



the referenced Order of July 5, 2005 was of the same wording. The alleged violations of these orders had to do with (1) turning over Receivership assets and Receivership records, (2) providing a sworn accounting, and (3) interfering with the operation of the Receivership estate.

2. On June 13, 2006, the Starks filed their Motion to Vacate the Show Cause Hearing, Dkt. No. 158, set by the Court on the Receiver's Motion.

3. Shortly after the above original Orders were entered on July 5, 2005, both Bradley and Pamela Stark were noticed for deposition by the SEC for July 12, 2005. Attached is a copy of the Notice of Depositions as Exhibit A.

4. On July 11, 2005 both Bradley and Pamela Stark provided the SEC with their Declarations Asserting Fifth Amendment Right Against Self Incrimination. Attached are copies of these Declarations as Exhibits B and C. These Declarations are detailed and encompass the providing by the Starks of any testimony, information, and records of various kinds pertaining to the allegations raised in the Complaint. The Declarations also include providing any compelled sworn accounting. Thereafter, no depositions of the Starks were taken by the SEC, or the Receiver. From that date until the present, there has been no Court action requested by either the Receiver or the SEC contesting the invocation of the Fifth Amendment by the Starks to either providing testimony and/or providing any particular information and/or records as set out in the Declarations. This is not surprising after reading the repeated allegations of wrongdoing by the Starks that are set out in the pleadings of the SEC and the Receiver in this case. It is respectfully submitted that by canceling their depositions and not contesting their claiming of their Fifth Amendment privileges as set out in the Declarations, the Starks had no reason to believe that the SEC and Receiver did not agree to their asserted rights.

5. The Starks will continue to assert their rights under the Fifth Amendment against being compelled to provide any information or “sworn accounting” which may tend to incriminate them regarding any of the allegations being made against them. *Fagen v. United States*, 545 F.2d 1005, 1007 (5<sup>th</sup> Cir. 1977). They will also assert this same right as to producing any item and/or document as to which the very “act of production” itself might tend to incriminate them, or furnish a link in the chain of evidence needed to prosecute them. *United States v. Hubbell*, 530 U.S. 27, 36-39, 120 S.Ct. 2037, 2043-2044 (2000)

6. In his Plaintiff’s Response to Defendant’s Motion to Vacate Show Cause Order filed on August 25, 2006, Dkt. No. 197, the Receiver stated in three distinct places (1) “**The Receiver, therefore seeks civil contempt** ... Response, p.2, (2) “...the Receiver submits that this is not grounds to vacate the show cause order altogether **because all the Receiver’s concerns can be remedied through civil contempt sanctions.**” Response, p.6., and (3) “**These grievances can be appropriately addressed through civil contempt**”. Response, p.6. (emphasis supplied). From these statements, the Receiver is clearly seeking from the Court civil contempt remedies in the show cause hearing as opposed to those of criminal contempt. In his Response, on pages 2 and 6, the Receiver makes somewhat veiled references to possible criminal contempt, but even in those instances, concedes that an amended order putting the Starks on clear notice that criminal contempt may be sought is at least required. However, as is pointed out in the Stark’s Motion to Vacate Show Cause Order more than just clear notice is required for a valid proceeding on criminal contempt to occur. See Motion to Vacate Show Cause Order, pp. 5 – 7. It is, therefore, submitted that any Court action sought for punishment by incarceration, or otherwise, of Mr. or Mrs. Stark for, as an example, any alleged past interference with the operation of the Receivership estate, would be purely criminal contempt in nature and outside the

purview of the instant hearing. The Starks wholeheartedly agree with the Receiver's statement, "The key factor in distinguishing civil contempt from criminal contempt is whether the Court's penalty is punitive (i.e. absolute) or remedial (i.e., **conditioned on the defendant's future conduct**)" (emphasis supplied) Response, pp.6-7 citing *Lamar Financial Corp. v. Adams*, 918 F.2d 564, 565 (5<sup>th</sup> Cir. 1990).

7. On page 8 of his Response, the Receiver requests that the Court order the Starks incarcerated or be subjected to other sanctions until they perform a "laundry list" of some seven "tasks." It is respectfully submitted that all of these "tasks" are subject to the Starks invocation of their privilege under the Fifth Amendment to the Constitution and/or have no direct relation to the prior Orders of this Court that the Starks are accused of violating.

Wherefore, premises considered, it is respectfully requested that the Court reconsider its treatment in vacating portions of the Starks' Motion to Vacate Show Cause Hearing or in the alternative, at the hearing on October 27, 2006, designate it as one seeking only civil contempt remedies, as that is what the Receiver has specifically requested.

Respectfully submitted,

By: /s John W. Sweeney, Jr.  
John W. Sweeney, Jr.  
State Bar No. 19570500  
David N. Reed  
State Bar No. 16675700

MEADOWS, OWENS, COLLIER, REED,  
COUSINS & BLAU, L.L.P.  
901 Main Street, Suite 3700  
Dallas, Texas 75202  
(214) 744-3700 Telephone  
(214) 747-3732 Facsimile

ATTORNEYS FOR DEFENDANT  
BRADLEY C. STARK and  
RELIEF DEFENDANT PAMELA C. STARK

**CERTIFICATE OF CONFERENCE**

I hereby certify that on the 24<sup>th</sup> day of October, 2006, I conferred with Mr. Michel Quilling, Receiver, concerning the foregoing pleading, and Mr. Quilling opposes the granting of this Motion.

/s John W. Sweeney, Jr.  
JOHN W. SWEENEY, JR.

**CERTIFICATE OF SERVICE**

This is to certify that on the 24<sup>th</sup> day of October, 2006, a true and correct copy of the above and foregoing document has been served on the attorneys for the parties in this matter via electronic notice.

/s John W. Sweeney, Jr.  
JOHN W. SWEENEY, JR.