of BOM's unilateral breach, we have in good faith assisted the relevant parties to the transaction(s) to settle the costs of extending each outstanding DLC and the restructuring fees. Had we not done so BOM would have received further demand notice by Rosbank to pay. At the same time we have also assisted to extend the maturities for the outstanding DLC's in order to unwind the transactions to minimize liabilities for BOM.

9. We have extended you full cooperation so far to properly close out the outstanding DLC positions. Provided BOM agrees to work in a cooperative and mutually supportive manner we would be willing to continue assisting to minimize BOM's liabilities in properly closing out the remaining outstanding DLC positions amounting to USD 18 million.

10. Given your unjustified and slanderous threats in the last paragraph of your letter dated 9th July, *"to treat this case as financial fraud and will approach the UN Treasury, Bank Negara Malaysia and Controllers Office in Labuan"*, should you proceed to do so then we will have no choice but be forced to defend and protect our name and we reserve all legal rights to institute legal proceedings against you for libel, slander and / or defamation. In these circumstances we may not be able to continue to assist further in negotiating and cooperating with the relevant parties and banks. BOM will have prevented further assistance from us and all relevant parties and your personal actions will have directly and solely caused BOM to be exposed to liabilities to the relevant parties under the DLC's for the outstanding amount of an additional USD 18 million.

11.1 Therefore, you would need to withdraw your allegations of fraud and your unjustified threats to libel, defame and/or slander us and all the parties involved so that all relevant parties can continue to assist and cooperate to minimize BOM's liabilities under the DLC's.

11.2 Despite the missteps of the past, we will assume you will cooperate in good faith unless you specifically revert within seven (7) days from date of this letter confirming your said allegations and threats. In that case, and without BOM's cooperation, then regretfully, we are advised by legal counsel that we, and all relevant parties including the respective banks involved, should cease to provide any further cooperation and assistance to BOM to resolve the outstanding matters.

11.3 We cannot see any reason why BOM would not cooperate, unless of course your objectives are to ensure BOM gets no further assistance and does become fully liable for all its remaining obligations under the DLC's due to BOM's unilateral breach of contract and refusal to cooperate and you seek to involve BOM in further legal action(s) for libel, slander and / or defamation, which will result in BOM having additional legal and reputation costs.

11.4 For the record, it must be stated that all our actions to date is clear evidence of our continued willingness to stand behind the Project and our objective to cooperate to minimize liabilities to BOM. Without mutual cooperation it will be impossible to resolve the situation caused by BOM's unilateral breach without liabilities and costs to all relevant parties, including BOM.

Sincerely,

GE Chalmers
President

cc M&P Global Financial Services, Europe AG
M&P Global Financial Services, Inc.
Stonehigh International LLC (Mongolia)

Exhibit 5

M &P GLOBAL FINANCIAL SERVICES EUROPE, AG
4300 North University Drive
Suite D-106
Lauderhill, Florida 33351
E-mail: burtg@greenbergs.biz
Tel: 954-741-3800
Fax: 954-749-3008

August 30, 2007

Mr. A. Batsukh, Governor
Mr. B. Enkhsaikhan, First Deputy Governor
Bank of Mongolia

Re: BOM Meeting with M&P (Stoneleigh)

Dear Gentlemen:

We hereby acknowledge receipt of your requests to send a delegation to meet with the undersigned at our Florida office. Please be advised that the undersigned will not be available to address said delegation until Monday, September 17, 2007. Please confirm that your delegation will be available on said date and the time of their expected arrival.

Please be further advised that at no time will M&P Global Financial Services Europe AG produce any financial statements to you. Your requests for private, corporate documentation is without basis and intrusive. Please furnish any written documentation that suggests that M&P has any contractual obligation to BOM to furnish said financial statements. Without same, and considering BOM's failure to honor it's contractual obligations with Stoneleigh in which M&P was a third party beneficiary, these requests for our corporate documentation is denied.

Please understand that M&P looks forward to working with BOM and has presented to Stoneleigh a viable proposal to proceed as originally planned and agreed to by BOM and the Mongolian government. However, any position by BOM to hold M&P responsible for the situation involving the Stoneleigh contract will be aggressively defended, as your allegations/insinuations are defamatory in nature to our company. Rather, we believe, with the assistance of BOM, that this matter may be resolved to the satisfactory benefit of all parties.

Very truly yours,

Burton D. Greenberg

Burton D. Greenberg

Exhibit 6

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

BANK OF MONGOLIA,	
Plaintiff,	
v.	**CASE NO.08-CV-60623** **Dimitrouleas-Rosenbaum**
M&P GLOBAL FINANCIAL SERVICES, INC., M&P GLOBAL FINANCIAL SERVICES EUROPE, AG, BURTON D. GREENBERG, JOEL E. GREENBERG, STONELEIGH INTERNATIONAL LIMITED, JAMES R. HALPERIN AND GEORGE E. CHALMERS,	
Defendants.	

PLAINTIFF'S REQUEST FOR DOCUMENTS FROM DEFENDANTS M&P GLOBAL FINANCIAL SERVICES, INC., M&P GLOBAL FINANCIAL SERVICES EUROPE, AG, BURTON D. GREENBERG AND JOEL E. GREENBERG

In accordance with Rules 26 and 34 of the Federal Rules of Civil Procedure and the Local Civil Rules of the United States District Court for the Southern District of Florida, Plaintiff Bank of Mongolia ("BOM"), by and through counsel, requests that Defendants, M&P Global Financial Services, Inc., M&P Global Financial Services Europe, AG, Burton D. Greenberg and Joel E. Greenberg (collectively referred to as the "M&P Defendants") produce the requested documents, electronically stored information and other things within thirty (30) days of service.

INSTRUCTIONS

1. In producing documents and other things, you are requested to furnish all documents or things in its possession, custody or control, regardless of whether such documents or things are possessed directly by you or your agents, employees, representatives, investigators, or by your attorneys or accountants.

2. Documents are to be produced in full; redacted documents will not constitute compliance with this request. If any requested document or thing cannot be produced in full, you are requested to produce it to the extent possible, indicating which document or portion of that document is being withheld and the reason that document is being withheld.

3. In producing documents, you are requested to produce the original of each document requested together with all non-identical copies and drafts of that document. If the original of any document cannot be located, a copy shall be provided in lieu thereof, and shall be legible and bound or stapled in the same manner as the original.

4. All documents shall be produced in the file folder, envelope or other container in which the documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

5. Documents shall be produced in such fashion as to identify that department, branch or office in whose possession it was located and, where applicable, the natural person in whose possession it was found and the business address of each document's custodian(s).

6. Documents attached to each other should not be separated.

7. If any documents or files requested herein have been lost, discarded, destroyed or are otherwise no longer in your possession, custody or control, they shall be identified as completely as possible including, without limitations, the following information: date of disposal, manner of disposal, reason for disposal, person authorizing the disposal and person disposing of the document.

8. If you withhold any document(s) by claiming that they are privileged or subject to the work-product protection, you shall comply with the Federal Rules of Civil Procedure by making the claim expressly and describing the nature of the documents, communications, or

things not produced in a manner that allows an assessment of the privilege or protection. To aid in the assessment, you shall disclose at the very least the following information as to each and every document, communication, or thing not produced or disclosed:

a. Date the document was prepared;

b. The author(s);

c. Recipient(s);

d. All persons to whom distributed;

e. Purpose for which the document was prepared; and

f. The factual basis of the asserted privilege or protection.

9. If you claim that a Request for Production is over-broad, respond to the portion of the Request for Production to which you do not object and specifically state why you claim the Request for Production is over-broad.

10. If you claim that responding to a Request for Production is unduly burdensome, please respond to the portion of the Request for Production to which you do not object and specifically state why you claim the Request for Production is unduly burdensome.

11. Documents shall be produced in such fashion as to identify which request(s) they are responsive to

12. The use of a verb in any tense shall be construed as the use of the verb in all other tenses whenever necessary to bring within the scope of the Request for Production all responses that might otherwise be construed as outside its scope.

13. A plural noun shall be construed as a singular noun, and a singular noun shall be construed as a plural noun whenever necessary to bring within the scope of the Request for Production all responses that might otherwise be construed as outside its scope.

14. The gender neutral form shall include the feminine or masculine form whenever necessary to bring within the scope of the Request for Production all responses that might otherwise be construed as outside its scope.

15. For purposes of these Requests for Production, terms not specifically defined shall be given their ordinary meaning as you understand them to be used in ordinary business.

16. If you object to any portion of a Request for Production, please respond to any portion of the Request for Production to which you do not object.

17. If you object to or disagree with any of the definitions set forth in these Requests for Production, or if you do not understand any term used in these Requests for Production, please explain in detail the nature of your disagreement with the definition, or lack of understanding of the term, provide an alternative definition of the term, and respond in accordance with that alternative definition.

18. You are subject to a duty to supplement all responses to these Requests for Production in accordance with Federal Rule of Civil Procedure 26(e).

19. Except where otherwise noted, the relevant time period for all requests is from January 2005 through the time of trial of this matter.

DEFINITIONS

The definitions provided below are intended to be as broad as, and no broader than as allowed under the Federal Rules of Civil Procedure or the Local Rules for the Southern District of Florida.

1. "You", "your", "M&P" and "M&P Defendants" each mean Defendants M&P Global Financial Services, Inc., M&P Global Financial Services Europe, AG, Burton D. Greenberg and Joel E. Greenberg, collectively and individually.

2. "BOM" means the Bank of Mongolia and (a) any of its branches, divisions, departments, parents, subsidiaries, affiliated entities, assigns, or other organizational or operational units; (b) all of its predecessor or successor companies, corporations, or entities; (c) all companies, corporations, partnerships, associations, or other business entities, which are or have been under its ownership or control, and are controlled by it; and, for each of the foregoing, its (d) present and former officers, directors, managers, employees, agents, investigators, accountants, consultants, attorneys, other representatives, or any other persons acting or purporting to act on its behalf or under its direction.

3. "Deutsche Forfait" means DF Deutsche Forfait AG and (a) any of its branches, divisions, departments, parents, subsidiaries, affiliated entities, assigns, or other organizational or operational units; (b) all of its predecessor or successor companies, corporations, or entities; (c) all companies, corporations, partnerships, associations, or other business entities, which are or have been under its ownership or control, and are controlled by it; and, for each of the foregoing, its (d) present and former officers, directors, managers, employees, agents, investigators, accountants, consultants, attorneys, other representatives, or any other persons acting or purporting to act on its behalf or under its direction.

4. "LLB" means Liechtensteinische Landesbank AG and (a) any of its branches, divisions, departments, parents, subsidiaries, affiliated entities, assigns, or other organizational or operational units; (b) all of its predecessor or successor companies, corporations, or entities; (c) all companies, corporations, partnerships, associations, or other business entities, which are or have been under its ownership or control, and are controlled by it; and, for each of the foregoing, its (d) present and former officers, directors, managers, employees, agents, investigators,

accountants, consultants, attorneys, other representatives, or any other persons acting or purporting to act on its behalf or under its direction.

5. "Ducom" means Ducom DMCC, Ducom AG and/or any company similarly named and (a) any of its branches, divisions, departments, parents, subsidiaries, affiliated entities, assigns, or other organizational or operational units; (b) all of its predecessor or successor companies, corporations, or entities; (c) all companies, corporations, partnerships, associations, or other business entities, which are or have been under its ownership or control, and are controlled by it; and, for each of the foregoing, its (d) present and former officers, directors, managers, employees, agents, investigators, accountants, consultants, attorneys, other representatives, or any other persons acting or purporting to act on its behalf or under its direction.

6. "Person" or "persons" is defined as any natural person or any business, legal or governmental entity or association.

7. "Document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.

8. "Electronically stored information" or "information" is defined broadly to give the full scope of that term as contemplated by Rule 34 of the Federal Rules of Civil Procedure, and refers to all computer or electronically stored or generated data and information, and shall include all attachments to and enclosures with any requested item, and all drafts thereof. Electronically stored information includes information stored in any format and on any storage media, including: hard disks; floppy disks; optical disks; flash memory devices; and magnetic

tape, whether fixed, portable, or removable. Electronically stored information includes: word-processing documents; electronic spreadsheets; electronic presentation documents; e-mail messages; image files; sound files; and material or information stored in a database, or accessible from a database. Electronically stored information also includes all associated metadata that is maintained or saved, which includes: document title or name; file name; date and time of creation; date and time of last edit; identity of author; identity of owner; identities of editors; identities of recipients; changes; history of changes; e-mail header information; history of who viewed an e-mail and when; and e-mail routing information. Electronically stored information further includes: correspondence, telegrams, memoranda, communications, minutes or records of meetings and conferences, lists of persons attending meetings or conferences, summaries, records of conversations, drafts, notes, notebooks, logs, invention records and disclosures, translations, drawings, graphs, charts, photographs, sound recordings, images, data compilations, computer records or printouts, specifications, reports, opinions, summaries, agreements, forecasts, plan drawings, mask works, engineering drawings, expressions or statements of policy, consultations, brochures, pamphlets, advertisements, publications, circulars, trade letters, press releases, and drafts of any of the foregoing. Unless the parties agree otherwise, all electronically stored information shall be produced in the form in which it is kept in the usual course of business. If electronically stored information is produced in the form in which it is kept in the usual course of business but it is not reasonably useable in that form, then all software, instructions, or tools necessary to make the information reasonably useable must also be provided or identified. To the extent that identical information is available as both a document and as electronically stored information or in multiple forms of electronically stored information, Plaintiff need only produce the electronically stored information in one reasonably useable form.

Defendants' counsel invites Plaintiff's counsel to call to discuss compliance with the foregoing instructions concerning electronically stored information.

9. "Thing" shall have the broadest meaning prescribed in Rule 34 of the Federal Rules of Civil Procedure, and refers to any tangible object, other than documents or electronically stored information, and includes physical objects of every kind and manner including: prototypes, models, and specimens.

10. "Relate", "relating", "refer", "referring", "concerning" and "concern" shall be construed in the broadest sense to include, in addition to their customary and usual meanings, describing, evidencing, including, discussing, mentioning, or constituting in whole or in part.

11. "Any" and "each" shall be understood to include one another and "all" whenever necessary to expand the scope of the request. "Or" and "and" shall be understood to include one another and "and" whenever necessary to expand the scope of the request. The words "all", "every", "any", and "each" shall include each other whenever possible to expand the scope of the request.

12. "Including" means including but not limited to.

13. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

14. "Identify" shall mean:

with respect to documents, "to identify" means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of document; and (iv) author(s), address(s) and recipients;

with respect to persons, "to identify" means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person,

additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person;

when referring to an organization or entity, to state the organization or entity's full name and present or last known address, and to fully describe the business or activity in which the organization or entity is engaged;

when referring to things, to state the product number, model number, serial number, type number, or other designation customarily used by Plaintiff or others in the trade to designate such thing and to distinguish it from others made by the same or a different producer.

15. "Materials" means any document, electronically stored information, or thing as those terms are defined above.

16. "Affordable Housing Project" means the US$1 billion project that was intended to construct an affordable housing project in Mongolia's capital city, Ulaanbaatar.

17. "Financial Instruments" means a real or virtual document representing a legal agreement involving some sort of monetary value, including but not limited to letters of credit or guarantees.

REQUESTS FOR PRODUCTION

1. All documents, information or things reflecting agreements and/or communications among or between the above-captioned Defendants, including the M&P Defendants, in connection with the Financial Instruments issued by BOM.

2. All documents, information or things reflecting communications between or among M&P Defendants and Deutsche Forfait or LLB, including but not limited to communications in connection with issuing or forfaiting Financial Instruments.

3. All documents, information or things relating to M&P Defendants' relationship at any time with Ducom and/or the Frico Group.

4. Documents sufficient to show any relationship and/or agreements, of any type, between or among Ducom and the M&P Defendants.

5. All documents, information or things relating to M&P Defendants transacting Financial Instruments issued by BOM, including but not limited to documents identifying the monies received by any of the M&P Defendants and the use of any money in connection with any letters of credit issued by BOM.

6. Documents identifying all accounts to which money was deposited, either directly or in subsequent transactions, in connection with the Financial Instruments issued by BOM, including but not limited to the name of the financial institution, account numbers, and the name of account holder.

7. All documents, information or things reflecting money paid to any person, including but not limited to all of the above-captioned Defendants, in connection with the Financial Instruments issued by BOM.

8. All documents, information or things reflecting communications or other materials sent to Defendants, George Chalmers and/or Stoneleigh International Limited, by the M&P Defendants.

9. All documents, information or things relating to any payments madeby Defendants, or companies associated or related to Defendants, purportedly in connection with the Affordable Housing Project, including but not limited to Documents sufficient to identify the uses of these funds, requests for these funds, and records showing the disbursement of these funds.

10. All Documents, information or things relating to any potential investors in the Affordable Housing Project.

11. All Documents, information or things reflecting the terms and conditions by which the M&P Defendants transacted the Financial Instruments issued by BOM, including but not limited to the following Financial Instruments:

(a) bank guarantees nos. 1-4, totaling US$200 million, issued on August 31, 2005 and with a maturity date of September 1, 2010;

(b) bank guarantees nos. 1-4, totaling US$200 million, issued by SWIFT on August 31, 2005 and with a maturity date of September 1, 2010;

(c) Documentary Letter of Credit No. 70002060717 issued to M&P Global Financial Services AG on July 17, 2006;

(d) Documentary Letter of Credit No. 70003060721 issued to M&P Global Financial Services AG on July 21, 2006;

(e) Documentary Letter of Credit No. 70005060802 issued to M&P Global Financial Services AG on August 2, 2006;

(f) Documentary Letter of Credit No. 70006060904 issued to M&P Global Financial Services AG on September 4, 2006; and

(g) Documentary Letter of Credit No. 70007060921 issued to M&P Global Financial Services AG on September 21, 2006.

12. All Documents, information or things reflecting the transport and sale of crude sunflower oil and molasses (the "Commodities") or anything else in connection with the Financial Instruments issued by BOM to M&P Defendants, including but not limited to Documents sufficient to understand the location of these Commodities and/or Documents reflecting the terms of transactions involving the Commodities.

13. Documents sufficient to show any relationship and/or interest that any of the above-name Defendants have with the following entities: SDT Private Bank Enterprises, Inc.; SDT Financial Wealth, AG; IXE Financial Services AG; Ducom DMCC; M&P Canada; Frico or Frico Group; or Liechtensteinische Landesbank.

14. Documents, information or things relating to the meeting in or around Zurich, Switzerland in December 2006 between or among Defendants and other persons.

15. All Documents reflecting any funds or payments given to any Mongolian public officials, family members of Mongolian officials or persons or entities connected to Mongolian officials by Defendants and/or their representatives or associates.

16. All Documents, information or things relating to any or all of the Defendants transactions or projects with entities or persons in Laos, including but not limited to transactions or projects with the Bank of Lao.

17. All Documents, information or things relating to business ventures and/or transactions on which any of the Defendants to which this document request is directed worked with the other Defendants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of January, 2009 the foregoing document was served via e-mail and U.S. Mail, to all counsel of record and *pro se* Defendants identified on the attached Service List.

MILBANK, TWEED, HADLEY
& MCCLOY LLP
Counsel for Plaintiff
1850 K Street, N.W. , Suite 1100
Washington, D.C. 20006
Ph: (202) 835-7547
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JASON S. WEISS
FLORIDA BAR NO. 356890
JSW@atkinson-diner.com

SERVICE LIST

Bank of Mongolia vs. M&P Global Financial Services, Inc. et al
CASE NO.08-CV-60623 Dimitrouleas-Rosenbaum
United States District Court, Southern District of Florida

Ronald K. Lantz, Esquire
Counsel for M&P Global Financial Services, Inc.,
M&P Global Financial Services Europe, AG,
Burton D. Greenberg and Joel E. Greenberg
First Professional Building
636 U.S. Highway One, Third Floor
North Palm Beach, Florida 33408
rklesq2@yahoo.com

James R. Halperin
Pro Se
6237 San Michel Way
Delray Beach, Florida 33484
vettesfl@comcast.net

Exhibit 7

* Rec'd 3/2/08

Subject: RE: URGENT IDEA

Date: Thu, 13 Dec 2007 15:50:08 -0500

From: "Burt Greenberg" <burtg@greenbergs.biz>

To: "george chalmers" <gc@stoneleighcapital.com>, "ALEJANDRO IXE" <alejandro.garcia@lxefinancialgroup.com>

Hello George..
Back and forth and UP and down..and NO place to go..
Most exasperating to say the least.

However..RE: Your inquiry.

Idea sounds good..BUT problem is DF and Rosbank. It is called TRUST and lack thereof of the BOM situation..
BOM not a subject they are (as we see it) willing at this time to discuss..This so called NEW/now OLD governor has really screwed up, and he has (as we know) ultimately caused outside Western European, North American banks etc. much concern and worry.

BOM could have had the cake and ice cream to..but elected not.

I know this is not the answer you where hoping for, but we can't make decisions (even if we like) for others..

Burt

From: george chalmers [mailto:gc@stoneleighcapital.com]
Sent: Thursday, December 13, 2007 2:50 AM
To: Burt Greenberg ; ALEJANDRO IXE
Subject: URGENT IDEA

Burton / Alejandro,

Am still being detained here in Mongolia without a timetable to be able to leave.

One suggestion that I beleive BOM would find acceptable (to address the imminent problem of loss) is to extend the balance of the coming due DLC maturities another 6mos with BOM paying for that extension in order to find a way to resolve the situation.

The next payment is **27 December 2007 for $1.650M** and it would seem that the extension cost would be cheaper than facing the soon to mature DLC in December

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and in postponing the payment balances of the additional USD18m which will only make matters even worse in terms of the additional losses to BOM.

Can either of you talk to Rosbank to see if this is possible. If so then BOM could formally initiate the request for extension and send a SWIFT promptly to Rosbank along the lines of July 25, 2007 SWIFT that was sent from BOM to Rosbank for the same purpose.

GEORGE

Exhibit 8

YAHOO! MAIL

Print - Close Window

Subject: RE: INDEMNITY

Date: Fri, 20 Jul 2007 14:19:26 -0400

From: "Burt Greenberg" <burtg@greenbergs.biz>

To: "george chalmers" <gc@stoneleighcapital.com>

CC: "Joel Greenberg" <joelg@greenbergs.biz>, "ALEJANDRO IXE" <alejandro.garcia@ixefinancialgroup.com>

Hello Mr. George..Hope you had quiet and not disturbed dinner with your lovely wife, away from the on-going situation with BOM..etc.

George as WE spoke my last night/your day.."Swifts MUST go"..as without this done and IN place..all else does not matter. AS I told you we have /are in discussion on the issue of indemnification and how properly etc. to respond. Reason for this..is that BOM already has documents from we, issued..based on "XX occurring, and now with this breach, of non performance on their part, (issuance of paper, stop as of Oct/Nov 2006) and as "we know and you and I spoke", not allowing Trade and Development to initiate, has put we M & P/and IXE at a total disadvantage, although we have committed to fulfill our obligation..and we are proffering up dough to cause this action. ..This is OUT of our pocket..

We all spoke today about solutions and steps..(and we have idea we are working on, over and above) but we also have to protect OUR back..as YOU know, onus falling on we..M & P/IXE..Not so sure we should leave BOM unexposed..

BUT..lets make sure (you must make sure) swifts go..so WE know we have the extensions in place..and then ,,next step..

Mr. G

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From: george chalmers [mailto:gc@stoneleighcapital.com]
Sent: Friday, July 20, 2007 11:15 AM
To: Burt Greenberg

Cc: Joel Greenberg; ALEJANDRO IXE
Subject: INDEMNITY

Morning Mr G;

With BOM cooperating on our instructions for the SWIFT(s) can you complete the specific indemnity document draft so I can forward to BOM. Then we can finalize this matter and move on as Alejandro noted to "work among us and do the necessary to meet the payment dates".

Thanks much.

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GEORGE

***Burt Greenberg <burtg@greenbergs.biz>* wrote:**

Alejandro..as I re-read..I know see what I missed..
Payment due November 28th...:) interest on extensions
Mr. G

From: alejandro garcia [mailto:alejandro.garcia@ixefinancialgroup.com]
Sent: Friday, July 20, 2007 8:13 AM
To: 'george chalmers'
Cc: Burt Greenberg; Joel Greenberg
Subject: RE: DF EMAIL

Hello Geroge,

Just to understand correctly, actually it result comnvininet the last negotiation that too k place.

Because now the restructuring fee, plus the DLC extension fees, all of that is payable until November 28, 2007 togehter with the 1st DLC. And not even all due now as they were asking before, nor on each DLC extension date.

the reason to this is simple, because DF and Rosbank dont want to be dealing with indiviodualpayemnts. They want to acoomodate all the interest fo r extension and the restructuring fee all in in once, and they have agreed not to request the payment now, nor on each DLC, but yes on November 28, 2007, when the first DLC is to be paid.

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Naturally they are chargig for that 5 months a charge o 50,000 UISD that is normal from my point of view.

Also for the knowledge BOM requested to DF that the extensions cost to be paid on Febryary 4 2008/// but DF cooperative agreed to be paid on 28.11.2007.

This is the explanation fo what happen.

Geroge. I will send you a draft for your review of what BVOM needs to send to Rosbank, but basically si alrteady written in theior email.

With this swift, now the extensions procedure is all set, and now to work among us to bring what necessary to meet the payments dates.

AG

From: george chalmers [mailto:gc@stoneleighcapital.com]
Sent: Freitag, 20. Juli 2007 12:06
To: alejandro.garcia@ixefinancialgroup.com
Cc: Burt Greenberg; Joel Greenberg
Subject: RE: DF EMAIL

Alejandro,

I have requested always for copies and usually get them promptly and will follow up but now not likely until Monday.

GEORGE

alejandro garcia <alejandro.garcia@ixefinancialgroup.com> wrote:

George,

It says in this letter that BOM sent today via Rosbank the swift with the message for undertaking of interest and DLCs. Can you please get the swift copy to see what BOM have written to them see the proper way to handle

Thank you

Alejandro

From: george chalmers [mailto:gc@stoneleighcapital.com]
Sent: Freitag, 20. Juli 2007 11:51
To: alejandro.garcia@ixefinancialgroup.com
Cc: Burt Greenberg; Joel Greenberg
Subject: RE: DF EMAIL

Alejandro,

Ok please do as I also am not sure what is the situation on these costs.

GEORGE

alejandro garcia <alejandro.garcia@ixefinancialgroup.com> wrote:

Dear George,

Got a little confused with the exchange of communications and something missing for me.

But let me get deeper in all of this tounderstand and talk back to you

Alejandro

From: george chalmers [mailto:gc@stoneleighcapital.com]
Sent: Freitag, 20. Juli 2007 11:40
To: Burt Greenberg
Cc: Joel Greenberg; ALEJANDRO IXE
Subject: DF EMAIL

Morning Mr. G;

Enclosed is the email received today 20 July from DF to

BOM. I have not received any copies of SWIFT communications from BOM to Rosbank as of yet.

Deputy Gov called to complain about the additional $50,000 to be paid regarding the deferral of interest payment for the extensions. Please advise how this is to be handled.

Let's talk late your morning on the matters at hand.

regards,

GEORGE

Exhibit 9

- Copy -
* Rec'd. 3/1/08

IXE MERCANTILE AG

Limmatquai 144, CH-8001 ZURICH
SWITZERLAND
Tel: 41-43-268-2090 Fax: 41-43-268-2091

Mr. A. BATSUKH, Governor
BANK OF MONGOLIA
Baga Toiruu -9, Ulaanbaatar – 46
MONGOLIA

Date: November 10, 2006

Re: INDEMNITY/GUARANTEE AGAINST RISK/LIABILITY TO BANK OF MONGOLIA ISSUING DOCUMENTARY LETTERS OF CREDIT TO BANK MELLI, IRAN, DUBAI, UAE:

Dear Sir;

This Letter is to reaffirm that Documentary Letters of Credit (DLC's) issued by BOM to Bank Melli, Iran, Dubai, UAE will have no liability and or responsibility for the underlying transaction and documentary content. In particular the Applicant for the DLC issued for marble from Iran is opened by our Group of Companies namely IXE Mercantile with same address as our offices in Switzerland. The Beneficiary, Al Raheel General Trading LLC is also one of our associate companies.

I confirm that this DLC will never be presented for payment and will be returned by the receiving bank at maturity with no withholdings. This undertaking is given with full corporate responsibility.

The purpose of this DLC(s) sent to Bank Melli, Iran, Dubai, UAE is as all previous DLC and SBLC transactions which is to further facilitate the funding for the Affordable Housing Project in Ulaanbaatar.

Sincerely,

Burton Greenberg
CEO

cc: Stoneleleigh International Limited

Candace L. Smith 11/1

CANDACE L. SMITH
Commission # 325968
My Commission Expires
July 03, 2008

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Exhibit 10

DUCOM DMCC

ORIGINAL

COMMERCIAL INVOICE

M AND P GLOBAL FINANCIAL SERVICES
EUROPE AG
4300 NORTH UNIVERSITY DRIVE, SUITE D-106,
LAUDERHILL, FLORIDA 33351 USA

INVOICE NO.: 068SDT/10102006
Date: October 10th, 2006

RE: B/L no. 6 and 9 dd. 12/09/2006
Delivered to CFR Any UAE Port
L/C no. AITD70003060721
Customs Tariff no.: 15121100

Description of Goods	Price, USD per MT	Quantity, MT	Amount Due, USD
CRUDE SUN FLOWER OIL	825,00	2'700.00	2'227'500.00
TOTAL: US Dollars two million two hundred twenty seven thousand five hundred 00/100			

Payment due date: July 24, 2007
(315 days from B/L date)

Beneficiary: DUCOM DMCC
Account: 10.300.958_0
IBAN: CH7908538103009580000
Bank: Rosbank (Switzerland) SA
17, rue du Rhone
P.O. Box 5734
1211 Geneva 11
Switzerland
Swift: UNEICHGG

DUCOM DMCC DUBAI UAE

Exhibit 11

- Copy -

X Rec'd. 3/1/08

BANK OF MONGOLIA
(THE CENTRAL BANK)
Chingeltei District, Ulaanbaatar, MONGOLIA
Tel: (976-11) 32-27-99 Fax: (976-11) 31 14 71 Tlx: 79332 BOMCB MH
SWIFT: BOMUMUMU, http://www.mongolbank.mn

Date 7 January 2008
Ref. 1/2

By Air mail, E-mail and fax
Stoneleigh International Limited
Unit Level 13(L)
Main Office Tower
Financial Park Labuan, Jalan Merdeka
87000 Labuan
Federal Territory of Malaysia

Attention: Mr.George F.Chalmers,
President

Re:Bank Guarantee Nos.001, 002, 003, and 004 dated August 31,2005, each in the Amount of US$50 million

Dear Mr.Chalmers,

The Bank of Mongolia hereby revokes and cancels any and all obligations due under, Bank Guarantee Nos. 001, 002, 003, and 004, each in the amount of US$50,000,000, issued at Ulaanbaatar, Mongolia on August 31, 2005 in favor of Stoneleigh International Limited. The bank guarantees are revoked and cancelled on the ground that their issuance was procured by fraud.

Sincerely,

Alag Batsukh
Governor

Cc: (by airmail, by e-mail, and/or by fax)

M&P Global Financial Services Europe, AG
North University Drive, Suite D-106
Lauderhill, Florida 33351, USA
Fax: 954-749-3008
Attention: Burton D.Greenberg

M&P Global Financial Services Europe, Inc.
North University Drive, Suite D-106
Lauderhill, Florida 33351, USA
Fax: 954-749-3008
Attention: Burton D. Greenberg

SDT Wealth Management
1260 Lakeshore Road East, Suite D-106
Mississauga, Ontario L5E 3B8, Canada

SDT Private BK Enterprises SA
Limmatquai 144
Zurich CH-8001, Switzerland
Attention: Burton D. Greenberg

Ducomm DMCC
SCCF, Place de la Fusterie 9 1.
1204 Geneva, Switzerland
Attention: Burton D. Greenberg

IXE Global Finance
Limmatquai 144
CH-8001, Zurich, Switzerland
Attention: Burton D. Greenberg

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14-911