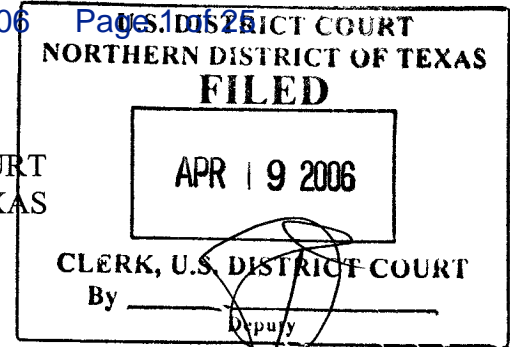


BD  
w/o



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

ORIGINAL

SECURITIES AND EXCHANGE COMMISSION, §  
Plaintiff, §

v. §

MEGAFUND CORPORATION, STANLEY A. §  
LEITNER, SARDAUKAR HOLDINGS, IBC., §  
BRADLEY C. STARK, CIG, LTD., and §  
JAMES A. RUMPF, Individually and d/b/a §  
CILAK INTERNATIONAL, §

Defendants, §

and §

PAMELA C. STARK, §

Relief Defendant. §

Civil Action No. 3:05-CV-1328-L

**MOTION FOR ORDER TO SHOW CAUSE WHY KENNETH W. HUMPHRIES  
SHOULD NOT BE HELD IN CONTEMPT FOR REFUSING TO TURN OVER  
RECEIVERSHIP ESTATE CLIENT FILES AND BRIEF IN SUPPORT**

TO THE HONORABLE JEFF A. KAPLAN, UNITED STATES MAGISTRATE JUDGE:

COMES NOW, Michael J. Quilling as the Receiver in this action (“Receiver”), and files this motion for an order requiring Kenneth W. Humphries to appear and show cause why he should not be held in contempt for violating this Court’s Amended Order Appointing Temporary Receiver, as entered on July 19, 2005, (the “Order Appointing Receiver”) and would show unto the Court as follows:

**I.  
INTRODUCTION**

This Court’s Order Appointing Receiver expressly requires all persons with actual notice of the Order—including Defendants’ attorneys—to promptly surrender to the Receiver all Receivership

Estate records in their possession. *Order Appointing Receiver* [Dkt. 36] at ¶ 3. Furthermore, Defendants' attorneys are specifically enjoined from interfering in any way with the operation of the Receivership. *Id.* at ¶ 5. Attached to this Motion as Exhibit "A" and incorporated for all purposes is the Declaration of Brent J. Rodine, attorney for the Receiver ("Rodine's Declaration"), which demonstrates that (1) Kenneth W. Humphries ("Humphries") has previously served as legal counsel for Megafund; (2) Humphries currently possesses records relating to Megafund; (3) the Receiver has presented Humphries with the Order Appointing Receiver; and (4) Humphries has not surrendered his records to the Receiver. Accordingly, for the reasons explained more fully below, Humphries ought to appear before this Court and show cause why he should not be held in contempt for failing to comply with the Order Appointing Receiver.

## II. BACKGROUND FACTS

1. The United States District Court for the Northern District of Texas has appointed Michael J. Quilling as Receiver for Megafund Corporation ("Megafund"), Stanley A. Leitner ("Leitner"), and other related individuals and entities. *Rodine's Declaration*, Exhibit "A" at ¶ 2.

2. On July 19, 2005, this Court issued its Order Appointing Receiver, which expressly requires all persons with actual notice of the Order—including Defendants' attorneys—to promptly surrender to the Receiver all Receivership Estate records in their possession:

3. All persons, including Defendants and Relief Defendant, and their officers, agents, servants, employees, brokers, facilitators, attorneys, and all persons in active concert or participation with them who receive actual notice of this Amended Order by personal service or otherwise . . . shall promptly deliver to the Receiver all Receivership Assets in the possession or under the control of any one or more of them and shall promptly surrender all Receivership Records. No separate subpoena shall be required. Upon presentment

of this Amended Order, all persons, including financial institutions, shall provide account balance information, transaction histories, all account records and any other Receivership Records to the Receiver or his agents, in the same manner as they would be provided were the Receiver the signatory on the account.

*Order Appointing Receiver* [Dkt. 36] at ¶ 3 (emphasis added).

3. Humphries is an attorney who maintains his practice in Hopkinsville, Kentucky. In an ancillary case related to this Receivership action, Humphries admits that he performed services for Megafund and/or Leitner.<sup>1</sup> He has also informed the Receiver that he currently possesses records relating to that representation. *Rodine's Declaration*, Exhibit "A" at ¶ 4.

4. On January 27, 2006, the Receiver's attorneys sent Humphries a letter asking for all materials contained in Megafund's client files. A copy of that letter is attached as Exhibit "A-1" and fully incorporated for all purposes.

5. On March 23, 2006, Humphries sent an e-mail objecting to producing those documents. He asked that the Receiver first seek written approval from Leitner before viewing Megafund's files or, alternatively, asked if there was a way he could turn them over that would comply with the rules of ethics. A copy of that e-mail is attached as Exhibit "A-2" and fully incorporated herein for all purposes.

6. On March 29, 2006, the Receiver's attorney called Humphries to discuss the matter further. *Rodine's Declaration*, Exhibit "A" at ¶ 7. The Receiver's attorney explained that (1) this

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<sup>1</sup> On February 16, 2006 the Receiver filed a Complaint against Humphries alleging negligence, negligent misrepresentation, aiding and abetting corporate waste, aiding and abetting breach of fiduciary duty, breach of contract, civil conspiracy, fraud, and fraudulent transfer for his role in advising and misrepresenting facts to two of the parties now in receivership. Judge Buchmeyer is overseeing that action, which is currently styled *Michael J. Quilling, Receiver for Megafund Corporation and Lancorp Financial Group, LLC, Plaintiff, v. Kenneth Wayne Humphries, Defendant*, Case No. 3:06-CV-0299-R (N.D. Tex.). Humphries has submitted a pleading in that case admitting he "performed or endeavored to perform" services on behalf of Megafund and/or Leitner. *Defendant's Response to Receiver's Original Complaint* [Docket No. 9], Case No. 3:06-CV-0299-R (N.D. Tex.) at 2.

Court appointed the Receiver to act for both Megafund and Leitner; (2) Federal law viewed the Receiver as standing in the shoes of those parties; (3) Leitner no longer had authority to act on Megafund's behalf; and (4) the Order Appointing Receiver expressly required Humphries' cooperation. *Id.* Humphries, however, refused to change his position.<sup>2</sup> *Id.*

7. On April 3 - 5, 2006, several e-mails were exchanged on this subject. Among other things, the Receiver's attorney directed Humphries to the landmark Supreme Court decision giving a corporation's successor the right to waive the attorney-client privilege. He also provided the phone number for Leitner's counsel, so that Humphries could independently seek a waiver letter instead of insisting that the Receiver do so. A copy of those e-mails are attached as Exhibit "A-3" and fully incorporated for all purposes.

8. It has been over two months since the Receiver's original request for Megafund's records and those documents have not yet been turned over. *Rodine's Declaration*, Exhibit "A" at ¶ 9. This Court should, therefore, order Megafund's counsel to appear and show cause why he refuses to turn over records belonging to the Receivership Estate, as provided in the Order Appointing Receiver.

### III. ARGUMENTS AND AUTHORITIES

9. Without question, federal law and the express Orders of this Court recognize the Receiver as the successor-in-interest for any rights that Defendants held before going into

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<sup>2</sup> At that time, Humphries stated that Kentucky law prevented him from turning over Megafund's files without Leitner's approval. *Rodine's Declaration*, Exhibit "A" at ¶ 7. In an effort to resolve this issue without Court intervention, the Receiver's attorney has since asked Humphries to provide the particular case or statute justifying his decision to withhold Megafund's records from the Receiver. *Id.* at ¶ 8. Humphries has not yet cited any authority justifying his actions. *Id.*; see also Exhibit "A-3."

receivership. In particular, the Receiver controls the right to exercise or waive any pre-existing attorney-client privilege without seeking approval from the Defendants or their former directors. Megafund's legal counsel, however, insists that the company's former director, Leitner, is the party who still controls that privilege. As explained below, Humphries' stance is both unreasonable and without any legal basis. Accordingly, the Receiver does not have to consult with Defendants in this case before obtaining records of the Receivership Estate.

**A. Attorney-Client Privilege is the Receiver's Right to Waive.**

10. A corporation cannot directly waive the attorney-client privilege. Rather, this act must be undertaken by an individual empowered to act on the corporation's behalf. *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 348 (1985). Under normal circumstances, the attorney-client privilege is controlled by a corporation's management. *See id.* at 351-52. When a case presents uncommon circumstances, however, the United States Supreme Court has reasoned that the attorney-privilege is held by the party whose duties most closely resemble the corporation's management. *See id.* For example, the privilege for a corporation in bankruptcy is held by the bankruptcy trustee. *Id.* at 358. Accordingly, it is well settled that the trustee of a corporation in bankruptcy has the power to waive the attorney-client privilege with respect to pre-bankruptcy communications. *Id.*

11. Courts have expanded the holding in *Weintraub* to receivership cases as well. For example, in *U.S. v. Plache*, 913 F.2d 1375 (9th Cir. 1990) the Court ruled that a corporation's attorney-client privilege passes from its former management at the moment the District Court appoints a corporate receiver. *Id.* at 1381; *see also Grassmuck v. Ogden Murphy Wallace, P.L.L.C.*, 213 F.R.D. 567, 572 (W.D. Wash. 2003) (receiver can waive work product privilege). Clearly

Humphries has no legal basis to continue withholding Megafund files under the veil of attorney-client privilege. This Court should, therefore, order Humphries to appear and show cause why he continues to do so in spite of this Court's express order to the contrary.

**B. This Matter is Appropriately Resolved by Having the Defendant Appear and Show Cause Why He Should Not be Held in Contempt of Court.**

12. Defiance of a Court order is appropriately redressed by finding the responsible party in contempt of Court. Contempt is simply the disregard of judicial authority. *Sigety v. Abrams*, 632 F.2d 969, 976 (2nd Cir. 1980). Federal Courts have the inherent power to achieve orderly and expeditious disposition of their dockets by imposing reasonable and appropriate sanctions for disobedience. *Natural Gas Pipeline Co. of America v. Energy Gathering, Inc.*, 86 F.3d 464, 465 (5th Cir. 1996). A person who fails to obey a lawful Court Order may be punished for contempt. *Travelhost, Inc. v. Blandford*, 68 F.3d 958, 961 (5th Cir. 1995). In a civil contempt proceeding, the party seeking relief must establish that: (1) a Court Order was in effect; (2) the Order required certain conduct by the respondent; and (3) the respondent failed to comply with the order. *See American Airlines, Inc. v. Allied Pilots Association*, 228 F.3d 574, 581 (5th Cir. 2000), *cert. denied*, 121 S.Ct. 1190 (2001), *citing Martin v. Trinity Industries, Inc.*, 959 F.2d 45, 47 (5th Cir. 1992). The standard of proof is clear and convincing evidence. *Petroleos Mexicanos v. Crawford Enterprises, Inc.*, 826 F.2d 392, 401 (5th Cir. 1987). However, the conduct need not be willful so long as the respondent actually violated the Court's Order. *Allied Pilots*, 228 F.3d at 581.

13. This Court has inherent authority to punish parties who refuse to comply with a Court Order to turn over assets or other property. In *SEC v. AMX Int'l, Inc.*, 7 F.3d 71, 72-73 (5th Cir. 1993), the United States Court of Appeals for the Fifth Circuit dealt with the issue of the appropriate

remedy for violation of a disgorgement order. In that case, the SEC sought to enforce a disgorgement order by bringing a contempt proceeding against a defendant who, like Humphries, was required to turn over certain assets. *Id.* at 72. The Fifth Circuit held that contempt was an appropriate means to enforce that Order because disgorgement is merely an injunction in the public interest (rather than a money judgment or debt) and properly enforced by the Court's contempt powers. *Id.* at 76 (stating that incarceration would be appropriate to bring about compliance).

14. The Fifth Circuit has also recognized that a contempt proceeding is an appropriate mechanism to enforce the rights of a court appointed Receiver in the performance of his duties. *See Santibanez v. Wier, McMahon & Co.*, 105 F.3d 234, 242 (5th Cir. 1997). Civil contempt proceedings are appropriate to protect the rights of litigants and those who have an interest in the lawsuit—e.g., the defrauded investors who have been injured by Megafund's activity and the advice rendered by Humphries. *See Louisiana Education Assn. v. Richland Parish School Bd.*, 421 F. Supp. 973, 975 (D.C. La. 1976).

15. The undisputed facts support a finding for contempt. The Order Appointing Receiver contains a standing order to promptly surrender Receivership Estate records. *Order Appointing Receiver* at ¶ 3. This Order specifically applies to Defendants' attorneys who have notice of the Order. *Id.* Humphries admits that he previously served as Megafund's legal counsel. *See Rodine's Declaration*, Exhibit "A" at ¶ 4. He further admits possessing records belonging to the Receivership Estate. *Id.*; Exhibit "A-2" and Exhibit "A-3." The Receiver has made numerous demands upon Humphries to surrender those records and has provided him copies of the Order Appointing Receiver. *See Rodine's Declaration*, Exhibit "A"; Exhibit "A-1"; Exhibit "A-2." Despite those efforts, Humphries still refuses to comply with the Orders of this Court and his own legal obligations

to the Receiver, acting as the client's successor-in-interest. Accordingly, the Receiver respectfully requests the Court's assistance by issuing an order that would set a date for Humphries to appear in these proceedings and show cause why he should not be held in civil contempt.

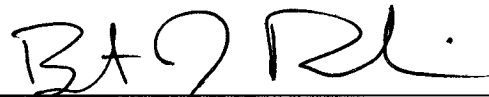
**IV.  
Prayer for Relief**

WHEREFORE, PREMISES CONSIDERED, the Receiver prays that this Court issue an Order (1) requiring Kenneth Wayne Humphries to appear and show cause why he should not be held in contempt for failing to surrender the Receivership Estate records in his possession and for causing the Receiver to file this motion; (2) setting a hearing on this matter, requiring Kenneth Wayne Humphries to pay to the Receivership Estate the reasonable and necessary attorneys' fees and expenses incurred; and (3) for such other and further relief, general or special, at law or in equity, to which he may justly show himself entitled.

Respectfully submitted,

QUILLING SELANDER CUMMISKEY & LOWNDS, P.C.  
2001 Bryan Street, Suite 1800  
Dallas, Texas 75201-4240  
(214) 871-2100 (Telephone)  
(214) 871-2111 (Facsimile)

By:



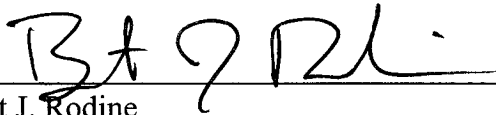
Michael J. Quilling  
Texas State Bar No. 16432300  
Email: [mquilling@qsclpc.com](mailto:mquilling@qsclpc.com)  
Brent J. Rodine  
Texas State Bar No. 24048770  
Email: [brodine@qsclpc.com](mailto:brodine@qsclpc.com)

ATTORNEYS FOR RECEIVER

**CERTIFICATE OF CONFERENCE**

Pursuant to Local Civil Rule 7.1, the Receiver would show unto the Court as follows:

1. On April 18, 2006, counsel conferred by telephone and it was determined that this motion would be opposed.
2. Brent J. Rodine participated for the Receiver and Kenneth Wayne Humphries participated on his behalf.
3. This motion is unopposed. Humphries states that he desires to produce the Megafund files in his possession but has not yet done so based on the recommendation of Leitner's counsel.

  
\_\_\_\_\_  
Brent J. Rodine

**CERTIFICATE OF SERVICE**

On the 19th day of April, 2006 a true and correct copy of the above and foregoing was sent via first class mail, with full and proper postage prepaid thereon, to:

Kenneth W. Humphries  
Post Office Box 74  
Hopkinsville, Kentucky 42241-0074

Stephen J. Korotash  
Securities and Exchange Commission  
801 Cherry Street, Suite 1900  
Fort Worth, Texas 76102

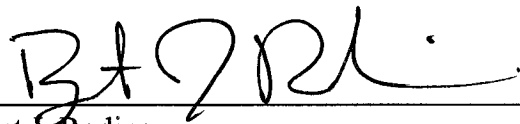
**ATTORNEY APPEARING PRO SE**

Steve Smoot  
Smoot Law Firm, P.C.  
4545 Mt. Vernon  
Houston, Texas 77006

Scott Baker  
10830 North Central Expressway  
Suite 475, B4  
Dallas, Texas 75231

Bradley C. Stark  
16960 Washington Street  
Riverside, California 92504

Pamela C. Stark  
16960 Washington Street  
Riverside, California 92504

  
\_\_\_\_\_  
Brent J. Rodine

# **Exhibit “A”**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:05-CV-1328-L
	§	
MEGAFUND CORPORATION, STANLEY A.	§	
LEITNER, SARDAUKAR HOLDINGS, IBC.,	§	
BRADLEY C. STARK, CIG, LTD., and	§	
JAMES A. RUMPF, Individually and d/b/a	§	
CILAK INTERNATIONAL,	§	
	§	
Defendants,	§	
and	§	
	§	
PAMELA C. STARK,	§	
	§	
Relief Defendant.	§	

**DECLARATION OF BRENT J. RODINE IN SUPPORT OF THE RECEIVER’S  
MOTION FOR ORDER TO SHOW CAUSE WHY KENNETH W. HUMPHRIES  
SHOULD NOT BE HELD IN CONTEMPT FOR REFUSING TO TURN OVER  
RECEIVERSHIP ESTATE CLIENT FILES**

TO THE HONORABLE JEFF A. KAPLAN, UNITED STATES MAGISTRATE JUDGE:

COMES NOW, Brent J. Rodine, attorney for the Receiver, and files this Declaration in Support of the Receiver’s Motion for Order to Show Cause Why Kenneth W. Humphries Should Not Be Held in Contempt, and would respectfully show unto the Court as follows:

1. I, Brent J. Rodine, attorney for the Receiver in the above-captioned matter, do hereby declare under penalty of perjury and in accordance with 28 U.S.C. § 1746, that the following is true and correct, and that this declaration is made of my personal knowledge and I am competent to testify as to the matters stated herein.

2. In this proceeding, the United States District Court for the Northern District of Texas has appointed Michael J. Quilling as Receiver for Megafund Corporation (“Megafund”), Stanley A. Leitner (“Leitner”), and other related individuals and entities.

3. On July 19, 2005, this Court issued its Order Appointing Receiver, which expressly requires all persons with actual notice of the Order—including Defendants’ attorneys—to promptly surrender to the Receiver all Receivership Estate records in their possession:

3. All persons, including Defendants and Relief Defendant, and their officers, agents, servants, employees, brokers, facilitators, attorneys, and all persons in active concert or participation with them who receive actual notice of this Amended Order by personal service or otherwise . . . shall promptly deliver to the Receiver all Receivership Assets in the possession or under the control of any one or more of them and shall promptly surrender all Receivership Records. No separate subpoena shall be required. Upon presentment of this Amended Order, all persons, including financial institutions, shall provide account balance information, transaction histories, all account records and any other Receivership Records to the Receiver or his agents, in the same manner as they would be provided were the Receiver the signatory on the account.

*Order Appointing Receiver* [Dkt. 36] at ¶ 3 (emphasis added).

4. Kenneth Wayne Humphries (“Humphries”) is an attorney who maintains his practice in Hopkinsville, Kentucky. In an ancillary case related to this Receivership action, Humphries admits that he performed services for Megafund and/or Leitner.<sup>1</sup> He has also informed me numerous times that he currently possesses records relating to that representation.

5. On January 27, 2006, James H. Moody, III sent Humphries a letter asking for all

---

<sup>1</sup> On February 16, 2006 the Receiver filed a Complaint against Humphries alleging negligence, negligent misrepresentation, aiding and abetting corporate waste, aiding and abetting breach of fiduciary duty, breach of contract, civil conspiracy, fraud, and fraudulent transfer for his role in advising and misrepresenting facts to two of the parties now in receivership. Judge Buchmeyer is overseeing that action, which is currently styled *Michael J. Quilling, Receiver for Megafund Corporation and Lancorp Financial Group, LLC, Plaintiff, v. Kenneth Wayne Humphries, Defendant*, Case No. 3:06-CV-0299-R (N.D. Tex.). Humphries has submitted a pleading in that case admitting he “performed or endeavored to perform” services on behalf of Megafund and/or Leitner. *Defendant’s Response to Receiver’s Original Complaint* [Docket No. 9], Case No. 3:06-CV-0299-R (N.D. Tex.) at 2.

materials contained in Megafund's client files. A copy of that letter is attached as Exhibit "A-1" and fully incorporated for all purposes.

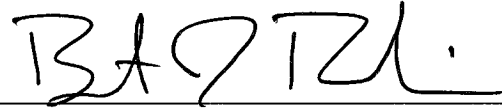
6. On March 23, 2006, Humphries sent an e-mail to me stating that he did, in fact, have records relating to the legal services he provided to Megafund. He objected to producing those documents, however, and asked that the Receiver first seek Leitner's written approval to view them. Alternatively, he asked if there was another way he could do so and still comply with the rules of ethics. A copy of that e-mail is attached as Exhibit "A-2" and fully incorporated for all purposes.

7. On March 29, 2006, I called Humphries to discuss the matter further. I explained that (1) this Court appointed the Receiver to act for both Megafund and Leitner; (2) Federal law viewed the Receiver as standing in the shoes of those parties; (3) Leitner no longer had authority to act on Megafund's behalf; and (4) the Order Appointing Receiver expressly required Humphries' cooperation. Humphries, however, refused to change his position. He stated that Kentucky law prevented him from turning over Megafund's files without Leitner's approval.

8. On April 3 - 5, 2006, several e-mails were exchanged on this subject. Among other things, I directed Humphries to the landmark Supreme Court decision giving a corporation's successor the right to waive the attorney-client privilege. I also asked Humphries to provide the particular case or statute justifying his decision to withhold Megafund's records from the Receiver. Humphries has not yet cited any authority justifying his actions. I also provided the phone number for Leitner's counsel, so that Humphries could independently seek a waiver letter instead of insisting that the Receiver do so. A copy of those e-mails are attached as Exhibit "A-3" and fully incorporated for all purposes.

9. It has now been over two months since the Receiver's original request for Megafund's records and those documents have not yet been turned over.

EXECUTED in Dallas, Texas this 19th day of April, 2006.

A handwritten signature in black ink, appearing to read "B. J. Rodine", written over a horizontal line.

Brent J. Rodine, Attorney for Receiver

# **Exhibit “A-1”**



JAMES H. MOODY, III  
E-mail: hmoody@qsclpc.com

Direct No.: 214.880.1890  
Direct Fax: 214.442.5456

January 27, 2006

**VIA FEDERAL EXPRESS**

Mr. Kenneth W. Humphries  
110 East Ninth Street  
Hopkinsville, Kentucky 42240

RE: Megafund Corporation

Dear Mr. Humphries:

I am writing on behalf of Michael J. Quilling ("Quilling"), Receiver for Megafund Corporation and any entities it controls (collectively, "Megafund"). A copy of the Order appointing Quilling as the Receiver for Megafund is enclosed herein for your file and review.

It is our understanding that you served as outside general counsel for Megafund. Please let this serve as a formal request by Quilling, who stands in the shoes of your client, for all file materials contained in any files belonging to Megafund and/or relating to any matters which you handled on behalf of Megafund. Please forward these files to my attention.

If necessary you make keep a copy of any files you forward to me, although it will be your responsibility to pay for the cost of any such copy.

Also, please let this serve as a formal request for the return of any fees or other monies paid to you by Megafund. These payments, all of which constitute fraudulent transfers, include, but may not necessarily be limited to, the following:

1. 3/01/05 - \$5000;
2. 3/15/05 - \$5000;
3. 3/25/05 - \$5000;
4. 4/26/05 - \$2000; and
5. 5/19/05 - \$2000.

Your prompt attention to these matters will be appreciated.

January 27, 2006  
Page 2

If you have any questions concerning this letter or its enclosure, please do not hesitate to give me a call.

Very truly yours,

A handwritten signature in black ink, appearing to read "JH Moody", written over the printed name.

JAMES H. MOODY, III  
HM:rf  
Enclosure

# **Exhibit “A-2”**

**Brent Rodine**

---

**From:** attylaw@bellsouth.net  
**Sent:** Thursday, March 23, 2006 9:31 AM  
**To:** Brent Rodine  
**Subject:** Re: RE: Joint Status Report - draft

Good morning Brent.

How is the weather "down there". It's amazing how we perceive things, based on others' previous labeling. You are down there in Texas, because the map makers were from Europe, and they placed the northern hemisphere "up" here on the top of the map. The weather here is chilly, but partly sunny, which is nice, especially because they were predicting a chance of rain and snow. Instead, it looks to be one of those typical early spring days, not cold, not warm, just somewhere in between, and definitely more pleasant than January.

Okay, to work now. I have downloaded and read Dondi. It is a good decision. The tactics addressed in that case are not normally experienced in the state courts in most of Kentucky, because the communities are relatively small, and you end up running into the attorney you just finished being nasty to at the grocery this evening when you go to get some milk, or your wife calls and tells you that she just got off the phone with the other attorney's wife, and we are invited over for supper on Saturday night. The communities in which we live are too small. And, the few attorneys who are unpleasant usually pay for it with their health. Of the two best examples I can think of in Hopkinsville, one died in his early 60's and the other had a heart attack when he was 50.

I will fax the signed page of the JSR to you shortly, as soon as I sign off here. I am still having trouble getting it in the proper format, even when I download the document in rtf format. If you think the page I am faxing is not suitable for filing, I will authorize you to sign the document on my behalf. Do whatever you think is appropriate.

I am going to be out of the office this afternoon, and have more to get done than I can before I leave. But, I do want to mention one matter I foresee concerning discovery. I know you will want to see my file. I am glad for you to see it. But, even though you represent the receiver for Megafund, I do not believe that I can ethically turn it over to you, unless Stan Leitner and Megafund grant me a release to do so. Scott Baker, who I understand to be representing Stan Leitner, indicated to me that he has been in contact with someone there in your firm. Is this a matter you or the attorney he has dealt with could work out? Or, have you encountered this situation before, and is there a way I can turn over the files and still comply with the rules of ethics? After you have had an opportunity to think about this, let me know when you would like to address it further.  
Ken H.

: "Brent Rodine" <brodine@qsclpc.com>  
> Date: 2006/03/22 Wed PM 05:43:30 EST  
> To: <attylaw@bellsouth.net>  
> Subject: RE: Joint Status Report - draft  
>  
> <<Joint Status Report.rtf>> Ken:  
>  
> The Joint Status Report is attached as an .rtf file.  
>  
> The Dondi decision is summarized as Exhibit A of the Court's  
> Scheduling Order that you received along with my letter. Or you can  
> access that decision online at: <http://www.txnd.uscourts.gov/pdf/dondi.pdf>.  
>  
> Please let me know if you need anything else.  
>  
> Sincerely,  
> Brent  
>  
> -----Original Message-----  
> From: attylaw@bellsouth.net [mailto:attylaw@bellsouth.net]  
> Sent: Wednesday, March 22, 2006 4:29 PM  
> To: Brent Rodine

> Subject: Re: RE: Joint Status Report - draft  
>  
> Brent,  
> A small problem. Actually, two problems.  
> First, my older version of Windows is opening the attachment as a Word  
> Pad document. The margins are not correct and it is not paginated.  
> Can you resend the JSR in a different format, such as rtf, or as a  
> Word Perfect Document, so that I can get an accurate format and sign a  
> page that resembles the rest of the document that you will be filing.  
> Second, I still have not read Dondi. Our local law library stopped  
> carrying FRD when it went to West Law some time back. But, our West  
> Law connection has been down all week, according to the librarian.  
> Thus, if the connection is not up by late tomorrow morning, can you  
> change paragraph 6 to read something like "Defendant will read Dondi  
> as soon as the Christian County Law Library can reestablish its  
> connection to West Law", or "Defendant anticipates reading Dondi  
> within the next two days", or words to that effect.  
> Sorry about this inconvenience.  
> Ken  
>  
>  
>  
>

# **Exhibit “A-3”**

**Brent Rodine**

---

**From:** attylaw@bellsouth.net  
**Sent:** Tuesday, April 04, 2006 8:49 PM  
**To:** Brent Rodine  
**Subject:** Re: RE: Megafund

> Brent,  
> Thank you for your response. I will call Mr. Baker tomorrow and let you know what we can work out.

Ken H.

> From: "Brent Rodine" <brodine@qsclpc.com>  
> Date: 2006/04/04 Tue PM 06:45:23 EDT  
> To: <attylaw@bellsouth.net>  
> Subject: RE: Megafund

>

> Ken:

>

> I spoke with Scott Baker this afternoon. He does not oppose you  
> producing Megafund files to the Receiver. We both agreed, however,  
> that the request needs to be made to him in writing rather than to us.  
> I encourage you to call Mr. Baker at (214)750-4444 to discuss this  
> further.

>

> Please understand that, regardless of whether you seek Lietner's  
> approval, we still insist on obtaining Megafund's client files. The  
> Order Appointing Receiver expressly requires all attorneys with actual  
> notice of the Order to promptly surrender to the Receiver all  
> Receivership Estate records in their possession. This is underscored  
> by the fact that any attorney-client privilege existing before  
> Megafund and Leitner went into receivership is now ours to exercise or  
> waive. See Commodity Futures Trading Comm'n v. Weintraub, 471 U.S.  
> 343, 348 (1985) (explaining that the right to exercise or waive  
> privilege as to pre-bankruptcy matters passed to receiver/trustee). I  
> know you suggested that this is not the law in Kentucky, and that  
> Leitner must still waive the privilege as it relates to him  
> individually and as the former director of Megafund. Can you please  
> direct me to the particular statute or case on which you are relying?

>

> I hope that you and Mr. Baker can work out a solution and, as always,  
> feel free to call me should you wish to discuss this further.

>

> Sincerely,  
> Brent

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> -----Original Message-----

> From: attylaw@bellsouth.net [mailto:attylaw@bellsouth.net]  
> Sent: Monday, April 03, 2006 10:24 AM  
> To: Brent Rodine  
> Subject: Megafund

>

> Good morning Brent,

> I have been trying to figure out the best way for the Receiver to  
> get my files. I went back and reviewed the order, and saw that he is  
> the receiver for Stanley Leitner also. I also reviewed my notes, and  
> saw where Stan indicated to me that he had no problem with turning

> over my files, but suggested I call his attorney, Scott Baker, which I  
> did. My notes do not reflect it, I think, but Mr. Baker did not give  
> me leave to turn the file over.

> I would like to turn the file over. It will help my case, and  
> weaken your's. Mr. Baker did indicate that he was in fairly regular  
> contact with an attorney in your office. Actually, he acted as if he  
> knew the guy pretty well. Thus, as I suggested last week, can not  
> whoever has been working with Mr. Baker in your office call him and  
> get something in writing from him as Stan Leitner's attorney  
> authorizing the turn over of the files? This seems to me to be the  
> easiest, most inexpensive and most expeditious way to resolve the issue?

> If this is not acceptable, if you would let me know why it is not  
> acceptable, then I will attempt to address those reasons at that time.

> Ken

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>

>

**Brent Rodine**

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**From:** attylaw@bellsouth.net  
**Sent:** Wednesday, April 05, 2006 3:09 PM  
**To:** Brent Rodine  
**Subject:** Re: RE: Megafund

Brent,  
I called Mr. Baker's office this morning and got his answering machine. I left him a message about getting a release from Mr. Leitner for the release of the file, and inquired as to what kind of written request he wanted from me. He has not called me back yet, but I assume he will in short order.

Ken

>  
> From: "Brent Rodine" <brodine@qsclpc.com>  
> Date: 2006/04/04 Tue PM 06:45:23 EDT  
> To: <attylaw@bellsouth.net>  
> Subject: RE: Megafund  
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> direct me to the particular statute or case on which you are relying?  
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> I hope that you and Mr. Baker can work out a solution and, as always,  
> feel free to call me should you wish to discuss this further.

> Sincerely,  
> Brent

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