SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

FICUS INVESTMENTS, INC. and
PRIVATE CAPITAL GROUP, LLC,

Plaintiffs,

-against-

PRIVATE CAPITAL MANAGEMENT, LLC, THOMAS B. DONOVAN, GERARD M. BAMBRICK, ESQ., BAMBRICK & RYAN, P.C., CHRISTOPHER CHALAVOUTIS, CHALAVOUTIS & CO. CPA'S PC, VIRGINA DONOVAN, PAMELA DONOVAN, MICHAEL BODE, ESQ., SCOTT BURGWIN, ALISSA GLADSTONE, PETER KAMRAN, JOHN KILEY, FIRST REO CORP., KIRBY ENTERPRISES I CORP., LANDPORT EQUITIES LTC REALTY CORP., M&O ENTERPRISES, PGA EQUITIES, PLAZA EQUITIES, PLAZA INVESTMENTS, PRIVATE CAPITAL CORP., PRIVATE CAPITAL SERVICING CORP., PRIVATE LENDER SERVICES CORP., PRIVATE LENDER WAREHOUSE CORP., PRIVATE CAPITAL MANAGEMENT GROUP OF NY LLC, DONOVAN FAMILY TR LLC, OCFF LLC, CARTER STREET HOLDING CORP., LUCY DIGIACOMO, GNOSIS LLC, GNOSIS IV LLC, JEN DEVELOPMENT I CORP., NPL PORTFOLIO CORP., NPL OPTION ACQUISITIONS LLCAND JOHN DOES 1-10

Defendants.

Index No. 600926/07
(Fried, J.)

AFFIRMATION OF CRAIG CARPENITO

I, **CRAIG CARPENITO,** do hereby affirm under penalty of perjury the following to be true:

1. I am an attorney admitted to practice before the courts of New York State and counsel with the law firm of Alston & Bird LLP, attorneys for Plaintiffs Ficus Investments, Inc. ("Ficus") and Private Capital Group, LLC (the "Company") in the above-captioned action.

2. I submit this affirmation in opposition to the motion of defendant Thomas Donovan ("Donovan") for an order pursuant to CPLR § 4403 (a) rejecting the Amended Report dated July 7, 2009 (the "Report") of Special Referee Marilyn Dershowitz (the "Referee") to the extent it disallowed the payment of certain legal expenses demanded by Donovan and (b) modifying the Report to require the Company to advance the entirety of Donovan's demanded Expenses plus interest from the date of Donovan's initial demands. I further submit this affirmation in support of Plaintiffs' cross-motion for an order pursuant to CPLR § 4403 confirming the Report in its entirety.

PRELIMINARY STATEMENT

3. The entirety of Donovan's motion is a legal straw man that is completely at odds with: (1) Donovan's and his counsel's own previous judicial admissions and deductions of categories of legal fees which they themselves recognized were NOT subject to advancement even though incurred in this action; (2) the plain wording and import of this Court's original advancement decision and explicit subsequent orders; (3) the clear language and intent of the parties with respect to advancement of legal fees under the Company Operating Agreement; (4) the detailed factual inquiry by, and findings of, Special Referee Dershowitz; and (5) Delaware case law. Only a litigant such as Donovan – whose "say anything" counterattack strategies have become transparent in the extreme by this point – would attempt the smoke and mirrors ploy that comprises the opposition papers, after he and his lawyers insisted upon and were granted a Delaware law driven protocol for advancement of legal fees and the overall application of Delaware law. Donovan's straw man – the so-called "rule of inclusion" which is not a rule at all and as to which there is not a single valid citation or authority advanced – is

nothing more than his latest attempt to avoid the reality of his criminal conduct and his ceaseless efforts to pollute this litigation with illegal activity and contemptuous conduct. Only Donovan could argue that he was free to violate criminal statutes, hack into former party Cline's personal email, access and use Cline's privileged communications with his counsel, and then argue that Ficus should pay his legal fees when Cline understandably seeks redress. Only Donovan could engage in clear contempt of this Court's injunction as to Company books and records, admittedly walking off with boxes and boxes of documents and records that had been maintained at the Company's 2 Jericho Plaza premises, and then argue that Ficus should advance his fees when New York law (and the law of this case) plainly provide that a contempt citation entitles recovery of legal fees and costs as against the contemnor.

4. There is a larger reality here. Special Referee Dershowitz has, by virtue of no less than six separate references from this Court, heard the testimony on various subjects from all of the key players in this drama: Donovan and Cline have both been on the stand and been cross-examined in two separate hearings; Chalavoutis, Donovan's principal shill, has also testified, as has the handmaiden of Donovan's theft of funds, Gladstone; the other former employees of the Company who have settled, Schancupp and Bambrick, have also testified; and the principal Ficus executives, Voss and Piercy, have also been on the stand. Referee Dershowitz understands the claims and defenses and the cast of characters here in a thorough and unique way. While the Referee has already, and would have on this hearing, made findings with respect to advancement that are removed from the merits, and the facts appertaining to email hacking and contemptuous removal of books and records, the point to be made is that the subject report and

recommendation is advanced by a jurist with a proverbial "full grasp." And, it is particularly ironic (indeed, distasteful) that Donovan now attacks Referee Dershowitz, and does so on so-called "legal conclusions," when he and his lawyers were saying something totally different in regards to the Referee's findings on "allocation" in the first advancement hearing and the report and recommendation that emanted from them.

5. To adopt Donovan's opposition theory here would, of course, be to render nugatory the protocol under Your Honor's original advancement decision, the manner in which the parties and all counsel have proceeded for more than a year, and the Company's right to object on reasonableness grounds. It would also sanction the unconscionable result that a litigant is free to abuse the civil jurisprudence system, fashion absurd positions, and engage in outrageous conduct (none of which pertains to the defense on the merits) – and then expect that the cost of such chicanery be borne completely by his adversary.

BACKGROUND

A. Donovan's Initial Advancement Demand & The April 24th Order

6. § 3.4.3 of the Company's Operating Agreement states that the Company must "advance funds to pay for or reimburse the reasonable Expenses incurred by a Person who is a Party to a Proceeding because he or she is a Member, Manager, or Officer" upon the receipt of a written undertaking. Attached hereto as Exhibit A is the Operating Agreement (Def. Ex. 1.)[1]

[1] The record of the trial before the Special Referee was submitted by Donovan as exhibits to the July 27, 2009 Affirmation of Richard Dolan ("Dolan Aff."). The March 23, April 15, and April 16 Transcripts are Exhibits 2, 3, and 4, respectively, to the Dolan Aff. Both the Defendant's and the Plaintiffs' Exhibits are contained in Exhibit 5 to the Dolan Aff.

7. On January 4, 2008, Donovan moved for advancement of his Expenses under the Operating Agreement, initially demanding approximately $3.1 million in legal fees and expenses. On April 24, 2008 this Court held that as the former CEO of the Company, Donovan had a right to advancement of reasonable Expenses in this action pursuant to the terms of the Operating Agreement. However, as Your Honor well knows, this Court did not award Donovan reimbursement of all the Expenses he submitted, as the $3.1 million clearly encompassed work that was not incurred because Donovan was an Officer of the Company. Recognizing that Donovan is not entitled to all Expenses he incurs in connection with this action simply because he was made a defendant, this Court referred to a Special Referee the factual inquiries as to (a) "which of the Expenses apply to Donovan," (b) "which of Donovan's claimed Expenses "were incurred as a result of Donovan's being 'a Party to a Proceeding because [he] ... is a[n] ... Officer' (Operating Agreement § 3.4.3)," and (c) "the reasonableness of such expenses." Attached hereto as Exhibit B is the April 24, 2008 Order (the "April 24 Order")(Pl. Ex. 8). Neither party ever challenged this Court's reference.

B. The Initial Referee Report

8. Recognizing that Donovan was not entitled to advancement of all of the fees initially demanded under the April 24 Order, Plaintiffs and Donovan entered into a stipulation reducing the amount sought in Donovan's original demands by approximately half, from approximately $3.1 million to $1.5 million prior to the initial Referee hearings. Among those Expenses willingly withdrawn by Donovan were – in addition to Expenses relating solely to the representation of other parties or to separate actions – were Expenses incurred by Donovan in this action which stemmed from Donovan's third-

party claims and counterclaims, Donovan's motion for access to Company books and records, Donovan's initial motion for the appointment of a temporary receiver to the Company, Donovan's never-filed motion to disqualify Alston & Bird as Plaintiffs' counsel, and transition costs in connection with Donovan's changing of counsel.

9. Due to this stipulation, the sole issue left for the Referee's determination at the initial hearings was whether the remaining Expenses should be allocated to account for the benefit Donovan's jointly-represented co-defendants received from legal work done on behalf of both Donovan and the co-defendants. On November 10, 2008, following a factual hearing, the Referee issued a report (the "Initial Report") recommending no such allocation, based on her finding that Donovan's lawyers would have done the same work in representing Donovan alone, regardless of the joint representations. On January 26, 2009, Your Honor confirmed the Initial Report.[2]

C. Donovan's "Emergency" Motion and the February 19th Order

10. On January 21, 2009, prior to this Court's confirmation of the Initial Report, Donovan made an emergency motion (Mot. Seq. 59) accusing the Company of violating the protocol for the submission and review of advancement demands set out in the April 24 Order (the "Protocol"). Donovan further claimed he was entitled to immediate payment of those Expenses undisputed by the Company, in spite of the fact that neither the April 24 Order nor the Operating Agreement provided for such payments. In response, the Company made a cross-motion, based upon the lack of detail contained in the bills submitted with his 2008 Demands and the resulting inability of the Company

[2] The First Department later affirmed Your Honor's confirmation on June 25, 2009 on the basis of the Referee's finding that the subject Expenses would have been incurred even if Donovan was the sole party represented.

to make determinations as to reasonableness and advanceability,[3] seeking an order directing Donovan to resubmit these defective bills with more detailed descriptions.

11. Your Honor denied Donovan's motion[4], finding that the Company did not breach the Protocol. However, Donovan did not fare as well. Based on the finding that Donovan's bills were not sufficient to allow the Company to make a determination as to whether the submitted Expenses were in fact subject to advancement under the Operating Agreement and the April 24 Order, Your Honor granted the Company's cross-motion. In doing so, Your Honor specifically recognized that a determination under the Operating Agreement and the April 24 Order as to the proprietary of Donovan's demands necessitated an examination of "whether or not the hours billed are reasonable or reasonably related to work necessitated by virtue of Donovan being an Officer of [the Company]" and ordered all of Donovan's demands withdrawn and resubmitted in compliance with this directive. Attached hereto as Exhibit C is the February 19, 2009 Order ("February 19 Order")(Pl. Ex. 9).

D. The Subject Demands & Referee Hearing

12. Evidentiary hearings on the particular Donovan advancement demands (the "Demands") which are the subject of the immediate motion were held before the Referee on March 23, April 15, and April 16, 2009. These demands covered work

[3] "Advanceability," and "advanceable" while probably not recognized words, are a useful shorthand description of the issue of whether Donovan's Expenses are subject to advancement under the Operating Agreement.

[4] As the Referee and Your Honor both recognized, Donovan's entire "emergency" motion was baseless as (1) the Protocol would not even be in place until the final confirmation of the Initial Report, and thus Plaintiffs could not have violated it, and (2) nothing in the Operating Agreement or any order provided Donovan with the right to interim payments from the Company prior to hearings on the subject Demands. (Relevant pages of the February 4, 2009 transcript of proceedings before Your Honor is attached hereto as Exhibit D, at 39-40). Nonetheless, Plaintiffs voluntarily chose to enter into a stipulation with Donovan to provide him with those portions of the Expenses not objected to by the Company within ten days of the Company's receipt of Donovan's demands.

performed from January 1, 2008 through January 31, 2009, and sought $3,828,708.49 in Expenses from the Company out of the total $4,241,373.99 billed. Of the total amount billed, the Company disputed that approximately $2.7 million of these Expenses were subject to advancement under the Operating Agreement and the April 24 Order.[5]

13. Donovan's sole witness was his counsel, Schlam Stone & Dolan ("Schlam Stone") partner John Lundin. The Company's sole witness was John Silas Hopkins, III. As the Referee heard and credited, Mr. Hopkins is an attorney with a long history of practicing commercial and bankruptcy litigation at major national law firms, and his experience includes trials of multiple complex cases. (3/23/09 Tr. at 177-182)[6]. More importantly, Mr. Hopkins has done extensive work as an expert in the review of legal fees and expenses, most notably as Chief Application Analysts on the Enron Fee Committee from 2002 to 2006, where he was responsible for the review of $643 million in professional fee requests. (Id. at 175-179). Mr. Hopkins testified that he reviewed the Demands in order to identify those Expenses which were not subject to advancement under the Operating Agreement as interpreted by Your Honor in the April 24 Order and the February 19 Order, either because they were not incurred because Donovan was an Officer of the Company or because they were unreasonable. (Id. at 207-208). Attached hereto as Exhibit G is Mr. Hopkins's Corrected and Amended March 13, 2009 Affidavit ("Hopkins Aff.") (Pl.'s Ex. 3).

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[5] The total amount of work invoiced during this time period was $4,241,373.99. However, Schlam Stone made its own minor affirmative deductions to this amount to account for work they deemed not subject to advancement, thus arriving at the $3,828,708.49 figure. As Mr. Hopkins, the Company's expert, explained, he found Schlam Stone's own deductions to the total Expenses inconsistent and unreliable and thus reviewed the totality of the invoiced billing entries, including those portions of Schlam Stone's bills for which Donovan did not seek advancement. (3/23/09 Tr. at 207-208).

[6] Cited pages of the March 23rd Transcript ("3/23/09 Tr.") throughout this affirmation are attached collectively hereto as Exhibit E; cited pages of the April 15th Transcript ("4/15/09 Tr.") throughout this affirmation are attached collectively hereto as Exhibit F.

14. Mr. Hopkins's review, which took place over hundreds of hours, centered on a coding system designed to calculate the amount of work billed to particular projects involved with the representation of Donovan. (3/23/09 Tr. at 203-205). In order to undertake this review, Mr. Hopkins examined numerous motion papers, orders, transcripts, and/or other background documents implicated by the work reflected in the Demands. (4/15/09 Tr. at 242-244). Hopkins broke down the Demands into various categories of Expenses which, in his expert opinion, could not be classified as reasonable and/or could not be classified as reasonably related to the representation of Donovan as an officer of the Company.[7] The Referee heard thorough testimony and received affidavits from both Mr. Lundin and Mr. Hopkins as to the factual background of each category and subcategory of the Company's objections. Based on that testimony, she concluded that $2,388,779.37[8] of the $4,241,373.99 in total invoices submitted by Donovan was not subject to advancement under the April 24 Order, and issued a report on July 7, 2009 (the "Report") recommending Donovan receive $1,852,594.62 in Expenses. Attached hereto as Exhibit H is the Report. As the Company had already paid

[7] While the basis for the Company's objections to each distinct non-advanceable project were explained in full by Mr. Hopkins in testimony and/or his submitted affidavit, the objections can be placed into several broad, and at times overlapping, categories: (1) Expenses stemming from conduct undertaken by Donovan while not an Officer of the Company, in particular work relating to the "E-mail Hacking Hearing" and the "Books & Records Contempt Hearing; (2) Expenses stemming from work done on issues not involving Donovan's status or conduct as an Officer of the Company, such as Donovan's multiple unsuccessful motions for the appointment of a temporary receiver for the Company after he left the Company; (3) Expenses stemming from affirmative claims by Donovan, including counterclaims and third-party claims; (4) Expenses stemming from the representation of the interests of parties other than Donovan or in other actions such as the Copperfield bankruptcy case or solely; (5) Expenses stemming from the representation of the interests of Schlam Stone in getting paid, such as Schlam Stone's attempts to assert entitlement to advancement funds awarded for the services of Curtis Mallet; (5) Expenses that were unreasonable based on the amount of time spent on a particular task or motion; (6) Expenses stemming from bills which were insufficiently detailed to determine their propriety under the Operating Agreement.

[8] The Referee originally submitted a report containing different dollar amounts; however, the parties agreed these numbers resulted from mathematical errors and the Referee thus issued a corrected Report containing the above figures.

Donovan a total of $1,695,404.28 in voluntary interim payments on the subject Demands, the Company advanced Donovan the net amount owed of $157,190.34 on July 7, 2009.

15. Donovan now asks this Court to reject the Referee's findings that certain subcategories of Expenses are not subject to advancement. Donovan does not assert that the Referee's findings lack factual support, but rather argues that by excluding any category of Expenses incurred by Donovan as a party in this litigation, the Referee made an "error of law."

ARGUMENT

A. Donovan Has Provided No Valid Basis for Rejection of the Report

16. It is well-established that a trial court should accept a referee's recommendation and report if the findings are supported by the record. See, e.g., RBC Capital Markets Corp. v. Bittner, 24 Misc. 3d 728, 728, 877 N.Y.S.2d 877, 881 (Sup. Ct. N.Y. County 2009); Barrett v. Toroyan, 45 A.D.3d 301, 301 (1st Dep't 2007), (citing Baker v. Kohler, 28 A.D.3d 375, 375-376, 814 N.Y.S.2d 121, 122 (1st Dep't 2006)); DiIorio v. Gibson & Cushman of New York, Inc., 204 A.D.2d 167, 614 N.Y.S.2d 114 (1st Dep't 1994). Courts recognize that such deference is properly accorded to a referee's report because "the Referee is considered to be in the best position to determine the issues presented." Nager v. Panadis, 238 A.D.2d 135, 136, 259 N.Y.S.2d 118, 119 (1st Dep't 1997) (internal citations omitted).

17. Donovan does not even make an attempt to attack the factual bases for the Referee's recommended exclusions. Rather, Donovan asks Your Honor to reject certain findings of the Referee on the basis that the she wrongly "interpreted" the April 24 Order and its construction of the advancement provisions of the Operating Agreement. This is

nonsense. Left with nothing to quibble over factually and facing a heavy burden, Donovan is simply distorting the Referee's findings of fact and declaring that they are "legal interpretations." Ironically, Donovan is the one who is attempting to substitute his own interpretation of the Operating Agreement for the construction contained in Your Honor's April 24 and February 19 Orders. Donovan insists that the Referee, instead of following Your Honor's direction to report on which Expenses were incurred as a result of Donovan's presence in this litigation "because he was an Officer of the Company," was bound to award Donovan any and all fees billed by Schlam Stone in this action, subject only to an inquiry as to their reasonableness, even if certain fees had no connection whatsoever to his status as an Officer of the Company.

18. Your Honor's reference clearly provides that the Referee is empowered to make a factual determination as to which Expenses presented to her were reasonable and incurred as a result of Donovan's being a party to this action because he was an Officer of the Company. This is precisely what the Referee did in deciding that certain categories of Expenses highlighted by the Company and its expert bore no connection to Donovan's status or conduct as an Officer. There is simply no reason to strip the Report of the deference it deserves.

B. Your Honor Has Already Interpreted the Operating Agreement

19. Donovan's construction is nonsensical, and contradicted both by Your Honor's past Orders and by Delaware case law. It is undisputed at this point that Donovan meets the requirements for entitlement to advancement as a party to this proceeding in part because of conduct undertaken as an Officer of the Company. According to Donovan, however, this fact alone entitles him to all expenses he chooses to

incur in this action – apparently subject only to a determination of reasonableness as to time spent under part (c) of Your Honor's reference – including fees stemming from conduct taken by Donovan after the termination of his employment with the Company and well outside the scope of his Officer status. Accepting Donovan's argument would mean that section (b) of Your Honor's April 24 Reference, which directed the Referee to make a determination as to which of Donovan's Expenses were "incurred as a result of Donovan's being 'a Party to a Proceeding because [he] ... is a[n] ... Officer.," was entirely unnecessary and a waste of the parties' time, money, and the judiciary's resources.

20. Tellingly, it is only now, sixteen months after the April 24 Order, that Donovan asserts his new interpretation. Indeed, in connection with the initial Referee hearings on Donovan's 2007 bills, Donovan willingly agreed to reduce his demanded Expenses by half through the withdrawal of Demands relating to his counterclaims, his third party claims, transition costs between law firms, and numerous affirmative motions in this action such as his initial motion for a temporary receiver, his motion for a preliminary injunction granting access to Company books and records, and his contemplated, but never made, motion to disqualify Alston & Bird as counsel. Donovan now refuses to accept similar exclusions when made by the Referee.

21. Furthermore, Donovan ignores the fact that Your Honor spoke to the limits of Donovan's advancement rights under the Operating Agreement a second time in the February 19 Order. In ordering Donovan to resubmit defective billing invoices that lacked sufficient detail, Your Honor recognized that the determination of which Expenses could be advanced under the Operating Agreement required an examination of "whether

or not the hours billed are reasonable or reasonably related to work necessitated by virtue of Donovan being an Officer of [the Company]." See Ex. B at 2. Your Honor plainly determined that Operating Agreement's advancement provisions require advanceable Expenses to have a connection to Donovan's status as an Officer of the Company. Accepting Donovan's interpretation means that the ordered resubmission of the Schlam Stone bills with time descriptions containing sufficient detail to determine the relation to Donovan's status or conduct as an Officer was a complete waste of Schlam Stone's time, counsels' time, the Referee's time, and this Court's time.

22. Donovan declares the February 19 Order illogical, as "Donovan's status as a former officer of the Company does not necessitate his putting on any defense at all, or engaging in any pretrial discovery or contesting any of the many motions brought against him by Plaintiffs." (July 24, 2009 Affidavit of Richard Dolan ("Dolan Aff.") at ¶ 27). This forced construction is ridiculous – although entirely consistent with the manner in which Donovan, his cronies and his lawyers have engaged in distorted interpretation of this Court's plain language orders. The plain and obvious meaning of Your Honor's statement is advanceable work "necessitated by virtue of Donovan being an Officer of [the Company]" is work done in the necessary defense of Donovan as an Officer of the Company. This is the interpretation of the Operating Agreement Your Honor advanced in the April 24 Order and moreover the interpretation under which the Referee carried out her factual examination of the Demands.

C. Donovan's Interpretation is Contradicted by the Operating Agreement Itself

23. Donovan's assertion that the Operating Agreement allows for advancement of Expenses which are wholly unrelated to his Officer status is actually

belied by the Operating Agreement itself. §3.4.3 on advancement is a subsection contained within the larger §3.4, "Indemnification of Members, Manager, and Officers." While the right to indemnification and the right to advancement are delineated in different subsections, advancement is clearly a loan dependant on a party's potential right to indemnification. Thus in order to receive advancement, a party must submit an undertaking that he will "repay any advances if it is ultimately determined that he or she is not entitled to indemnification." Ex. A at § 3.4.3. Notably, §3.4.2, titled "Obligation to Indemnify; Limits," states that "The Company must indemnify and hold harmless...any individual who is a Party to a Proceeding because he....was a[n]...Officer for any Liability whatsoever arising in connection with the Company." Ex. A at §3.4.2(a). This "Liability" is defined in §3.4 to include "reasonable Expenses[9] actually incurred with respect to a Proceeding." This language makes clear that the Operating Agreement only binds the Company to indemnify an Officer for Expenses related to his conduct vis a vis the Company. There can simply be no advancement of Expenses which are not incurred "in connection with the Company," as such Expenses will never, under any possible course this litigation may take, be subject to indemnification by the Company. In fact, under Donovan's argument, even if it is "ultimately determined" that Donovan is entitled to indemnification under §3.4.2, this Court will still have to conduct a post-judgment proceeding to sort out which of the Expenses advanced to Donovan must be paid back because they were not incurred "in connection with the Company" and thus not subject to indemnification. This is a ridiculous construction of the Operating Agreement and demonstrates the untenable nature of Donovan's position.

[9] "Expenses" is defined to include counsel fees and other legal costs and is the same term used in §3.4.3 on advancement, entitled "Advance for Expenses."

D. Donovan's Interpretation is Contradicted by Delaware Case Law

24. Delaware case law, which Donovan has repeatedly trumpeted throughout these advancement proceedings, directly supports Your Honor's interpretation of the Operating Agreement and the Report. Numerous cases which Donovan himself has relied on in the past hold that a party entitled to advancement by virtue of his status as an officer, director, or agent of a corporation is entitled to advancement only in respect to work done in connection with claims and issues stemming from that status. Fasciana v. Electronic Data Systems Corporation, 829 A.2d 160 (Del. Ch. 2003), a case which Donovan cited repeatedly in arguing against allocation between jointly-represented parties, speaks precisely to this point. Pursuant to corporate bylaws allowing for the indemnification of agents, attorney Fasciana demanded advancement from a corporation for which he had served. The subject corporation's indemnification/advancement provision was broader than the Company's advancement provision here, stating simply that:

> Each person who at any time shall serve or shall have served as a Director, officer, employee, or agent of the Corporation ...shall be entitled to (a) indemnification and (b) the advancement of expenses incurred by such person from the Corporation as, and to the fullest extent, permitted by Section 145 of the DGCL or any successor statutory provision, as from time to time amended.

Id. 829 A.2d at 166. In determining Fasciana's advancement rights, the court first held that Fasciana was entitled only to advancement as to claims against him in his capacity as an agent for the corporation. Id. Fasciana then took a position analogous to Donovan's current position: "According to Fasciana, the implication of a finding that any portion of the claims against him in the indictment and in the Civil Action are subject to advancement is that all of his defense costs for the entirety of those actions must be

advanced." Id. 829 A.2d at 174. The corporation took the position supported by the Company, Your Honor, and the Referee: "In contrast, EDS argues that it is Fasciana's burden to prove entitlement to advancement and that he should only receive advancement for those portions of his defense expenditures that might ultimately be indemnifiable." Id. In response to this dispute, the Fasciana court held that "courts should order the advancement of only those reasonable costs related to the litigation of claims arising out of the indemnitee's actions in the capacity that triggers the indemnitee's right to advancement." Id. 829 A.2d at 175. Explaining that the only attraction of Fasciana's all-or-nothing method of advancement was that it was "simpler for the court," the court stated that:

> "What [the corporation] contracted for was to bear the risk of later non-payment on expenses for which advancement is owed in the event that the underlying conduct of Fasciana and/or the outcome of the matter ultimately disentitles Fasciana to indemnification. I do not believe that [the corporation] contracted to provide Fasciana with a loan so that he could fund defense costs that do not arise out of his conduct as an agent and therefore could never be subject to advancement." Id.

25. Another prime example of Delaware case law's clear contradiction of Donovan's position is Radiancy, Inc. v. Azar, C.A. No. 1547-N, 2006 Del. Ch. LEXIS 13 (Del. Ch. Jan. 23, 2006), a case Donovan himself cites on this motion in support of his so-called "rule of inclusion." In Radiancy, the court actually denied advancement for work in connection with two counterclaims and a separate action because "[these claims] refer in part to matters...that fall outside the defendants' roles as officers and directors." Id. at *13 (emphasis added). Instead, the Radiancy court held that the officer was only entitled to advancement for work on certain issues in his counterclaims which "mirror[ed] the allegations in the Plaintiff's complaint." Id.

26. Yet another Delaware case previously cited by Donovan (on Mot. Seq. No. 71) contradicts his position, holding that a party receiving advancement is only entitled to expenses incurred in connection with the status that triggered his right to advancement. Underbrink v. Warrior Energy Servs. Corp., Civ. A. No. 2982-VCP, 2008 WL 2262316 (Del. Ch. May 30, 2008). The advancement provision at issue stated, similarly to the Operating Agreement, that:

> In the event of any threatened or pending Proceeding in which the Indemnitee is a party or is involved and that may give rise to a right of indemnification under this Article V, following written request to the Corporation by the Indemnitee, the Corporation shall promptly pay to the Indemnitee amounts to cover Expenses reasonably incurred by Indemnitee in such Proceeding in advance of its final disposition upon the receipt by the Corporation of (i) a written undertaking executed by or on behalf of the Indemnitee providing that the Indemnitee will repay the advance if it shall ultimately be determined that the Indemnitee is not entitled to be indemnified by the Corporation as provided in these Bylaws and (ii) satisfactory evidence as to the amount of such Expenses

27. The two corporate directors entitled to advancement argued that they were entitled to all of their expenses in defending themselves in the proceeding, even those expenses incurred in defending claims not made by reason of their status as directors. The court, however, looking to the indemnification provision of the corporate bylaws entitling the directors to indemnification only in connection with events arising out of their director status, denied advancement for claims not arising from this status, as this would be "advancement of expenses for which indemnification is not possible." Id. at *13 (emphasis added). Importantly, the court went even further and applied the "director-related" and "non-director-related" approach to individual underlying issues and motions. Id. at *17.

28. Therefore, under the very case law that Donovan proffers, it is clear that Donovan is entitled to advancement only as to those issues which arise from his status as an Officer of the Company.

E. Donovan's So-Called "Rule of Inclusion" is Illusory and Irrelevant

29. The reason that the Special Referee "ignored" the "rule of inclusion" is simple: it does not exist. The phrase "rule of inclusion" cannot be found anywhere in the rulings of Your Honor, the First Department, or the Referee; nor is such language present in any of the irrelevant Delaware case law cited by Donovan. It is wholly an invention of Donovan and his counsel. The First Department's decision allowing for no allocation of certain Expenses between parties on the basis that the work at issue "would have been anyway" for Donovan alone has absolutely nothing to do with the distinction between (1) "advanceable" categories of work arising in connection with claims against Donovan as an Officer of the Company and (2) wholly separate "non-advanceable" categories of work that are unrelated to Donovan's actions as an Officer and create additional work.

30. Moreover, not a single case cited by Donovan for his "rule of inclusion" actually supports his position that an Officer is entitled to all expenses incurred as a defendant in a proceeding simply because he was made a defendant in part based on actions taken as an Officer. As discussed above, the Radiancy case actually goes directly against this proposition. In addition, the court in Citadel Holding Corp. v. Roven stated that "a demand for advances of costs incurred during a legal proceeding the subject of which was totally unrelated to the business of [the corporation] would clearly be unreasonable," and granted advancement only on certain compulsory counterclaims. 603 A.2d 818, 824 (Del. 1992). In Kreinberg v. Dow Chem. Co., the court similarly stated

that "[l]egal fees incurred in pursuit of merely permissive counterclaims, which do not 'aris[e] out of the transaction or occurrence that is the subject matter of the opposing party's claim,' however, cannot justifiably be construed as part of a director's 'defense' of claims brought against [him or] her by a corporation." Civ. A. No. 3003-CC, 2008 WL 868108 at *3 (Del. Ch. Mar. 28, 2008). At the very most, these cases stand for the proposition that an officer is entitled to advancement for work on counterclaim issues that directly mirror issues necessary to the defense of claims against him in his official status. Donovan has not pointed to any evidence that the excluded categories of Expenses involve work only on issues implicated by the allegations against him as an Officer of the Company. Indeed, it is undeniable that this is an unusual litigation in that much of the motion practice has arisen from actions taken by Donovan after the events which form the basis for the complaint and thus long after Donovan resigned from his position as an Officer of the Company.

F. The Record Fully Supports Each of the Referee's Deductions

31. The Report finding certain categories of Expenses non-advanceable is fully supported by the record. The Referee heard testimony from both Mr. Lundin and Mr. Hopkins as to the amount and nature of the work making up each category and on this basis decided, as a matter of fact, whether such work was reasonable and incurred as a result of Donovan's being a party to this action because he was an Officer of the Company.

I. The Expert Gave Only Proper Factual Opinion Testimony

32. Donovan attacks the testimony of Mr. Hopkins credited by the Referee by asserting that Mr. Hopkins gave improper "legal" testimony on the meaning of the

Operating Agreement. The Dolan Affirmation does not give a single citation to any ruling by the Special Referee allowing Mr. Hopkins to opine on the interpretation of the Operating Agreement or to any testimony by Mr. Hopkins doing so.[10] The reason is simple: there was no such ruling and no such testimony. Mr. Hopkins limited his testimony to "[t]he facts . . . simply the facts . . . [for] the Special Referee to pass on." (3/23/09 Tr. at 215:26-216:3). The questions to Mr. Hopkins and his answers used the language of this Court's interpretation of the Operating Agreement in the April 24 Order and the February 19 Order, and references to these interpretations were necessary to put the witness's answers into context.[11]

33. The Referee ruled that the Mr. Hopkins "certainly is free to express what standard he used in his analysis. . . . [a]nd he can certainly cite portions of an order for why he did what he did. So I think the testimony is entirely proper under the circumstances. . . . [h]e's not going to state this is what the Court is bound by, this is what he, in fact, did and that's fine." (4/15/09 Tr. at 259-260[12]). Mr. Hopkins simply gave his opinion, after a thorough review of Donovan's Demands and documents concerning the motions and projects reflected in these Demands, as to which Expenses should be categorized as advanceable under Your Honor's reference. Expert factual testimony of this sort is entirely proper, and Donovan has provided no reason why Your Honor should disturb the Referee's crediting of the testimony.

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[10] The only two references to the Transcript in Mr. Donovan's argument (3/23/09 Tr. at 184 and 201) of the are to the argument about Mr. Hopkins' qualifications to testify and the offer of his Expert's Report. The Special Referee found that "this gentleman is amply qualified as an expert with regard to legal fees and may testify as an expert with regard to legal fees" (3/23/09 Tr. at 200:18-20) and accepted his Report into evidence (Id. at 201: 24-26). There is no testimony on either of the referenced pages.

[11] Paragraphs 20 and 21 of Mr. Hopkins' Expert's Report referenced this Court's interpretation of the Operating Agreement in the same manner to explain why he did the analysis that he did. (See Ex. G).

II. The Email Hacking Motion

34. The Referee found that Donovan hacked into Larry Cline's e-mail, including privileged communications between Mr. Cline and his attorneys, to protect his personal properties, not the interests of the Company (Ex. H at 4-5, 6) and that the e-mail hacking occurred well after Donovan's resignation as CEO of the Company on April 10, 2007 (Ex. H at 5, 6). She found that for those reasons the fees for the hearing on the e-mail hacking were outside the scope of advanceable fees. (Ex. H at 6)

35. These findings were amply supported by the evidence. Mr. Hopkins testified that his investigation showed that Donovan claimed that he hacked into the Cline e-mail to protect his personal interests seven months after he had resigned as an Officer of the Company. (4/15/09 Tr. at 266-269). Donovan himself swore in an affidavit that was introduced into evidence that he hacked into the Cline e-mail, not as an Officer of the Company, but rather to prevent Mr. Cline from stealing any more of his assets and that he started the hacking on or about November 15, 2007, long after his resignation as an Officer. (Pl. Ex. 11, attached hereto as Exhibit I). Mr. Lundin, Donovan's counsel, testified that Donovan testified at the e-mail hacking hearing that he did the hacking to protect himself from his belief that Mr. Cline was stealing his properties (3/23/09 Tr. at 147-148), and that accessing Mr. Cline's e-mail was not something that was necessitated by Donovan having been an Officer of the Company (3/23/09 Tr. at 150).

36. Donovan asserts that his cross-motion to the E-mail Hacking motion somehow makes the entirety of work done on the E-mail Hacking motion subject to advanceable. (Dolan Aff. at ¶47). Not only did Donovan fail to present any dollar evidence of the amount of work dedicated to the cross-motion, but this cross-motion has

now been recommended for dismissal by the Referee through a directed verdict at the close of Donovan's case. Donovan asserts the importance of the portion of the cross-motion seeking to use the stolen Cline e-mails in this litigation, but failed to provide any evidence at the Referee Hearings that any work was actually devoted particularly to this issue. As such, the Referee could properly find that work on the E-mail Hacking Hearing was non-advanceable.

37. Donovan has improperly submitted an affidavit of Larry Silverman, taint counsel in connection with the E-Mail Hacking Hearings, and this affidavit should not be considered on this motion. This affidavit is wholly inappropriate for a number of reasons. First, Mr. Silverman's legal bills were not at issue in these Referee hearings and he has no standing on which to submit an affidavit. Secondly, Donovan had every opportunity to call Mr. Silverman at the Referee hearings but chose not to do so, and his affidavit is clearly an attempt to supplement the record. Third, the purpose of Mr. Silverman's affidavit seems to be to tug at the Court's heartstrings by establishing the fact that he may have to withdraw if his bills are not paid.[13] As Referee Dershowitz has repeatedly recognized, advancement proceedings are focused on the proper advancement of reasonable expenses to Donovan. The Company does not become responsible for every dime charged by Donovan's lawyers – especially those stemming from issues

[13] Although Mr. Silverman's sworn affidavit states that he has not been paid and that "if [Donovan] does not obtain advances, no portion of [Silverman's] fee will be paid," that statement is demonstrably false. (See July 24, 2009 Affidavit of Larry Silverman). Indeed, a review of the bills submitted by Mr. Silverman to the Company for advancement reveals that he has been paid at least $40,000 as of February of this year. Mr. Silverman's bills are attached hereto as Exhibit J. As February 2009 is the last bill the Company has received, it is unclear if Mr. Silverman has received any further payment. Furthermore, Mr. Silverman has recently confirmed that he will not withdraw, as he is continuing to provide services to Donovan in connection with post-hearing briefing on the Email Hacking motion. Finally, it is clear from Mr. Silverman's bills that he is also performing work outside of even the Email Hacking motion which is non-advanceable. Specifically, the invoices show numerous meetings with Peter Tomao, a criminal lawyer who does not represent Donovan in this matter. This is disturbing given Your Honor's TRO forbidding the further use or distribution of the emails stolen from Mr. Cline's email account.

clearly not related to Donovan's status as an officer – simply because Donovan claims he is unable to pay his own attorneys.

III. Books & Records Contempt

38. Donovan also seeks to overturn the Referee's finding that Expenses stemming from the Books & Records Contempt motion and hearing are not subject to advancement. In discussing this motion, the Report states:

> "removal and non-disclosure of books and records occurred well after that resignation and were never, even arguably, intended for the benefit of anyone but Thomas B. Donovan as he admitted. In hearings before the undersigned, separate from this fees hearing, he has testified that the books and records which he took belonged to other companies, not those of PCG,FL. He surely did not act as an officer of the corporation in the removal of books and records from the corporate premises in the face of an order precluding the removal of any corporate related documents."

(Ex. H at 4). These findings are amply supported by the record. The Referee heard testimony on a Donovan affidavit in which stated that he took the books and records at issue because they in fact did not relate to the Company, as well as testimony on the fact that this occurred after Donovan was no longer was an Officer and could not constitute conduct vis a vis the Company. (4/15/09 Tr. at 277-283; Pl. Ex. 13, attached hereto as Exhibit K). Mr. Hopkins testified that Donovan's defense to the contempt was that he took books and records of companies other than PGC to which he was entitled and that, whether or not this is true, he could not have been acting as the CEO of the Company in taking books and records that he claims the Company is not entitled to. (4/15/09 Tr. 277-280). In addition, the Referee is of course fully conversant with the Books & Records Contempt motion as she presided over multiple days of hearings in that matter.

39. Mr. Lundin's testimony on the Books & Records Contempt motion suggests Donovan's position is, at least in part, that advancement is proper because a

contempt finding could result in "adverse inferences" being drawn against him as a defendant in this action. (3/23/09 Tr. at 78-79). Following this argument to its logical conclusion leads to the untenable proposition that the Company has the obligation to advance funds to a former officer for defending any conduct in litigation that could lead to an "adverse inference," such as spoliation of evidence or the threatening of a juror. As such, the Referee could properly conclude that advancement was not proper as to work done in connection with the Books & Records contempt.

IV. Donovan's Motion for a Temporary Receiver

40. Donovan also disagrees with the Referee's denial of advancement in connection with Donovan's motion to appoint a temporary receiver to the Company and to his appeal of Your Honor's denial of that motion. The Referee heard testimony that the motion solely concerned the management of the Company after Donovan was no longer an officer and therefore had no connection to allegations against Donovan as an officer of the Company, (4/15/09 Tr. at 301-308), and Donovan fails to point to any evidence or testimony negating these facts. As such, the Referee's determination is properly supported by the Record.

V. The Company's Motion to Repay Loans to Ficus

41. The next category of excluded Expenses with which Donovan disagrees are those incurred in connection with his opposition to the Company's motion to repay the loans of Ficus to the Company. The Referee concluded that this motion "bore no relationship to Mr. Donovan," and on this basis denied advancement. (Ex. H at 7). Mr. Hopkins testified that, based on his review of the papers associated with this motion, the motion dealt solely with the repayment of funds to Ficus in the future and did not concern

the defense of Donovan or his conduct at all. (4/15/09 Tr. at 342-348). Donovan's argument that he is entitled to advancement for this motion appears to be based merely on his argument that he incurred these expenses as a defendant in this action and is thus entitled to them. As a result, the Referee could properly conclude that these Expenses were not subject to advancement under the April 24 Order.

VI. The Money Dispute Between Schlam Stone and Curtis Mallet

42. Donovan also objects to the Referee's exclusion of Expenses for the dispute between Schlam Stone and Curtis Mallet, Donovan's former counsel, as to which firm was entitled to the initial advances sum awarded to Donovan and paid into court by the Company. The Referee heard testimony from Mr. Hopkins that as the funds were secured for Donovan, the Expenses associated with the fight between Schlam Stone and Curtis Mallet for possession did not constitute reasonable "fees on fees." (4/15/09 Tr. at 386-392). The Referee also heard Mr. Hopkins's opinion testimony that such Expenses were further unreasonable because the advances sum in dispute stemmed largely from work done by Curtis Mallet and Donovan's other prior firm Troutman Sanders, rather than by Schlam Stone. (Id.) Donovan's opposition to the Referee's finding appears to be based merely on the assertion that he is entitled to any Expenses whatsoever to "obtain court-ordered....advance[s] for Expenses," and he fails to point to any evidence or testimony which undermines the Referee's crediting of Mr. Hopkins's testimony that these particular "fees on fees" were unreasonable under the circumstances. Therefore, the record supports the Referee's finding on this category of Expenses.

VII. Donovan's "Emergency" Advancement Motions

43. Based again on the argument that Donovan is entitled to any and all "fees on fees," Donovan also seeks to reject the Referee's finding that advancement is not proper as to two "emergency" motions made by Donovan to obtain interim advancement payments. The Company rested on the affidavit of Mr. Hopkins on this category; this affidavit provided Mr. Hopkins's opinion that these motions for interim payments were "unreasonable" under the Operating Agreement because each motion was wholly unauthorized and unsupported under the protocol for monthly advancement plainly set out by Your Honor in the April 24 Order. (Ex. G at ¶¶118-122). The Referee could, and did, properly credit Mr. Hopkins's opinion as to the unreasonableness of these "emergency" motions.

VIII. Certain Subpoenas Directed to Third Parties

44. Donovan also seeks to reject the Referee's findings as to Expenses relating to subpoenas directed to non-parties Marc Ravage, Greenberg Traurig, and Peter Schancupp. As to the Schancupp subpoena, the Referee heard opinion testimony that as an affidavit submitted by Schlam Stone stated that the purpose of this subpoena was to gain information related to the books and records contempt as well as Donovan's affirmative claims as to the Plaintiff's alleged receipt of privileged information from Schancupp and Cline, these Expenses were not incurred in connection with Donovan's status as an Officer and not subject to advancement. (4/15/09 Tr. at 308-315; Pl. Ex. 21, attached hereto as Exhibit L).

45. As to the Ravage subpoena, the Referee heard opinion testimony that, as based on an affidavit submitted by Schlam Stone, the subpoena sought information on

events occurring after Donovan was no longer an officer of the Company and related specifically to Donovan's affirmative claims regarding the receipt by Lawrence Cline of assets in which Donovan claimed an interest, Expenses associated with this subpoena were also not subject to advancement. (4/15/09 Tr. at 319-320; Pl. Ex. 25, attached hereto as Exhibit M).

46. Finally, the Referee heard opinion testimony that, as an affidavit of submitted by Schlam Stone asserted that the Greenberg Traurig subpoena sought information relating to conduct occurring after Donovan was an officer which was also related to the Donovan's cross-motion in the Email Hacking Hearings, Expenses associated with this subpoena were also not subject to advancement. (4/15/09 at 322-324; Pl. Ex. 27, attached hereto as Exhibit N). Mr. Donovan's argument for rejection of the Referee's findings as to these subpoenas revolve around the declaration that each was a device "used by Donovan to defend himself against Plaintiffs' claims." (Dolan Aff. at ¶ 56). However, the Referee heard similar arguments in Mr. Lundin's testimony and chose not to credit them. The Referee had ample factual basis for her determination that the Expenses associated with each of these subpoenas were not subject to advancement due to the subject matter of the documents sought.

IX. Insufficiently Detailed "Financial Analyses" Expenses

47. Donovan also objects to the Referee's crediting of Mr. Hopkins's opinion, as set out in his affidavit, that certain Expenses relating to "financial analyses" done by Schlam Stone in conjunction with forensic accountants were not advanceable because the Demands for these Expenses did not comport with the detailed billing requirements set out by Your Honor in the February 19 Order and thus made a proper analysis under the

Operating Agreement impossible. (Ex. G at ¶¶ 134-135). Donovan did not, and does not now, attempt to combat the substandard nature of these billing entries. As such, the record supports the Referee's crediting of Mr. Hopkins's opinion as to the defective nature of these "financial analyses" Demands.

X. Reduction of Discovery Expenses

48. Finally, Donovan objects to the Referee's crediting of Mr. Hopkins's recommendation that Donovan's discovery expenses should be reduced by a factor of 55% to account for discovery related to non-advanceable issues in this litigation, as the billing entries for "discovery" did not detail which projects or motions to which this discovery related. Mr. Hopkins testified that some of the discovery obviously related to advanceable matters and some obviously related to non-advanceable matters; he further testified that he would have allocated each time entry on the basis of what subject matter the discovery related to, except that virtually none of the almost $1,000,000 of time entries gave any description of the subject matter of the discovery. [14] (4/15/09 Tr. at 380-383). In accordance with this Court's directive that the Schlam Stone time entries be amended to set forth "the type of work that was done and the subject matter thereof" (Ex. C at 2), Mr. Hopkins testified that he could have recommended that all the discovery time be disallowed, but that this would be unfair to Donovan. (4/15/09 Tr. at 381). As a result he adopted and recommended the approach of allocating the discovery between advanceable and non-advanceable work in the same proportion as the other Schlam Stone

[14] During the thirteen months reviewed by Mr. Hopkins, Schlam Stone billed $982,629.75 for work on discovery. (Pl. Ex. 53) Of this amount, $21,280.00 of time entries indicated that the subject matter of the discovery "included" the opposition to the Plaintiffs' motion to authorize partial repayment of Ficus (Pl. Ex. 54) and $1,961.00 of time entries indicated that the subject matter of the discovery "included" Donovan's third party complaints (Pl. Ex. 55). The remaining $959,388.75 of time entries did not even indicate any subject matter that was "included."

work. (Id. at 380-383). He testified that he had calculated a 55% non-advanceable and 45% advanceable proportion in his initial report before the Court ordered the resubmission of the Schlam Stone time entries, and that while the allocation had actually become less favorable to Mr. Donovan in his revised report,[15] the change was just short of significant enough to cause him to revise his recommendation. (Id.) He expressly "[left] it up to the Special Referee to decide what the percentage should be." (Id. at 383:9-10), and the Referee decided to adopt Mr. Hopkins' 55% recommendation. Any imprecision of the allocation of which Donovan complains was the necessary consequence of the imprecision of the Schlam Stone time entries submitted, and provides no basis for rejecting the Referee's findings of fact.

49. Donovan asserts that all of the discovery would have been sought in the absence of the non-advanceable matters highlighted by the Company. But the actual requesting and producing of documents was only a fraction of the discovery costs billed by Schlam Stone. Indeed, Mr. Lundin described the overwhelming bulk of the discovery-related work that was done as follows: documents produced were entered into electronic database and Schlam Stone timekeepers, then used the database to search the documents and organize them into electronic folders relating to various subjects in this action for use in future depositions, hearings, and trials. (3/23/09 Tr. at 58-61, 107-109). Such work was described by Schlam Stone timekeepers in general terms such as: "plan and coordinate discovery"; "prepare for depositions, including search and review documents"; "DocuMatrix searches for key documents"; etc. and classified by Mr. Hopkins as "discovery" work in his analysis. (3/23/09 Tr. at 107-109; *see also* Hopkins, 4/15/09 Tr. at 380-381, Pl. Ex. 53, attached hereto as Exhibit O). The Referee cannot be

[15] The allocation changed to 63.7% non-advanceable and 37.3% advanceable.

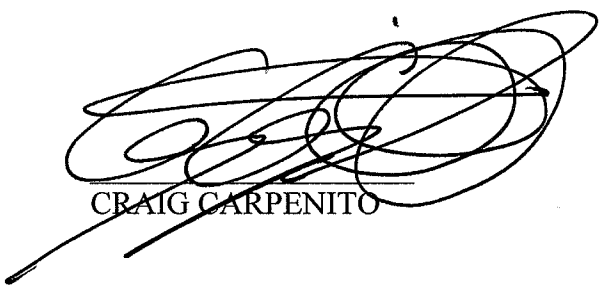
faulted, given the testimony on the many different issues and projects involved in this action, for finding that the subjects of some of these searches and compilations necessarily must have related to non-advanceable issues; as already demonstrated, Donovan has failed to show that all work in this litigation "would have been done anyway" if the only issues in play were those involving Donovan as an Officer.

50. Donovan points to the fact that no separate seeking of discovery was allowed as to E-mail Hacking and Books and Records Contempt in an attempt to discredit Mr. Hopkins's opinion on discovery costs, but ignores the fact that his attorneys were obviously not precluded from conducting these internal discovery searches and compiling relevant documents from the discovery pool in respect to these two motions, and thus charging significant "discovery" time to these motions. The Referee hardly erred in presuming that Schlam Stone used its electronic database as appropriate to prepare for the e-mail hacking hearing and the books and records hearing as well as all other matters involved in this action. Indeed, she had first-hand knowledge of how Schlam Stone conducted those hearings.

CONCLUSION

For all of the foregoing reasons, Donovan's motion to reject the Report in part should be denied, and the Company's motion to confirm the Report in its entirety should be granted.

Dated: New York, New York
August 14, 2009



CRAIG CARPENITO